



Republic of the Philippines
CONGRESS OF THE PHILIPPINES
SENATE
Pasay City

JOINT CONGRESSIONAL OVERSIGHT COMMITTEE ON THE
AUTOMATED ELECTION SYSTEM

- Date** : Thursday, February 5, 2015
- Time** : 9:30 a.m.
- Venue** : Session Hall
Second Floor, Senate of the
Philippines, Financial Center
Roxas Boulevard, Pasay City
- Agenda** : **Update on the Latest COMELEC
Decisions, Resolution, and Contracts
Relative to the Preparations for the
2016 National and Local Elections**
- Report of the COMELEC Committee on
Digital Lines**
- Sample/Overview of Other Alternative
Systems to the Current Automated
Election System**
- Inquiry on the Bidders' (Smartmatic
and Indra) Legal Standing/Foreign
Ownership and/or Capacity/Exclusive
Right to Provide For and to Refurbish
the PCOS Machines**
- Report on the Compliance on the
Minimum System Capabilities of the
PCOS Machines**
- Update on the COMELEC Calendar for
the 2016 National and Local Elections**

ATTENDANCE

SENATE PANEL:

HON. AQUILINO "KOKO" PIMENTEL III -Chairman

HOUSE PANEL:

HON. MEL SENEN S. SARMIENTO -Chairman
HON. EDGAR R. ERICE -Member
HON. ELPIDIO F. BARZAGA JR. -Member
HON. CARLOS M. PADILLA -Member

GUESTS/RESOURCE PERSONS:

Hon. Sixto S. Brillantes Jr. - Former Chairman, Commission on Elections (Comelec)

Hon. Christian Robert S. Lim -Acting Chairman, Comelec

Hon. Arthur D. Lim - Commissioner, Comelec

Ms. Ester Villaflor-Roxas - Director, Election Records and Statistics Department, Comelec

Ms. Helen G. Aguila-Flores - Chairperson, Bids and Awards Committee (BAC), Comelec

Ms. Eden Bolo - Comelec Technical Demo Evaluators

Mr. Robert Ongkiko - Comelec Technical Demo Evaluators

Mr. Filemon Enrile III - Comelec Technical Demo Evaluators

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- Mr. Angel S. Averia Jr. - Member, Comelec Advisory Council (CAC)
- Mr. Cesar Flores - President, Smartmatic Asia Pacific
- Mr. Marlon Garcia - Technical Development Manager, Smartmatic Asia Pacific
- Mr. Neson Celis - Spokesperson, Automated Election System Watch/Philippine Computer Society
- Ms. Marikor Akol - AESWatch
- Ms. Evita Jimenez - Center for People Empowerment in Governance (CenPEG)
- Atty. Glen Chong - Bayan Ko
- Ms. Margarita Cojuangco - Philippine Constitution Association (Phinconsa)
- Mr. Eric Jude Alvia - National Movement for Free Election (NAMFREL)
- Mr. Tim Abejo - Democracy Watch
- Mr. Orlando Oxales - Co-Convenor, Democracy Watch
- Mr. Iñigo Guevara - Vice President for International Business, Indra Sistemas
- Mr. Javier Moreno - Manager for Electoral Processes Department, Indra Sistemas
- Mr. Archibal Demata - Legal counsel, Indra Sistemas
- Mr. Gus Lagman - Convenor, Transparent Elections

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SENATORS' STAFF:

Atty. Valery Joy A. Brion-Dolojan	-	O/S Pimentel
Atty. Frank Navarrete	-	O/S Pimentel
Atty. Dana Paula B. Mendiola	-	O/S Pimentel
Mr. Ronwald F. Nunsayac	-	O/S Pimentel
Mr. Ryan Martin C. Macalatan	-	O/S Pimentel
Mr. Bryan See	-	O/S Legarda

REPRESENTATIVE'S STAFF:

Ms. Marjorie Martin	-	O/R Sarmiento
Mr. Ceazar Aquino	-	O/R Sarmiento
Ms. Alexa Reinoso	-	O/R Sarmiento
Ms. Bernadette Sardillo	-	O/R Sarmiento
Ms. Myrna L. Galvan	-	O/R Sarmiento

SENATE SECRETARIAT:

Mr. Himerio Jose L. Garcia IV	-	Committee Secretary
Ms. Sherill M. Villadiego	-	Committee Stenographer
Ms. Araceli D. Masicap	-	- do -
Ms. Jennifer D. Flores	-	- do -
Ms. Rosemarie J. Ortiz	-	- do -
Ms. Cleofe P. Caturla	-	- do -
Ms. Ana Leah C. Catimbang	-	- do -
Ms. Marivic H. Ulep	-	- do -
Ms. Ma. Emperatriz L. Novero	-	- do -
Ms. Nida A. Mancol	-	- do -
Ms. Ma. Rosalinda J. Catadman	-	- do -
Ms. Helen S. Gayapa	-	- do -
Ms. Avigail G. Andaya	-	Legislative Committee Clerk
Ms. Ma. Teresita C. Lavarias	-	- do -
Ms. Mylene R. Palino	-	- do -
Mr. Elmer Cardiano	-	Legislative Page
Mr. Reginald Mendoza	-	- do -
Ms. Laarni Vidal	-	- do -
Ms. Gina Rowena	-	- do -
Mr. Andre Mortel	-	Senate Economic Planning Office

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- Mr. Antonio A. Lazaga - Audio Technician
- Mr. Manuel H. Duka - do -
- Mr. Roel M. Fernandez - do -
- Mr. Erwin Jimenez - EDP-MIS
- Mr. Arce Arellano - do -

(For complete list, please see attached Attendance Sheet)

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**“AT 9:41 A.M., HON. AQUILINO “KOKO”
PIMENTEL III AND HON. MEL SENEN S.
SARMIENTO, RESPECTIVELY, CALLED THE
HEARING TO ORDER.”**

THE CHAIRMAN (SEN. PIMENTEL). Magandang umaga po.
Good morning.

On the part of the Senate, this meeting of the Joint
Congressional Oversight Committee on the Automated Election System
or the JCOCAES which is created pursuant to Republic Act No. 8436, as
amended by Republic Act No. 9369, is hereby called to order.

THE CHAIRMAN (REP. SARMIENTO). On the part of the
House of Representatives, this meeting is called to order.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So the Chair
declares the presence of quorum. And for our hearing this morning,
we have prepared the following agenda:

We want to hear a report from the Comelec Committee on Digital
Lines;

We want to be updated on the Comelec calendar for the 2016
national and local elections;

We want to be updated on the latest Comelec decisions,
resolutions, contracts and actions related to the preparation for the
2016 national and local elections;

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We have heard and read about a dispute between bidders Smartmatic and Indra. Maybe Comelec can also inform this Committee of what the issues all about.

We have also heard and read about DRE, the plan to use DRE and even the plan to use Internet voting.

So will you please inform this Committee? And, of course, other matters related to the automated election system--past, present and future issues which we have deemed to be unresolved.

Let me congratulate our former chairman, Chairman Brillantes, congratulations. You are now a private citizen.

MR. BRILLANTES. Thank you very much, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So how are you, sir? Okay.

MR. BRILLANTES. We have some papers and still researching on the hearing today because I am supposed to have made a report on the digital lines.

THE CHAIRMAN (SEN. PIMENTEL). Are we ready, Acting Chairman Commissioner Christian Robert Lim?

MR. C. LIM. Your Honor, I have prepared an opening statement addressed to the JCOC. If the Honorable Committee will allow?

THE CHAIRMAN (SEN. PIMENTEL). Yes, sir. Go ahead.

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THE CHAIRMAN (REP. SARMIENTO). Mr. Chair, before the opening statement, the Chair would like to recognize the presence of Congressman Pidi Barzaga.

MR. C. LIM. Thank you, Your Honor.

The Chairman and the Honorable Members of the Joint Congressional Oversight Committee, thank you for this opportunity to address the Committee today regarding the Commission's preparation for the 2016 National and Local Elections.

On the subject of the repair and maintenance of the existing PCOS machines, I believed that the Commission on Elections *En Banc* has clearly explained its position in Resolution NO. 9922, issued on 23 December 2014. To reiterate, the constraints of the tight time schedule in the preparations of the 2016 National and Local Elections, the highly technical nature of the work to be conducted, and the fact that the conditions for direct contracting provided under the Government Procurement Reform Act had been met, justify the approval of the Smartmatic-TIM's extended warranty proposal. In the interest of transparency, this Committee will be furnished copies of the said resolution, Resolution 9922 as well as copies of the Extended Warranty Contract dated January 13, 2015.

Allow me, however, to briefly stress two important points on the matter. First, the decision in Resolution No. 9922 was not made by

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the former chairman, Sixto S. Brillantes Jr., alone. It was a decision that five members of the Commission *En Banc* concurred in. Former Chairman Brillantes did not enter into a contract with Smartmatic-TIM on his own. It was the Commission of Elections, as an institution, which entered into the contract with Smartmatic-TIM for the repair and maintenance of PCOS machine.

Second, the Commission recently received a copy of a Petition for Certiorari and Prohibition with Preliminary Injunction docketed as G.R. No. 216098. The petition was filed with the Supreme Court by Bishop Roderick Pabillo, Pablo Manalastas, Maria Corazon Akol, Concepcion Regalado, Hector Barrios, Leo Querubin, Augusto Lagman, Felix Muga II, Gregorio Fabros, Evita Jimenez and Jaime Caro assailing the validity of Resolution 9922 and praying that it be declared *void ab initio* for having been issued with grave abuse of discretion.

This being the case, the issue is now *sub judice*, and under the *sub judice* rule as explained in *Marantan vs. Diokno*, GR No. 174105, April 2, 2009 and the case of *Romero vs. Estrada*, GR No. 205956, February 12, 2014, comments and disclosure on any matter being considered by a judge or court should be restricted so as to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. The restriction applies not only to the participants of the pending case, but also to the public in general,

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including the media. A violation of the *sub judice* rule may render one liable for indirect contempt under Section 3(d), Rule 71 of the Rules of Court.

Hence, Your Honors, while I am willing to answer any of your questions regarding the repair and maintenance of the PCOS machines, I am constrained by the *sub judice* rule to restrict my comments and disclosures to matters which will not prejudice the pending case. We will also furnish the Honorable Committee a copy of the petition as filed with the Supreme Court.

Thank you once again, and good morning to all.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Before we continue, I would like to ask the committee secretary, Atty. Garcia, for the record, to acknowledge our resource persons.

THE COMMITTEE SECRETARY. Good morning.

The Joint Congressional Oversight Committee on the Automated Election System would like to acknowledge the presence of our resource persons. We have Honorable Christian Robert S. Lim, acting chairman, Commission on Elections; Honorable Arthur D. Lim, commissioner, Comelec; Honorable Sixto S. Brillantes Jr, former chairman, Comelec; Director Ester Villaflor-Roxas, Election Records and Statistics Department, Comelec.

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We have Ms. Helen G. Aguila-Flores, Chairperson, Bids and Awards Committee, Secretariat Office, Comelec. We have Ms. Eden Bolo, Mr. Robert Ongkiko, Mr. Filemon Enrile III, Comelec Technical Demo Evaluators; Mr. Angel S. Averia Jr, member, Comelec Advisory Council; Mr. Cesar Flores, President, Smartmatic Asia Pacific; Mr. Marlon Garcia, Technical Development Manager, Smartmatic Asia Pacific; Dr. Nelson Celis, spokesperson, AESWatch/Philippine Computer Society together with Ms. Maricor Akol; Ms. Evita Jimenez of CENPEG; Atty. Glenn Chong, Bayan Ko together with Dr. Margarita Cojuangco, PHILCONSA; Mr. Eric Jude Alvia, NAMFEL. Atty. Tim Abejo and Mr. Orlando Oxales of Democracy Watch; Mr. Iñigo Guevarra, Vice President for International Business Indra Sistemas; Mr. Javier Moreno, Manager for Electoral Processes Department, Indra Sistemas; Atty. Archibal Demata, legal counsel, Indra Systemas; Mr. Gus Lagman, convenor, Transparent Elections.

Senator.

THE COMMITTEE SECRETARY. Thank you, Atty. Garcia.

THE CHAIRMAN (REP. SARMIENTO). The Chair would like to recognize as well the presence of Congressman Edgar Erice.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So your opening statement touched on the negotiated contract with Smartmatic. Is it for what, specifically for what? So that we will be clarified.

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MR. C. LIM. Excuse me, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). You know why I am asking, Commissioner Lim? Because I have read the pronouncement of former Chairman Brillantes, he is distinguishing between refurbishing and the repair.../smv

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THE CHAIRMAN (SEN. PIMENTEL). ...refurbishing and the repair. So, what is this really about?

MR. C. LIM. I will just go the scope of the contract, Your Honor. We will be furnishing the honorable Committee of the copy of this, Your Honor.

The scope of the contract will cover: number one, during the program, the provider will accomplish a physical inventory count of all the 81,896 PCOS machines; number two, completion of a full diagnostic of every PCOS machine in accordance with the diagnostic program; number three, examination of each PCOS machine to determine the required refurbishment to bring them back to working condition; number four, performance of a full preventive maintenance program of every PCOS machine; number five, perform all repairs and replacements in the defective components subject only to the exclusions list as listed below; number seven, provide replacement units for those PCOS machines that are irreparable up to maximum amount of 4 percent of the total number of PCOS machines after the inventory count by both parties.

That is the coverage of the contract, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Is this envisioned to solve the problem of digital lines?

MR. C. LIM. Not yet, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). This is already 300 million, right, P300 million?

MR. C. LIM. Two hundred sixty eight million eight hundred thousand pesos, inclusive of VAT.

THE CHAIRMAN (SEN. PIMENTEL). But this is not going to solve. So even if the 81,000 machines are to undergo all of these works, there is still a chance that there will be digital lines.

MR. C. LIM. It is possible, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So, this is not meant for the digital lines.

Okay. So, why did we do this step?

MR. C. LIM. To ensure, Your Honor, since we'll be using the PCOS machines for majority of parts of the country except for NCR, Cavite, Bulacan, Rizal, all other parts of the country will be using still the PCOS machine, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). What will be used in the NCR, Cavite, Bulacan, Rizal?

MR. C. LIM. Except for the Municipality of Pateros, Your Honor, they'll be using the new OMRs which are subject of the bidding.

THE CHAIRMAN (SEN. PIMENTEL). What are the other provinces? Cavite...

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MR. C. LIM. Cavite, Bulacan, Rizal, NCR and perhaps I think Laguna.

THE CHAIRMAN (SEN. PIMENTEL). Laguna. What will happen to these?

MR. C. LIM. They will be using the new OMRs that we are bidding right now, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay, para klaro, ha? NCR, new OMRs except...

MR. C. LIM. Pateros.

THE CHAIRMAN (SEN. PIMENTEL). ...PCOS sila, optical mark, optical mark.

MR. C. LIM. Yes, yes, sir.

THE CHAIRMAN (SEN. PIMENTEL). Except Pateros because you plan DRE.

MR. C. LIM. Yes, Your Honor..

THE CHAIRMAN (SEN. PIMENTEL). Okay. And then Cavite, Bulacan, Rizal, Laguna, the new OMRs.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So, for the rest of the country, 81,000.

MR. C. LIM. Yes, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). So, through his contract, you are preparing them to be ready for use in 2016.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay. But it doesn't address my concerns, huh?

MR. C. LIM. Yes, Your Honor.

Actually, Your Honor, if I may add, we are still considering the issue of further refurbishing the PCOS machine such that it will cover perhaps upgrade on software, possibility of replacing the Mylar sheets of each and every PCOS machines as well as the batteries and other consumable parts but that has yet to be taken up by the commission en banc, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga, that's not covered by the contract being questioned in the Supreme Court.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kasi sayang. When they are now examining each and every machine, they are not going to include the last works that you mentioned in their examination. If you so decide to do it, then balik na naman tayo, 81,000 na naman ang dadaanan.

MR. C. LIM. Actually, Your Honor, the original intent of this contract, Your Honor, was that it was supposed to start as early as

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November of last year. Because considering the timeline, it will take approximately about five months to finish all these. It will take longer to open up all the machines and replace the consumable parts, Your Honor. So, actually because of the delays, because of the national issues, it is moved to this time of the year, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Can we hear, sir, on the digital lines because I want to understand now? If we have already identified or pinpointed the source of the problem, why could we not incorporate solving the problem of digital lines in the refurbishment contract?

MR. C. LIM. Your Honor, the Committee on Digital Lines was headed by the former chairman I understand he was the one who submitted the report to the honorable Committee, Your Honor, and if I may pass on the explanation on the issue of digital lines to the former chairman, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Yes, sir. Former Chairman Brillantes.

MR. BRILLANTES. Good morning, Your Honor.

When we submitted the digital lines, I think the Committee would recall that when the issue on digital lines came up, the Committee has to do a random checking. So, we did make the random checking of all selected PCOS or selected precincts all over the

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country. In fact we invited some people to do actually the selection of what random precinct is going to be selected. And we reviewed the total of 383 precincts all over the country and this we actually decrypted and we determined whether there are lines in these ballots or whether there are no lines in several ballots. We have already submitted the report on the 383 precincts which we randomly checked and we were able to determine whether there are lines, there are no lines, how will it affect the results whether the results will be affected or not. That is the submitted report to this Committee.

We are prepared to explain that as of this moment—up to this moment, we don't really know the direct cause that is why a week or a few weeks back we referred back the matter to the TEC to assist us in determining the actual cause of the digital lines or the lines that appear in the ballots when they are decrypted. We are still determining. But if the Committee will recall, when the TEC initially checked on the random manual audit, when we referred it to the TEC, the TEC already made some findings. They said that these digital—these lines that appear in the face of the ballot in case of decryption actually can be attributed to three matters. One would be the ink which could actually create the line on the paper if it will not absorb the ink well or the Mylar or a combination of the three. So, what we did after the random and after we have determined specific ballots

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with so many lines, with no lines, no lines we disregarded, with those with plenty of lines or those which—there are lines which affected—let me just explain because there are lines where it is very thin that it does not affect the results because even if it goes through the oval, it does not reach the threshold to 20 percent and therefore it does not affect the results. There are lines that are quite thick such that if it goes through the oval, then it will somehow adversely affect the results of one particular ballot where it goes through the oval. There are several lines which does not go over, which does not touch the ovals therefore does not also affect the results of the ballots.

So, specifically, what we are going after now is trying to determine, first, which are those which adversely affect the results of the elections in particular positions. Those where the lines are very small and very thin and does not affect the results, this we also set aside. Those where the lines are very thick and it touches the oval, and therefore creates—of it affects the results of the elections, this is what we are now detailing and we are now going to report it, as in fact we reported it to the TEC. So, we can pinpoint the particular precinct and the particular PCOS which was used in the 2013 elections and this maybe can be tested in the near future. And this is the current status now. We have already the random, those where we saw—let me just

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give you one example, Your Honor. We saw one particular precinct
where there were 220 ballots. In the 220 ballots cast.../admasicap

MR. BRILLANTES. ...220 ballots cast—there are supposed to be 220 ballots which we tested. And when we decrypted the 220 ballots, 219 of the 220 had digital lines—had lines on the face. Analyzing the 219 with lines, there were only about very, very few that affected the results. Meaning—I just don't have the figures—but the 219 ballots which had lines, 111 did, in fact, touch the—

THE CHAIRMAN (SEN. PIMENTEL). One hundred eleven crossed some ovals?

MR. BRILLANTES. Crossed some of the ovals. The rest did not which means over 100 also did not touch, so it did not really affect. And analyzing this particular precinct, it would show that since there is a summary—when you decrypt the ballot, you will see that there is a summary of the results below. So, you can see that there was an overvote because of the digital line—caused by the digital line. Because the digital line going over the oval actually created a vote for those who were not supposed to have been shaded.

Now, analyzing further this particular precinct, it would appear that it did not affect most of the positions because these were in the local. The ballot has a national on the face and the local on the other side. There are digital lines that do not affect the national but affects only the local. In this instance, it affects only the local. And, therefore, going over the results of this particular ballot, since there

were 200—in this particular precinct, 219 up to 220 had digital lines and about 111 had lines that affected the results using the summary, I actually instructed the ERSD who's taking care of this to look at other precincts and decrypt other precincts in the same municipality. Because this is only one precinct in the particular municipality, I think, of Oas, Albay. So, I said, "Go over about 10 more and check whether the same digital lines would appear in all of these ballots or very few of the ballots." Is it consistent with the 220, 219, or not, just to see by way of analysis. Because what we did in the random is only one precinct in one particular municipality. Now, we went over additional 10 just to see if it is consistent that all of the precincts all over the same municipality will have digital lines all over. And there are inconsistencies. For example, in the nine additional precincts that we opened up, which is not in the report yet because we did this later, it would see that it is not that consistent. There are very few lines in the others, there were several lines in the others, others did not affect. So, there are all inconsistencies. We just want to make sure, which means, the inconsistencies of the lines are there. Meaning, that there could be lines, there would be no lines, there were lines that hit the ovals, there could be lines that are on the side, there are lines that hit the names but does not touch the ovals. And there are several lines, there are few lines. So, lines are there all over. I guess there are

several also without lines as we reported in our report. Out of the 383, I think, about over 200 had lines, about over 100 did not have lines. But the 200, we started to analyze precinct by precinct. This is covered by our report—in the annexes in our report.

THE CHAIRMAN (SEN. PIMENTEL). Mr. Former Chairman, you know why I'm very interested in the digital lines because of its potential to misreport the vote of the voter. I don't care about the affecting the results of the election. Hindi iyon. Because if a machine produces digital lines, therefore, that machine actually does not satisfy the 99.995 percent accuracy requirement for a PCOS machine.

MR. BRILLANTES. That is correct, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). That is my concern. I don't really care if the machine—if the lead of the mayor is 100 over his nearest rival and then digital lines affect only 50, so hindi nga naapektuhan ang results of the election.

MR. BRILLANTES. That's correct.

THE CHAIRMAN (SEN. PIMENTEL). But those 50 machines are questionable in their accuracy.

MR. BRILLANTES. Well, that is correct, Your Honor. That is, in fact, what we're trying to determine now is there is a glitch that happened which is not necessarily caused by the machine itself. That's why we're saying it could have been because of the ink. Chances are

that it could be with the ink. Meaning, maybe some sort of quality control is needed because it—

THE CHAIRMAN (SEN. PIMENTEL). Hindi. Wala pa tayong conclusion, sir, as to what causes—?

MR. BRILLANTES. Wala pa ho. That is why we're referring it to the technical committee now, to the evaluation committee, and we're going to discuss this. I mean, the Comelec is supposed to discuss the details of this, the technical evaluation committee. Because this is also the concern of the Commission on Elections. We don't want this to happen. No, but we did not see these digital lines in 2010. We saw this now in 2013. Now, will it appear in 2016? That is why we want to pinpoint now what is the cause. And the cause, as I have said, could be Mylar, paper or ink. If it is ink and paper, it does not have anything to do with the machine itself. If it is the Mylar, then that is part of the machine. And, therefore, we already have—we're negotiating already. We have started to talk—can be replaced. As part of the repair, replace all the Mylars just to ensure that it will have no problem. But if the problem is on the ink or in the paper, then we have to review and make sure that the paper that we're going to be supplied for 2016 will not be the same as the paper that was supplied in 2013, if it is the paper that is defective. Or, if it is the ink, then, we'll just have to have more quality control on the ink itself that's

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going to be used. And that should be the remedial measure. So, it does not really go into the machine itself.

THE CHAIRMAN (SEN. PIMENTEL). You say this because in 2010, digital lines were not an issue.

MR. BRILLANTES. That is correct.

THE CHAIRMAN (SEN. PIMENTEL). Is that confirmed? Wala talagang issue noong 2010 on digital lines?

MR. BRILLANTES. Wala ho.

THE CHAIRMAN (SEN. PIMENTEL). Ah, tama.

MR. BRILLANTES. So, kaya nga ho. So, it came out in 2013, so it's probably because of—well, it could affect the Mylar or because mas maganda ho iyong tinta noong 2010 o mas maganda iyong paper noong 2010 kaysa sa 2013. Or, it's a combination of the ink and the paper. And the Mylar itself, baka ho may dumi iyon at lumalabas. So, if we replace all the Mylars, it might solve some problems. But we'll have to put the testing now. We still have time to do the testing. That's why it's not covered by the repair/refurbishment contract as yet because we're still awaiting some things that we need to in coordination with the technical evaluation committee, so that we will be able to pinpoint saan ho ba tayo titingin. Kung Mylar lang iyan—if it is Mylar, then no problem. We'll cover the Mylar in a new contract with the Smartmatic.

THE CHAIRMAN (SEN. PIMENTEL). So, sir, ganito nga, although hindi pa formal iyong report niyo, you feel that the digital lines may have been caused by three factors: Mylar...

MR. BRILLANTES. Mylar, ink and paper.

THE CHAIRMAN (SEN. PIMENTEL). ...ink, paper. Ano iyong accumulation of dirt or dust, puwede rin iyon?

MR. BRILLANTES. Puwede rin ho iyon pero sa Mylar na iyon.

THE CHAIRMAN (SEN. PIMENTEL). So, sa Mylar na iyon.

MR. BRILLANTES. Oho.

THE CHAIRMAN (SEN. PIMENTEL). So, ano ba itsura nitong Mylar na ito?

MR. BRILLANTES. It's a plastic—

THE CHAIRMAN (SEN. PIMENTEL). Can we see it? Do you have an actual Mylar with you?

MR. BRILLANTES. Mayroon ka ba?

MR. C. LIM. Your Honor, if I may. We received also a request from the honorable committee to bring two PCOS machines: one PCOS machine and one deconstructed PCOS machine. Actually, we could not deconstruct the PCOS machine in the Comelec premises for two reasons, Your Honor. First reason is, because the PCOS machine has so many parts, that if we deconstruct it here and bring it here, there's possibility that some parts might go missing. And second, Your Honor,

we don't want to be accused that we have fixed the machine. So, in fact, we brought naman—and if you wish to deconstruct it, Your Honor, we can deconstruct it in your presence if you want to see the Mylar.

We also have a request, Your Honor, if the deconstruction of the PCOS machines can be done only by our technician and in executive session, Your Honor. There are certain national security implications, Your Honor, if we deconstruct it in public, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). But when you deconstruct it, you're sure that you can put it all together and you can still use it?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Ayaw naman namin mag-one less PCOS machine kayo.

Congressman Barzaga.

REP. BARZAGA. Thank you very much, Mr. Chairman. .../jlf

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REP. BARZAGA. ...Thank you very much, Mr. Chairman.

I would like just to clarify some concerns pertaining to the opening statement of Acting Chairman Robert Lim. Firstly, of course, we have been reading in the newspapers adverse news and adverse reaction regarding the 264 million repair/refurbishment contract which was awarded by the Comelec to Smartmatic. In the opening statement of the acting chairman, he stated that this is a decision of the Comelec as an institution. Because in the newspapers we have been reading, it appears that that is the decision personally of Chairman Brillantes. So considering that it is a decision of the Comelec as an institution, my question is, before entering into this contract, were there deliberations made by the seven members of the Comelec including the chairman?

MR. C. LIM. Yes, Your Honor. In fact, there were several deliberations made, Your Honor.

REP. BARZAGA. Well, as a matter of fact, it has been stated in the newspapers that it is a midnight deal; that the award was made on January 30 which happens to be a Friday, and on the succeeding working day Chairman Brillantes retired. So will you please state to us when was the first time that the Comelec started deliberations regarding the repair or refurbishment of the Smartmatic PCOS?

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MR. C. LIM. Your Honor, it started as early as October of 2014. Then sometime in November, there was an opinion issued by the law department, then there were several deliberations conducted by the commission including the several drafts of the Resolution 9922, Your Honor.

REP. BARZAGA. Well, was there a voting before the Comelec officially took the action of awarding this contract without any public bidding?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. Was there a vote made?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. How many commissioners favored?

MR. C. LIM. Five, Your Honor.

REP. BARZAGA. Five. And since there are seven, two are against?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. Who were the two commissioners who are not in favor of making a negotiated contract with Smartmatic?

MR. C. LIM. They dissented, Your Honor, because their position was that it should be for public bidding. These were Commissioner Louie Tito Guia and Commissioner Arthur Lim.

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REP. BARZAGA. But the other five commissioners including the chairman are of the opinion that there is no need for a public bidding and even if there is no public bidding and the award should be made by negotiated contract, there would be no violation of Republic Act 9184?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. And what is the reason why you have such position considering that the amount covers P264 million?

MR. C. LIM. Your Honor, actually the reasons are contained in Resolution No. 9922. This will be the subject of our--

REP. BARZAGA. More or less, what are the substantial reasons?

MR. C. LIM. First of all, Your Honor, that the--

REP. BARZAGA. I will clarify the rule on *sub judice*. Insofar as the parties are concerned, insofar as the Comelec is concerned, insofar as the lawyers in the case are concerned, the rule on *sub judice* applies. But insofar as congressional investigations are concerned considering that this is a constitutionally mandated obligation on our part even if there is a case pending before the Supreme Court, the rule of *sub judice* does not apply to us. I'll just clarify that.

MR. C. LIM. In that case, Your Honor, subject to my continuing objection, I am constrained to answer your query, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). I will add a few reasons why you should answer or you can safely answer. The question only asked for your position.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). The position of the--

REP. BARZAGA. I'm not saying whether--

THE CHAIRMAN (SEN. PIMENTEL). Wala pong ano iyon. That is not covered by any *sub judice* rule, just give us your position.

REP. BARZAGA. As a matter of fact, you even stated that the reasons are in your--?

MR. C. LIM. Resolution, Your Honor.

REP. BARZAGA. Resolution.

MR. C. LIM. Yes, Your Honor. If I just read/summarize Resolution 9922?

REP. BARZAGA. No, just the basic points.

MR. C. LIM. Basic points, Your Honor. First, the issue of timelines, Your Honor. Second, Your Honor, the risk of contracting it to a third-party provider other than Smartmatic which is the original manufacturer would be too great. Third, Your Honor, there are sufficient grounds for direct contracting under Republic Act 9184: issues of the proprietary nature of the goods procured, the critical components of the goods; and, second, Your Honor, in the 2009

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automated contract which was subject to a public bidding, there is a proviso regarding the repair and maintenance of the contract, Your Honor, and this is a publicly bid contract and which is implemented, that provision in the contract.

REP. BARZAGA. No, it's a little bit vague. No. (1), what is the issue pertaining to timeliness and for which we have to enter into a negotiated contract? When we speak of timeliness under circumstances, you are sending the message that there would be no more time for public bidding?

MR. C. LIM. Yes, Your Honor. In fact, to be detailed, Your Honor, we configure that for the timelines for a public bidding under a two-stage method, Your Honor, it will require 88 calendar days to complete the process assuming that there is no failed bidding.

REP. BARZAGA. Well, actually, these 81 PCOS machines are actually owned by the Comelec.

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. And, of course, you are of the firm belief that these 81,000 machines will be used for the 2016 elections in order to minimize the expenses of the Comelec?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. Okay. Would not prudence dictate that under these circumstances, you must have started the bidding process at an

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earlier time in order that you would have sufficient number of days in order to comply with Republic Act 9184?

MR. C. LIM. The problem, Your Honor, was that our budget for that was included only in the 2015 budget.

REP. BARZAGA. So you were acting under the impression that there is a possibility—so you don't have any budget for the repair or refurbishment?

MR. C. LIM. Yes, Your Honor. In fact, Your Honor, the original request of the commission was to purchase an entirely new PCOS machines for 2016, Your Honor, entirely new set. But when the CAC came up with the recommendation as well as the budget approved by the DBM, then we had to use the existing PCOS machines, Your Honor.

REP. BARZAGA. And you cannot start the conduct of the bidding or the process of the bidding unless there is a certification that you have available funds for the project?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. Well, about this contractual risk, ano ba iyong sinasabi ninyong contractual risk and for which you have to award the contract to Smartmatic?

MR. C. LIM. Your Honor--

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THE CHAIRMAN (REP. SARMIENTO). Before Commissioner Lim will respond to the question, the Chair would like to recognize the presence of Deputy Speaker Carlos Padilla.

Thank you.

REP. BARZAGA. Contractual risk, Mr. Acting Chairman?

MR. C. LIM. Yes, Your Honor. Actually, Your Honor, what we have is that there was an offer by Indra Sistemas to conduct also refurbishment and preventive maintenance of the PCOS machines. And we consulted the CAC on that, Your Honor. And that it was mentioned by Undersecretary Louie Casambre that there's a big risk on reverse engineering, Your Honor. And we consider that matter, Your Honor.

REP. BARZAGA. What about the so-called proprietary right, what would be the legal issue?

MR. C. LIM. Proprietary right, Your Honor—Sorry, Your Honor. As far as rights, Your Honor, there is a copyright as well as a patent of Dominion Voting Systems, Your Honor. And, second, Smartmatic as the licensee of Dominion Voting Systems, it's an obligation to protect the proprietary information on this intellectual property, Your Honor.

REP. BARZAGA. Would there be legal restrictions in the event that another company should be given the right to refurbish or repair the PCOS machines of Smartmatic?

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MR. C. LIM. There might be some infringement violations, Your Honor.

REP. BARZAGA. Why do say that there might be some infringement violations?

MR. C. LIM. As to the Commission.../rjo

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MR. C. LIM. ...As the to the Commission on Elections if we were the ones to do it, Your Honor, we are granted the right to do that, but we allow a third-party especially if it's a competitor, Your Honor, there might be infringement issues, Your Honor.

REP. BARZAGA. And finally, you stated that there is a contract for maintenance in 2009.

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. Does that contract provide the amount to be paid to Smartmatic in the event that they have to maintain the PCOS machine which you purchased?

MR. C. LIM. No, Your Honor. What is provided is that it shall be discussed based on prevailing market prices, Your Honor.

REP. BARZAGA. So, there is no provision regarding the amount to be paid.

MR. C. LIM. No, Your Honor.

REP. BARGANZA. Why 264 million considering that it covers only repairs of 81,000 PCOS machines? Approximately that would be how much per machine, 30,000?

MR. C. LIM. Three thousand more or less.

REP. BARZAGA. Three thousand per machine.

MR. C. LIM. Yes, Your Honor. Why 268?

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REP. BARZAGA. Yes. You must have some basis for 264 million. Two hundred sixty-eight million.

THE CHAIRMAN (SEN. PIMENTEL). Two hundred sixty-eight, 'no?

MR. C. LIM. Two hundred sixty-eight.

REP. BARZAGA. Oo.

THE CHAIRMAN (SEN. PIMENTEL). Point eight. Two hundred sixty-eight point eight.

MR. C. LIM. May I defer to the former Chairman, Your Honor.

REP. BARZAGA. Okay, thank you.

MR. BRILLANTES. During the time that we're negotiating, Your Honors, the initial offer or proposal of Smartmatic was 300 million excluding the VAT. If we include the VAT, that would reach to about 336 million. Now, when we were negotiating after we finished with the Resolution 9922, and we were now negotiating for the actual contract and I said that 300 million since that was the offer, that's the maximum. We were going to negotiate for a lower amount. And we started negotiation. We were already negotiating as early as October as to how much would be the price. The original offer was given to us way before October. So, when we're negotiating came in the opinion of the Law Department na "Do not negotiate directly because we might go into public bidding." So, we have to review whether we have to go

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public bidding or we can negotiate directly. After which, we finally decided we will now negotiate directly because we can dispense with public bidding following the Procurement Law.

So, when we started negotiating with Smartmatic, we started to move out. My initial offer is that, "Let's do it for 200 million instead of 300 which is the max." And we started negotiating until we finally came in into the amount of 240. The 268 actually includes the VAT, but the actual price there is actually 240. So, we were able to negotiate from 300 million which is 336 including VAT down to 240, but 268 including VAT. So, we were able to lower it for about 60 million. But that is not the only coverage. No, no, no. You will notice that Smartmatic proposal originally covering 300 million covered only diagnostics and minor repairs without major repairs and without replacement of PCOS machines which are non-reparable.

In the negotiation, if you will now see the contract, the new contract that we signed ultimately on January 30, it has gone down to 240. The price has gone down to 240. The coverage does not cover only minor repairs, it covers already all repairs, and third, it speaks of replacement of non-reparable machines up to four percent which means that out of the 81, four percent will be about 3,700, our computation. And the cost of one PCOS machine is about 70,000 each. So, if we are going to replace 3,000 machines assuming that

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these are non-reparable anymore, that would cost already 210 million if they are going to replace. And this is part of the contract. So, 240 is not really that high because of the expanded coverage which we negotiated. We were able to go down to 240 and we've covered now the replacement of irreparable machines which was not covered in the original proposal. So, we have gone down below and we've expanded the scope. It's not limited to diagnostics, it's not limited to minor repairs, it's the wordings now, "All repairs."

Now, what is the effect of this? Let me go back again. The original proposal of Smartmatic is 300 million for diagnostics and some minor repairs. Then additional 900 million for major repairs and replacements. Now, we're limited to 300 million down to 240, we're covering already all repairs which is supposed to be covered by the 900 million. We are also going to have replacement of irreparable machines which is really part of second stage na 900 million. Such that our own analysis—my own analysis of the contract that we entered into with Smartmatic now after we have negotiated, after people started shouting "300 million mahal," now, we are down to 240 where there will be practically no more second stage. The 900 million is practically out because we are covering already even major repairs in the 240. And we are also covering replacement of irreparable which is supposed to be covered by the second stage of the 900 million. My

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analysis now of this new contract which we negotiated with Smartmatic is such that now with the 240, we might be able to dispense even for the next stage of 900 million.

So, the 1.2 billion that was supposed to be or the original contract—original proposal of Smartmatic is actually down already to less than 300 million. And even if we'll have to replace some, and even if we have to pay for spare parts, it will not reach half a billion. Therefore, the original 1.2 as originally proposed is now down to about half a billion, it could even not be more than 300 million. So, that is what we negotiated before people started talking.

Because people started shouting as soon as we came out with our resolution on December 23 that we were going to negotiate, the 300 million was the issue and everybody shouting is "It's very high." It only covers diagnostics. But they were not reading. We said it is high because the coverage is still supposed to be negotiated. And the 300 million is the cap, that is not the value, it is much less because we are going to negotiate for it. And we did, in fact, negotiate not only the value, not only the price, but also the coverage such that we were now able to negotiate.

With the new contract that I signed on January 30 as one of my last acts is that the 1.2 has already been effectively reduced to less than half a billion. The two-stage refurbishment which were the 300

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million and 900 million as originally offered has now been reduced to about less than half a billion or even less than 300 million depending on the findings when we go into the diagnostics and examination.

THE CHAIRMAN (SEN. PIMENTEL). Kasi, sir, ako mismo I differentiated between refurbishment and repair because of what I've read.

MR. BRILLANTES. That's correct. That's why you read the newspapers. And people start going after us without even knowing because this former commissioner is talking and talking, and not talking to us.

THE CHAIRMAN (SEN. PIMENTEL). Basta for the record, Mr. former Chairman, now the refurbishment concept has been abandoned, it's now actually repair.

MR. BRILLANTES. Yes. It covers—

THE CHAIRMAN (SEN. PIMENTEL). Repair and replacement.

MR. BRILLANTES. After the contract that we signed on January 30, it covers—the original was not refurbishment but diagnostics with minor repairs. Now, we're covering diagnostics with all repairs, meaning, minor and major. Major was supposed to have been covered in the second part, in the original proposal. Now, we put in in the first part. So, wala na ho iyong 900 million, natatangalan na iyon. In the second part, it's supposed to cover replacement of irreparable

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machines, hindi na maaayos. We place that also in the first part. So, halos wala na ho iyong second part na 900 million.

THE CHAIRMAN (SEN. PIMENTEL). Where did that come from, sir, iyong two-part proposal?

MR. BRILLANTES. Proposal po ng Smartmatic iyon.

THE CHAIRMAN (SEN. PIMENTEL). Smartmatic.

MR. BRILLANTES. Siyemepre magbi-business sila, gusto nila ng kuwan.

THE CHAIRMAN (SEN. PIMENTEL). Pero the budget of 1.2 has not been given to Comelec. Wala pa inyo o nasa inyo na?

MR. BRILLANTES. Nasa amin na ho iyon. Nasa amin na at the time na ano. Pero ang original offer nila is iyon nga kaya iyong newspaper nakikinig. Ang original offer nila ang alam ko is two billion, 300 million parang diagnostics, minor repairs, 900 million major replacements, another 800 million for upgrading. So, total nga naman noon two billion.

Hindi naman ho kami tatanga-tanga, tinitingnan naman namin iyong kontrata. Iyong mga maiingay na hindi naman...cpc

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MR. BRILLANTES. ...Iyong mga maiingay na hindi naman alam na araw-araw nagne-negotiate, kami at nag-aaral kami, sabi namin, "Aayusin namin iyan, walang problema." Now, ito, hindi pa nga nila nakikita iyong kontrata noong January 30 nasa Supreme Court na sila. If we will read their petition in the Supreme Court, they're questioning the Resolution 9922. They don't even know about the contract of January 30. Why? Kasi hindi nila alam kung anong contents nito. And I dare them to see if they know what are the contents of this contract. Sinasabi ko na ho ngayon ang coverage. And this is what we are going to tell the Supreme Court. Ito ho pasok nang pasok hindi ho nakakaintindi. Former commissioner ka, bakit hindi ka mamasyal sa amin. Kakausapin ka naman namin. Ie-explain namin sa iyo lahat. Puro ingay eh.

REP. BARZAGA. Thank you very much. Well-explained.

Well, number one, I would be requesting for a certified true copy of the contract awarding the 264 million to Smartmatic.

MR. BRILLANTES. Yes, Your Honor.

REP. BARZAGA. Number two, I would be also requesting for a copy of the written offer of Smartmatic providing for the 300 million and 900 million or 1.2 billion. Was the offer made in writing?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. And I would also request a copy of the petition filed before the Supreme Court.

MR. C. LIM. Yes, Your Honor, we will.

REP. BARZAGA. And finally, Acting Chairman Lim opened the issue of *sub judice* and even former Chairman Brillantes has said that people are shouting, shouting, shouting, etcetera. As a matter of fact, when I was reading the newspaper this morning, front page, "Row over Smartmatic deal continues to rage," opening word, "Unconscionable." Well, actually, although I'm a lawyer, as a congressman, I am also confused with what I have been reading in the newspapers, favorable sometimes to Smartmatic, most of the times unfavorable, sometimes unfavorable to Indra. And, therefore, for me and to most of our citizens, they are entertaining doubt about the authenticity, about the trustworthiness of the machines to be used for 2016. Considering that Smartmatic, Indra and the parties to the case are bound by rule *sub judice*, can the Comelec not compel them, not to make any statements? Do you have that power, being a constitutional office, legally?

MR. C. LIM. Yes, Your Honor.

REP. BARZAGA. We should refrain from issuing statements which will only cast suspicion or doubt.

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MR. BRILLANTES. To clarify lang ho. Indra, Smartmatic insofar as the 23,000 is concerned, that's where the bidding is. Let us not confuse. Hindi ho covered iyon sa Supreme Court.

REP. BARZAGA. No, we know that.

MR. BRILLANTES. Iyong sa Supreme Court ho, iyong finayl (file) ni Commissioner Gus Lagman, kasama ho siya roon sa mga petitioner, ang coverage ho noon is the repair and refurbishing.

REP. BARZAGA. Okay. Mr. Chairman, we know that the 240 million covers only the refurbishing, repair or even replacement not exceeding 4 percent of the 81,000 PCOS machines for those PCOS machines which could no longer be used. Tama ba iyon?

MR. BRILLANTES. As originally proposed.

REP. BARZAGA. Yes.

MR. BRILLANTES. But as now contracted, that will now cover both minor and major repairs. It will also cover replacement of irreparable machines.

REP. BARZAGA. Not to exceed 4 percent.

MR. BRILLANTES. Not to exceed 4 percent which is about 3,700.

REP. BARZAGA. So additional request, once there has been a finding made by Smartmatic, we request that we be given also a copy.

MR. BRILLANTES. Yes, Your Honor.

REP. BARZAGA. As to your caution, we know that the issue before the Supreme Court is only 240 million.

MR. BRILLANTES. No, not even that, Your Honor. They are questioning the Resolution 9922, which covers the amount of 300 million.

REP. BARZAGA. Okay. But we know for a fact that even if Smartmatic would certify that 81,000 PCOS machines can be used for the 2016 elections, they are in good condition, nonetheless, you have to purchase additional machines.

MR. BRILLANTES. Twenty-three thousand.

REP. BARZAGA. Twenty-three thousand. And that 23,000 is not yet the subject of issue before the Supreme Court, right?

MR. BRILLANTES. In fact, it is still the subject of the current ongoing bidding between Indra and Smartmatic.

REP. BARZAGA. Just to clarify to the public. Will it be a case of public bidding or shall we see again in the future that it will be a negotiated contract insofar as the 23,000 PCOS?

MR. BRILLANTES. The 23,000 has already started, Your Honor. It's a public bidding.

REP. BARZAGA. It is a public bidding.

MR. BRILLANTES. It has already been published, documents, we already made purchase. Bidding is already ongoing. In fact, the

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first stage, we already finished. It's a two-stage public bidding. We have already finished with the first stage. We are going to the second stage.

REP. BARZAGA. So categorical answer, no negotiated contract for the 23,000.

MR. BRILLANTES. No negotiated on the 23,000 new machines.

REP. BARZAGA. Okay. Thank you very much for that information.

I think that would be all, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). Before we recognize the other resource persons, Acting Chairman Lim, how long will it take to deconstruct the PCOS machine? Dito. Kasi while we are proceeding with the hearing, maybe we can start the construction process.

MR. C. LIM. Maybe about 15 to 20 minutes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Sige, we will look for a room. We can start doing it. And then, when they are ready, please tell us, then we can take a break. We can go there to the other room.

MR. C. LIM. Okay. Yes, Your Honor. The moment a room is available, we can already send the machine.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Garcia will tell you what room.

MR. C. LIM. Yes, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). Personally, my concern is, I want to be able to see the Mylar para makita po natin.

MR. C. LIM. Yes, Your Honor, you will be able to see it.

Your Honor, can I just...

THE CHAIRMAN (SEN. PIMENTEL). Yes, continue, sir.

MR. C. LIM. ...discuss on the issue of the digital lines, what we are doing, even though we are still awaiting the finding of the TEC. First of all, Your Honor, under the terms of reference for the new OMRs, we have included as part of the specifications a part of the software that it has an ability to check if the Mylar has already been affected. We included that as a specification.

THE CHAIRMAN (SEN. PIMENTEL). Kaya ba iyon?

MR. C. LIM. Kaya iyon, sir.

THE CHAIRMAN (SEN. PIMENTEL). A software?

MR. C. LIM. For Indra—I saw the presentations before—before the bidding started, was that they have a software that can erase the lines. They showed that. On the part Smartmatic, they showed me that there is already a line in the Mylar.

THE CHAIRMAN (SEN. PIMENTEL). Now if it can erase a line, can it erase a shade?

MR. C. LIM. Technically. Yes, it's possible. These, sir, are demos. I mean, these can still be subject to customization, Your Honors, but we require that in the new OMRs.

Second, Your Honor, in the random manual audit, the TEC identified the issue of paper and pen. We have discussed and we intend to bundle the bidding for the paper and pen. So a test will be that for the paper and pen will be for the absorption rate as well as the dripping of the paper and pen. What we also discussed is a possible upgrade on the software of the existing PCOS machines to include that feature that it can detect the lines, Your Honor. And fourth, Your Honor, we have also discussed the possibility of including a protocol for the board of election inspectors that we will be providing them with sheets of paper in case that we have that software and it's detected that the Mylar has been infected that they can clean. And after cleaning, there is still an infection, then we'll have to replace the machine.

THE CHAIRMAN (SEN. PIMENTEL). Upgraded software in the 23,000 that you are intending to purchase.

MR. C. LIM. The 23,000, Your Honor, we require that's a mandatory feature.

THE CHAIRMAN (SEN. PIMENTEL). And then?

MR. C. LIM. For the existing PCOS machines, we are studying the fact of possibly upgrading the software so that we can have that feature, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So that's another step.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Since you mentioned the software—before I recognize the other resource persons—how is now the dispute between the alleged owner of the software, Dominion Voting System, and Smartmatic, the licensee?

MR. C. LIM. They have submitted to us an agreement between Dominion and Smartmatic. But it would be more appropriate for Smartmatic to explain the details of that, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). There is an agreement.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Smartmatic, I'll recognize you later on two points: the agreement with Dominion and if we can ask a copy and for your explanation. And do you confirm the understanding of former Chairman Brillantes as to the scope of your 240 million contract regarding replacement, etcetera and major repairs. But former Commissioner Lagman.../alicc

THE CHAIRMAN (SEN. PIMENTEL). ...But former Commissioner Lagman has been mentioned by the former chairman so let us give him a chance just to respond.

MR. LAGMAN. Thank you, Mr. Chairman.

We are here as resource persons and so I would like to inform the body of certain facts. As early as the 1960s, there was a new industry that sort of sprouted and that is called third party maintenance companies. IBM objected because they didn't want anybody, any other company to maintain their mainframe computers. These are mainframe computers. They lost and, all over the world, third party maintenance companies were allowed to maintain IBM computers.

Not only that, IBM was compelled to sell parts to these companies. So the talk about other companies or other people maintaining PCOS machines is not going to be allowed in their copyrights covering that is not true.

THE CHAIRMAN (SEN. PIMENTEL). That's one of your arguments in the petition?

MR. LAGMAN. No, I don't think so. But I just wanted—because we are resource persons here.

THE CHAIRMAN (SEN. PIMENTEL). Okay, yes, sir. That it could be done, that's what you're trying to tell us.

MR. LAGMAN. Yes. Even with cars. Cars are composed of many parts, many of them covered with patents. And yet, if my car breaks down, I can go to any shop. I can do the repairs myself.

In 2012, Smartmatic was—by the way, the local partner of Smartmatic does third party maintenance. Anyway, in 2012, Smartmatic was quoted to say that “80 Smartmatic technicians and 80 Comelec technicians can do the job of repairing the machines and it would only take several weeks.” They were quoted to have said that “Even Comelec can do it itself using these 80 technicians and some students.”

It’s not rocket science. PCOS is composed of a PC, a printer and a scanner and these are off-the-shelf devices. So there are many who can do this. Filipino companies, Filipino technicians can do this. So I just wanted to clarify that point.

Just a second point, Mr. Chairman, earlier you mentioned the agenda and you mentioned that there are other alternative solutions and you mentioned a couple of companies. Could Filipino design solutions also be heard in this forum? Because we’ve been talking about a Filipino design solution which is very much cheaper and yet we have not been given a chance to present it to this forum. That’s all, Mr. Chair.

THE CHAIRMAN (SEN. PIMENTEL). That's for—to be considered for use in 2016.

MR. LAGMAN. In 2016.

THE CHAIRMAN (SEN. PIMENTEL). May time pa ba, sir, Acting Chairman Lim?

MR. BRILLANTES. Wala na hong time siguro.

THE CHAIRMAN (SEN. PIMENTEL). May time pa ba?

MR. BRILLANTES. Tapos na lahat ang kontrata.

THE CHAIRMAN (SEN. PIMENTEL). Iyon ho ang concern natin.

MR. BRILLANTES. But I think we can consider that in 2019, 2022, wala hong problema. I just wanted to say, there are so many who can do the repair.

Can Mr. Gus Lagman tell us three names?

MR. LAGMAN. Many, there are many. I can send you a list.

THE CHAIRMAN (SEN. PIMENTEL). Also the committee, sir.

MR. BRILLANTES. And if they can do it for the same price covering the same contract.

MR. LAGMAN. But that's not the point.

THE CHAIRMAN (SEN. PIMENTEL). I get the point because if you open it up for bidding, then you will see the costing.

MR. LAGMAN. Exactly.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, that's now being questioned before the Supreme Court.

MR. LAGMAN. Let me just disabuse what was mentioned that there's no time to do other alternative solutions. There is time. I am the IT person, he is a lawyer. I think—

THE CHAIRMAN (SEN. PIMENTEL). I want to ask the acting chairman. There are Filipino companies with election systems or solutions, do they still have any opening where they can participate in 2016?

MR. C. LIM. Your Honor, first of all, for the new OMRs, if the bidding will fail, we will go to the second stage. Actually, we were quite disappointed with the number of bidders who participate. We wanted to open up the bidding to as much bidders to participate. Unfortunately, only two were found to be eligible. We will also be bidding the other consumables such as the CF cards, the battery, the thermal paper. We will—

THE CHAIRMAN (SEN. PIMENTEL). Supplies na po iyon.

MR. C. LIM. Yes, yes.

THE CHAIRMAN (SEN. PIMENTEL). Filipino companies will participate.

MR. C. LIM. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Pero when you chose OMR, did you automatically disqualify na wala yatang Filipino company who can participate in the OMR?

MR. C. LIM. They bought the bidding documents but they did not participate in the demonstration.

THE CHAIRMAN (SEN. PIMENTEL). Is that point your Commissioner Lagman, when they chose OMR—

MR. LAGMAN. They chose OMR, then that disqualified many technologies, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). So we're beyond that already because they have already chosen OMR.

MR. C. LIM. No, Your Honor, they can change it, the choices. It's worth billions to change. It's for Congress to change. That's under 9369. Our choices are DRE and OMR, under Republic Act 9369.

THE CHAIRMAN (SEN. PIMENTEL). Let me double check if we really tied your hands to technologies lang.

MR. LAGMAN. In 2007, they used manual and there was already 9369.

THE CHAIRMAN (SEN. PIMENTEL). So what is the position of the Chairman, as far as, you know, the—

MR. C. LIM. Our position, Your Honor, under 9369 which we are to implement is that the choices are limited to OMR and DRE.

THE CHAIRMAN (SEN. PIMENTEL). So siguro, sir, Commissioner Lagman, because this will become a legal debate, maybe even that decision of the Comelec to choose OMR should have been questioned before the court. And then they will argue that, "Well, the law ties our hands to only two options." And that is now the legal issue before the court.

MR. LAGMAN. Sections 31 to 40 of 9369 talks nothing but manual systems. Sections 31 to 42, as a matter of fact.

MR. BRILLANTES. Iyon ho ang problema kay—

MR. LAGMAN. And then in 2007, it was manual and there was already Republic Act 9367.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga. Ganito, sir, kasi we will be debating with Comelec. Comelec already made their decision. If we believe that there is a loophole or a mistake in their decision, then we could have questioned that because they feel they are mandated daw.

MR. LAGMAN. We've been questioning that, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). The choice of the OMR as the technology, did we question it?

MR. LAGMAN. No, OMR is a valid technology. We're not questioning that it's invalid.

THE CHAIRMAN (SEN. PIMENTEL). No, but when they chose it—kasi they are now limiting their options, hindi ba, OMR kami excluded na po yung manual.

MR. LAGMAN. Mr. Chairman, it's like a speeding train, you can't stop it. I mean, every time we talk, we're ignored. Even when I was a commissioner, I would be ignored. And the vote would always be 6-1.

THE CHAIRMAN (SEN. PIMENTEL). Outvoted, sir. Iba naman yung ignored sa outvoted. You're outvoted.

MR. BRILLANTES. Gusto kong liwanagin lang kasi nag-a-abogado na naman si Commissioner Gus Lagman. Sinabi niya, under 9369, yung ... section is manual, that is correct. Because the anticipation was that that was the first law; 9369 was an amendment to 8734. And then they anticipated it is very possible that it might not go automated in 2007. So they had provisions which were manual. Sinigurado lang ho iyon. Kasama ho ako noon noong dina-draft yung 9369. So kasama rin ho si Gus dahil doon sa technical, ako naman sa legal. Pero siya uma-argue ngayon sa legal.

MR. LAGMAN. *Argumentum ad hominem.*

MR. BRILLANTES. So yung technical ho—1 to 40 is technical, the rest was legal. Iyon hong sinasabi niya ngayon ay legal. Iyon ho ang linya ko, hindi ho technical iyon. Kaya lang ho nilagay iyon

because of the possibility that there might be a problem in the technical so that we will be forced to go back to manual so we still have some provisions on the manual doon sa 9369. Iyon lang ho ang reason noon that's why in 2007, hindi nga ho natuloy iyong technical. Hindi nga ho natuloy iyong automation so we have to apply the rules, the ---- because nag-manual ho tayo noong 2007.

Pero ngayon sinasabi na naman niya, "Pwede mong gamitin yung manual in relation to technical." Hindi ho pwedeng mag-combine iyon. Yung sa sistema ni Gus na open system, iyon ang kanya, manual at saka IT, magko-combine. Pero maski iyon, hindi ho nya naiintindihan masyado iyon. Kaya nga lang hindi ko masagot masyado dahil ang dami ho namin trabaho sa Comelec. Siya naman ay nasa labas lang puro ingay. Ngayon, wala na rin akong trabaho, mag-iingay na rin ako.

THE CHAIRMAN (SEN. PIMENTEL). Sige. Ganito. So ang thinking ng Comelec, as manifested by the former chairman is that what Commissioner Lagman advocates—how do you call that, sir?

MR. LAGMAN. Well, now because we've added some features, we now call it transparent and credible election system.

THE CHAIRMAN (SEN. PIMENTEL). Pero as far as automation is concerned, anong degree—

MR. LAGMAN. The canvassing stages are all.../meln

MR. LAGMAN. ... The canvassing stages are all automated. But counting at the precincts would be manual, duplicated by taras using a laptop.

THE CHAIRMAN (SEN. PIMENTEL). Can we get the opinion of the acting chairman? Under the law, does the law allow the adoption of such a system?

MR. C. LIM. No, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, that's your opinion?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, let's no longer debate kasi that becomes a legal question, legal interpretation of the law. I just got it for the record ha. That's the opinion of the acting chairman. You think your fellow commissioners share your point of view?

MR. C. LIM. I will ask—

THE CHAIRMAN (SEN. PIMENTEL). Arthur Lim, Commissioner Arthur Lim, sir.

MR. A. LIM. As far as that point is concerned, I share the view, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Of the acting chairman?

MR. A. LIM. Of the acting chairman. We cannot combine what is referred to as open system, manual and automated.

MR. LAGMAN. ... as a resource person, Mr. Chairman, that the wording in the law is “authorized to automate the voting, counting, transmission and canvassing.” PCOS does not automate voting. So, that’s also a combination of manual and automation. So, you know,, the board is authorized, not mandated.

THE CHAIRMAN (SEN. PIMENTEL). Yes, oo.

MR. LAGMAN. Authority to use.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, the point has been raised. If the JCOAES members deem this a very important issue, then maybe we can issue our own opinion. Depend. We will study.

Okay. So—

MR. BRILLANTES. Can you consider the opinion ng retired chairman kasi alam ko iyong manual saka automation para maintindihan ni Commissioner Gus Lagman na hindi ho puwede iyong kumbinasyon.

MR. LAGMAN. One final opinion po.

REP. ERICE. Mr. Chairman, we have a lot of things to discuss. That is water under the bridge.

THE CHAIRMAN (SEN. PIMENTEL). One short lang, Congressman. Sige ho, Chairman Brillantes.

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MR. BRILLANTES. Kasi pag pinagdama ninyo iyong... where the counting will be manual, manual counting means ballot opening one by one and tara ho iyong preparasyon ng election returns. Tinatara. Once you start using taras in the election returns manually prepared, then there will be an issue now as to the canvassing. Kasi ho pagka-pitong kopya iyan ng election returns, canvassing, you go back to the old law when there is a manually prepared election return which is based, proclaimed. May proklamasyon ho. It's based on the manually prepared election returns. Hindi ho kayo puwedeng mag-canvass ng manually prepared election returns under the manual system until you give all the parties the right to object to the manually prepared election returns and you cannot transmit anything before that.

THE CHAIRMAN (SEN. PIMENTEL). Thank you, Chairman Brillantes.

Before we leave that petition in the Supreme Court since the Comelec summarized their arguments, may we hear from—if you're aware, Ms. Akol, can you just give us the main points of your arguments in the petition?

MS. AKOL. This is done before they came out with a contract and I suppose the noise we made gave us, the Philippine country, a reduction in the cost, from 1.2 to 240.

Anyway, the case that we have, Comelec gravely abused its discretion in adopting Resolution No. 9922 titled "In the matter of clarifying the opinion of the law department to the draft contract for the 2014 extension to the warranty program. Program One, repair and maintenance of the Precinct Count Optical Scan Machines. Lack of material time, as Comelec alleged to conduct it, if not one of the conditions spelled out in R.A. 9184 when public bidding may be dispensed with. Suffice to say that its failure to perform its constitutional mandate to enforce and administer the laws relating to elections or to conduct free, orderly, honest and peaceful elections cannot be used as a convenient excuse to violate stringent and specific requirements set forth in said law.

Okay. Another one, it bears stressing that even Common Act No. 138 or the Flag Law was grievously breached by Comelec when it adopted the resolution in question. Notably, said law mandates that the national government procurement agency and all other officers and employees of the local government units and the government of the Philippines including commissions, bureaus, departments, offices, agencies, branches and government-owned companies which are authorized to requisition, purchase or contract or make disbursement of articles, materials and supplies for public bidding—"

THE CHAIRMAN (SEN. PIMENTEL). Are you reading from your petition?

MS. AKOL. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, we will be given a copy.

MS. AKOL. Oo.

THE CHAIRMAN (SEN. PIMENTEL). O, siges po. Okay na po iyon para lang—

MS. AKOL. On the vertical lines, I was present in the examination of the vertical lines in the review, I object to the process because what was done was a review of CF cards. It should have been because this is a hardware problem, hardware and software. Therefore, the random audit should have been done in the warehouse where we can randomly select 383 machines and not randomly select CF cards which we do not trust anyway.

THE CHAIRMAN (SEN. PIMENTEL). Did you write to this committee?

MS. AKOL. No, we voiced that opinion during the review.

THE CHAIRMAN (SEN. PIMENTEL). Since you were present, can you also describe what happened and then give us a—para so we will have a record of your account,.

MS. AKOL. Okay. What happened was that we were asked to randomly select by computer the precinct—

THE CHAIRMAN (SEN. PIMENTEL). Number, number, the number.

MS. AKOL. But we said okay, because they prepared set of precincts that can be randomly selected by computer. But we noticed that I think they only prepared a certain number because sometimes it would come back to number one, okay. So, but before that observation, we said, “No, we will manually select from your list of precincts what precincts we want to review.”

When we selected some precincts, they said that cannot be so because that is *sub judice*. That’s part of a complaint.

THE CHAIRMAN (SEN. PIMENTEL). Election protest.

MS. AKOL. Okay. So, we did not select that.

Now, after that, they would decrypt the CF cards and we would look if there were vertical lines. As I said, we object to the process that the review only considered CF cards.

THE CHAIRMAN (SEN. PIMENTEL). Ma’am, ganito gawin natin. We have a copy of the report of the Comelec on the digital lines. We will give you a copy and then give us your own version.

So, Atty. Chong and then I’ll go to Smartmatic na. Okay, Atty. Chong.

MR. CHONG. Yes, Mr. Chair. We submitted to this committee a continuing objection to the examination of the CF cards for ballot images. We had less than 24 hours notice but we were able to attend the proceedings, sir, Ms. Maricor Akol, Governor Tingting Cojuangco and myself. And what we noticed, however, is we would like to review at this point the basis of the report on the digital lines because we have reasons to believe that those images are not the real images. And I have my presentation, sir, if you will allow us so you will know why.

THE CHAIRMAN (SEN. PIMENTEL). Lapu-Lapu?

MR. CHONG. No, sir. The one that were opened in the Comelec, the 383 precincts, I went back in the afternoon. There were 13 laptops already opened. When I saw what was inside the laptops, I backed out that's why I submitted our continuing objections because we could not allow our presence there to lend credibility to these proceedings because we have reasons to believe that those ballot images are not the real ballot images.

THE CHAIRMAN (SEN. PIMENTEL). Ano iyon? You have the lapu-Lapu case, 'di ba?

MR. CHONG. Yes, sir. Kasi sinabi nga ho ni Acting Chairman Lim that Indra Sistemas has this software to erase the lines and which could also erase the shades. Inadmit (admit) niya, sinabi niya posible.

THE CHAIRMAN (SEN. PIMENTEL). Theoretically, theoretically, time permitting, we will allow the presentation pero later na.

Congressman Erice has to ask questions.

REP. ERICE. It was mentioned that Indra has made a proposal to repair the diagnostics and repair of the PCOS. So, may we be enlightened by Indra how will they do it because, of course, there's a 2009 contract that there's a proprietary right of Smartmatic to the machiens. And I wonder if they can mention a ballpark figure on how much they would be able to repair the diagnostics of the 81,000 PCOS.

THE CHAIRMAN (SEN. PIMENTEL). Iñigo Guevara, please, of Indra.

MR. GUEVARA. Yes, Mr. Chairman.

If Your Honor please, may I be allowed to make a brief statement of the company and Indra to interact—

THE CHAIRMAN (SEN. PIMENTEL). Yes, sir. Go ahead.

MR. GUEVARA. Okay. And then, I will answer the question.

Well, first of all. . . (*nam*)

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MR. GUEVARA. ...Well, first of all, Mr. Chairman and all members of the Committee, I would like to thank you for giving us the opportunity to speak on behalf of my company to this distinguished audience.

Please allow me to state, in all sincerity, that it is an honor to be here today.

I would also like to acknowledge the fact that the Philippines is a country where the people have long enjoyed the living tradition of being a free and open society. But before I answer these questions, please allow me to provide some information about Indra, the company that I probably represent here today.

Mr. Chairman, I would be very short, and I will just be focusing on five cardinal points.

First of all, our leadership has a seal of excellence. Indra is one of the major consulting and technological multinationals worldwide. A leader in Europe and Latin America, and also expanding now in other emerging regions such as Asia.

Indra achieved this through focusing on the innovation enabled by strong technological base and the talent of its professional staff.

Second, our framework is the hardware. Indra, with around 40,000 professionals has ongoing projects in 138 countries and operating companies in 47. We provide solutions and services in the

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sectors of transport, traffic, energy, industry, public administration, health, financial services, security, defense, telecom, and media. This is only accomplished—thanks to the excellence and professionalism of a global company aiming at offering solutions and services anywhere around the planet.

Number three, our conditional nature as a listed private company is a guarantee of transparency, and I think that this is very important.

Indra is a listed company in the IBEX 35, a selective index of the Spanish Stock Exchange. We absolutely comply with each and every one of the most demanding requirements of the listed companies as set up by the regulatory authorities and with the highest standards of transparency and corporate governance best practices. This is not something we just say about it, it is actually how we are described by the well-known Dow Jones Sustainability Index World. We are the only company of the technology subsector of information technology services and Internet that remains in the Global Index since 2006, when we came in. This is only possible to achieve by working under the highest and more strict ethical standards and transparency in all our markets at all times.

Fourth, our proven track record of success in electoral processes have been recognized worldwide: U.K.—United Kingdom, United States, Norway, France, Slovenia, Portugal, Italy, Argentina, Spain,

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Colombia, El Salvador, and Angola are some of the examples of our references in this market.

We have participated in consolidated democracies, and we have been notaries (?) of the extension of pluralism in the world through our 40 years of experience in more than 350 electoral processes, with more than 3.5 billion voters.

Indeed, Indra is the only company in the world that is simultaneously certified by the United Nations for supply of election materials, and also by the European Union for support in electoral observation missions.

And, fifth and last, our global DNA is also with the local view (?). Indra came to the Philippines in 1995 to stay. And for 20 years, we have been first in the Philippines providing solutions in I.T. services for all Southeast Asia. The company employs almost 900 highly qualified employees in the Philippines and works with the most dynamic sectors in the Philippine economy.

Before I finish, let me emphasize that it's an honor for me and I am sure that for almost the 40,000 professionals that work in our company to be part of this outstanding business project.

I have tried to summarize Indra's recognized merits and achievements which are done with accomplished innovation,

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knowledge, excellence, strong commitment, transparency, ethical behavior and, of course, many years of experience.

Thank you very much for your attention, and I will be delighted to answer your questions.

REP. ERICE. Yes. But before that, because I've been browsing the website of Indra...

MR. GUEVARA. Sure.

REP. ERICE. ...you participated in several elections in several countries.

MR. GUEVARA. Yes.

REP. ERICE. But I noticed that most of these elections are manual. You just do the quick count and for the purpose of this hearing, may we be briefed by Indra on how many PCOS have you built or sold in the last 10 years? PCOS--because we're doing OMRs.

MR. GUEVARA. OMR?

REP. ERICE. Yes.

MR. GUEVARA. Technology?

REP. ERICE. Yes.

MR. GUEVARA. Totally proven. Where we have done?

REP. ERICE. Yes. You have sold or used or built how many in the last 10 years?

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MR. MORENO. Yes, we have implemented OMR technology which is optical mark recognition...

REP. ERICE. Yes. How many?

MR. MORENO. ...in different countries like El Salvador, Chile.

REP. ERICE. How many?

MR. MORENO. How many what?

REP. ERICE. How many PCOS have you built or sold in the last 10 years? OMR.

MR. MORENO. OMR devices?

REP. ERICE. Yes.

MR. MORENO. How many in total? Maybe I have to check, but—well, very simple, the OMR elections that—

REP. ERICE. Have you built one? Or—

MR. GUEVARA. We did in Venezuela, even before Smartmatic was in this particular business. We did in El Salvador, Norway, United Kingdom, Chile and Spain. We have their optical—

REP. ERICE. Precinct-level of OMR?

MR. MORENO. In some of those countries are precinct-level OMR, for example, El Salvador, and some other are central counting, but the technology used to count—

REP. ERICE. Have you conducted an election similar to the Philippines?

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MR. MORENO. Yes...

REP. ERICE. That's conducted by—

MR. MORENO. ...the counting also is based in precinct scanner OMR technology.

REP. ERICE. So you built how many OMRs?

MR. MORENO. ...in total.

REP. ERICE. Ballpark figure.

MR. GUEVARA. OMR devices made, I told you these particular countries where we did optical nationwide.

REP. ERICE. Yes, but what I'm asking is just a ballpark figure of how many OMR units/devices have you sold or built in the last—

MR. MORENO. You're referring all these countries, we will be glad to check the exact number and provide it. We have implemented it in these countries in several occasions, not only once, so I don't have the exact number.

THE CHAIRMAN (SEN. PIMENTEL). Yes, provide us the information needed.

MR. MORENO. We will provide.

REP. ERICE. Yes, thank you. Please provide us the information.

THE CHAIRMAN (SEN. PIMENTEL). Okay, to give Smartmatic also—

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REP. BARZAGA. Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). Yes, sir, Congressman Barzaga.

REP. BARZAGA. Just one point. While I have been reading in the newspapers that insofar as Indra is concerned, it is an expert insofar as manual elections are concerned. Meaning to say, we vote, read what is in the ballot, put it in the blackboard, then prepare the results per precinct, then transmit it to the city on board of canvassers. Based on our experience in 2010 and 2013, insofar as PCOS machine are concerned, the machine is being placed in the precinct or voting center. And that's the reason why we have to have at least more than 100,000. Then, when the machine is already there, the voter gets the ballot, after checking he puts the ballot in the PCOS machine. Later on the PCOS machine counts the votes in the ballots and later on the PCOS machine gives a printout of the results of the votes in that PCOS machine. My question is, has there been an instance that Indra has conducted an election, or has supplied the machine in this manner which we did in 2010 and 2013?

MR. MORENO. We have implemented, sir, with our projects in, for example, some of the countries that we have mentioned—

REP. BARZAGA. No, we want to have a specific—

THE CHAIRMAN (SEN. PIMENTEL). Please specify.

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MR. MORENO. Specific countries are El Salvador, Norway—

REP. BARZAGA. Wait for a moment, El Salvador. What date are the elections?

MR. MORENO. They do the voting manually like here—did the voting manually like here, but then the counting and the canvassing is automated as here.

REP. BARZAGA. Okay, you said manually.

MR. MORENO. The action to fill the ballot paper as here in—

REP. BARZAGA. Okay. In El Salvador, in your experience, you give the ballot, the voter selects or shades the candidates, and after that, what do you do? You count the ballots, of course, tabulate.

MR. MORENO. Let me clarify the answer. In UK, for example, or Norway, the voter shades the ballot, and then all the ballots are counted by a scanner, and then the canvassing consolidation.

REP. BARZAGA. You count it by scanner?

MR. MORENO. Yes.

REP. BARZAGA. So, if I were the voter, I would be able to see how my ballot was counted through a scanner, yes or no?

MR. MORENO. They can attend to the counting...

REP. BARZAGA. Okay, scanner.

MR. MORENO. ...as observer to the counting of the votes—

REP. BARZAGA. After counting the ballot, what happens next?

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MR. MORENO. All the results are generated by the system and
then—

REP. BARZAGA. What is the system.../mrjc

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REP. BARZAGA. ...What is the system that generates the results?

MR. MORENO. That's the scanner together with the counting system.

REP. BARZAGA. With the?

MR. MORENO. Counting system.

REP. BARZAGA. The counting system, the scanner. The scanner itself counts. Then that is the procedure in one precinct.

So what would happen if you want to have a national canvass for 100,000 machines, how do you do it?

MR. MORENO. All these machines would transmit to the--

REP. BARZAGA. No, no. What machines, the scanner?

MR. MORENO. Plus the PC. The scanner is manned also by the PC. Like a PCOS, a PCOS has inside a PC but it's everything integrated but it has a scanner plus a PC. So, the system will count the votes and will transmit the result to the canvassing system.

REP. BARZAGA. Okay. So, first question, when you give the ballot and I shade it, after shading it, where will the ballot go?

MR. MORENO. To a ballot box.

REP. BARZAGA. To a ballot box, just like that, ballot box? Ordinary ballot box without any electrical connection whatsoever?

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MR. MORENO. In UK and Norway that are the cases that we are talking about, they go to a usual ballot box without electronic connection.

REP. BARZAGA. Okay. Then later on, at the end of the voting period, after going with some of the formalities, you open the ballot box.

MR. MORENO. Yeah.

REP. BARZAGA. You get the ballots one by one then you scan it.

MR. MORENO. No, not one by one. All of them to the scanner and the scanner is able to automatically count.

REP. BARZAGA. Okay, the scanner, you put it in the scanner.

MR. MORENO. Yeah.

REP. BARZAGA. And after that, how do we get the results in that precinct?

MR. MORENO. The scanner is with a PC there with a counting system and then the counting system gets the results and transmits them. That's it.

REP. BARZAGA. That's it? Well, I don't really know because Comelec would be an expert.

REP. ERICE. Anyway, one more question.

REP. BARZAGA. I'm not finished yet.

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REP. ERICE. Hindi pa rin ako tapos.

THE CHAIRMAN (SEN. PIMENTEL). Congressman Barzaga.

REP. BARZAGA. Okay, I'll give way to--

THE CHAIRMAN (SEN. PIMENTEL). You're giving way.

Okay, Congressman Erice, please.

REP. ERICE. Yes. May you explain what happened in Albania election? You have conducted elections in Albania and I read that suddenly your contract was receded and they go back to manual elections.

MR. GUEVARRA. No.

THE CHAIRMAN (SEN. PIMENTEL). Mr. Guevarra, Albania, yes.

MR. GUEVARRA. In Albania, we didn't do elections, we did the pilot.

REP. ERICE. You don't have a contract with the Albanian government?

MR. MORENO. There was no failed elections in Albania. We entered into--

REP. ERICE. No, what I'm saying is that you have a contract to conduct the elections in Albania.

MR. MORENO. We entered--

REP. ERICE. But your contract was receded and they went back to manual elections.

MR. MORENO. No. We entered in a contract with the Albanian elections authority.

REP. ERICE. Can you explain?

MR. MORENO. They were trying to implement a pilot project to automate certain process of the elections. At the end, they failed to implement all the laws, all the rules and everything that they needed to be able to have an automated elections. So, as a consequence of this failure of the Albanian government, their contracts were cancelled. But the contracts already included there a clause that the contract can be cancelled in case that the government wouldn't be able to implement all the rules.

THE CHAIRMAN (SEN. PIMENTEL). Earlier we allowed Indra to enumerate the countries where they had involvement in election.

May we hear from Smartmatic on that particular point first? What countries have you also been involved in their election systems?

MR. FLORES. Thank you very much, sir.

THE CHAIRMAN (SEN. PIMENTEL). Point only and then we'll go back--

MR. FLORES. Absolutely.

As clarification because the Honorable Representative was asking about PCOS technology.

When ballots are scanned in a centralized location by the high speed scanner that is actually called "CCOS," (Central Count Optical Scan), what Indra is describing is basically a precinct connected to an off-the-shelf scanner and then ballots are not counted at the precincts but they are brought to, let's say, a number of centralized locations without the presence of the voters and then the ballots are placed there—tsu,tsu,tsu and quickly scanned and then results are there.

THE CHAIRMAN (SEN. PIMENTEL). But still OMR?

MR. FLORES. Yeah.

THE CHAIRMAN (SEN. PIMENTEL). Acting Chairman Lim, that's still OMR?

MR. C. LIM. Yeah.

THE CHAIRMAN (SEN. PIMENTEL). That is still OMR.

MR. C. LIM. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Hindi ba OMR is our term— CCOS OMR.

MR. FLORES. But not precinct-based.

THE CHAIRMAN (SEN. PIMENTEL). Yes, I know.

Congressman Barzaga.

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REP. BARZAGA. Well, is that accurate that at the ballots, after voting, the ballots will be taken out of the precinct and will be brought to another place for scanning?

MR. MORENO. In this case of the UK, yeah.

REP. BARZAGA. No. What about your proposal for the Philippine elections, will it be the same?

MR. MORENO. No, no, no.

REP. BARZAGA. So the scanning will be made where?

MR. MORENO. The scanning will be made in the precinct.

REP. BARZAGA. In the precinct.

THE CHAIRMAN (SEN. PIMENTEL). All of a sudden it's now PCOS.

REP. ERICE. So meaning, it's a prototype.

MR. MORENO. No, it's not.

REP. ERICE. Because you've used a PC machine in UK, then you will be using PCOS here. That must be a prototype.

REP. BARZAGA. Just a clarification. We have 100--how many precincts?

MR. C. LIM. About 105,000, Your Honor.

REP. BARZAGA. One hundred five thousand precincts. So the scanning will be made in 105,000 precincts.

MR. C. LIM. Yeah.

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REP. BARZAGA. Next question, did you have any experience with regard to this procedure considering your long experience insofar as elections are concerned? And if you did, what country and when was the election?

MR. MORENO. Yeah. As my colleague previously explained, the first project that we had with OMR, with PCOS--

REP. BARZAGA. No, I'm talking about OMR--we simplify.

Your proposal here is that the voting will be made in the 105,000 precincts. Then the procedure for counting will be the scanning shall be made in these 105,000 precincts. And you said "yes."

MR. MORENO. Yeah.

REP. BARZAGA. My question is, has there been an instance that you made the—same similar procedure, 100,000 precincts, and if yes, in what country and in what date and what kind of elections?

MR. MORENO. Nationwide in Venezuela in 2000.

REP. BARZAGA. Venezuela in 2000?

MR. MORENO. Yeah.

REP. BARZAGA. Is it a national election?

MR. MORENO. Nationwide.

REP. BARZAGA. And the ballots were counted in the same precinct?

MR. MORENO. The same thing.

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REP. BARZAGA. More or less, do you recall how many precincts were there, 50,000, 20,000, 10,000?

MR. MORENO. No, but we can provide. I cannot remember. We can provide the exact number.

REP. BARZAGA. Okay. Thank you very much for that information.

THE CHAIRMAN (SEN. PIMENTEL). Can I go back to Smartmatic? Can you name the countries where you have also been involved in, the system?

MR. FLORES. Yes. We have provided systems for elections in USA, Mexico, Haite, Columbia, Peru, Argentina, Bolivia, UK, Belgium, The Netherlands, Bulgaria, Sambia, Indonesia, Ecuador, Brazil and Curacao, among other countries.

THE CHAIRMAN (SEN. PIMENTEL). But there are some common countries that you have operated in.

MR. FLORES. Yeah. Let me also mention that we have built in the last 10 years over 150,000 voting machines built by ourselves in our factories as opposed to our competitors who have not built a PCOS machine. In fact, the 7,000 PCOS that Indra sold in Venezuela in 1998 for a price of US\$7,000 per unit were actually manufactured by the US company—ESAS. And the reason we know is because when we got the contract in 2003, we have to take those units as far as the inventory.

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THE CHAIRMAN (SEN. PIMENTEL). Okay. Anyway, we will exercise our oversight function over the Comelec once they have made their decisions.

Okay. Yes, Ms. Jimenez, please.

MS. JIMENEZ. Yes, thank you, Mr. Chair.

First, I would like to congratulate--congratulations, Smartmatic, for clinching the contract once again. I know this is all business and we've been talking about business. Elections in the Philippines have become big business. Billions of pesos are being paid in exchange for a contract. And this time, no sweat, no bidding.

And I'd like also to, again, welcome former Chairman Brillantes. Now you are back to your private lawyering. You have several clients, I know, very known.

I did not really expect that he would be again active because he had been saying long before that before 9922 was signed, he said, "I won't be active in any of the deliberations." But you know as we all see, he has been very, very active and now defending even the contract.

THE CHAIRMAN (SEN. PIMENTEL). Ms. Jimenez, before you continue, I want to pursue that point.

MS. JIMENEZ. Yeah.

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THE CHAIRMAN (SEN. PIMENTEL). Acting Chairman Lim, last hearing you said that the retiring commissioners were no longer participating. And then when I read, it was--What happened?

MR. C. LIM. If I can recall correctly, Your Honor, that was in response to the question regarding the bidding of the 23,000 OMRs.

THE CHAIRMAN (SEN. PIMENTEL). Let me check the TSN.

MR. C. LIM. Because the award.../mhu

MR. C. LIM. ...Because the award would be made—

THE CHAIRMAN (SEN. PIMENTEL). Kasi the impression was that, you know, they were already in retirement mode, they were letting the four remaining commissioners. So parang general, it is not very specific only as to the 23,000.

MR. C. LIM. No, Your Honor. What I stated in my statement, Your Honor, was that the award for the 23,000 will be made sometime late February or March. I did not—

THE CHAIRMAN (SEN. PIMENTEL). Well, that was the impression I got. Siguro also Ms. Jimenez got that impression.

MS. JIMENEZ. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, sig. We will check the TSN.

MS. JIMENEZ. Anyway, I just have to pursue.

THE CHAIRMAN (SEN. PIMENTEL). Continue.

MS. JIMENEZ. I know there will be endless, you know, justifications for this. I don't want to argue and to engage in debates with the former chairman, now back to private lawyering.

I just like to go back to the agenda. The JCOCAES will discuss the following. We have to go back. We have point of order lang po. Update on the latest Comelec decisions. I just like to say—

THE CHAIRMAN (SEN. PIMENTEL). Ms. Jimenez, we have flexibility. I said, "other matters." Do not anymore lecture to the Chairman.

MS. JIMENEZ. Okay.

THE CHAIRMAN (SEN. PIMENTEL). We have other matters. I have great flexibility, spontaneity. If I feel that something is important, let me--allow us to pursue that. Please.

MS. JIMENEZ. Okay. Thank you very much.

Number 1, on the update, sir, Mr. Chairman, the Comelec already updated us on the Resolution 9922 and the contract just signed with Smartmatic. Just one question, because we have raised this several times in the past. On what basis was the resolution and contracts made? On what report, on what verified report, what update was inventoried, particularly on the state of the PCOS machines. Because what we know is there has been no inventory yet done or audit on the PCOS machines. Exactly, the Resolution 9922 states that it will be Smartmatic that will determine, based on diagnostic tests, on how many machines will be repaired, how many machines will be refurbished, how many, etcetera, and how much cost will it amount to? Which means that Comelec is just basing very specifically on the report of Smartmatic and it was mentioned a while ago that the proposal

made by Smartmatic was approved *in toto* by the Comelec. And this, I think should be looked into by the JCOC.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. I think, sufficiently explained already.

MS. JIMENEZ. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Actually, part of the contract is physical inventory, that is number 1. One of the scopes, of course, you mentioned.

MR. C. LIM. Yes, Your Honor. May I add also, we have been conducting also our periodic quarterly inventory, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). What is the meaning of that periodic?

MR. C. LIM. Periodic. We conduct inventory on the properties owned by the Commission on Elections and that includes the PCOS machines. We have the report.

THE CHAIRMAN (SEN. PIMENTEL). Oo. Pero totality iyan. Hindi iyan inyo but...

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). ...the contract with Smartmatic, you said, one of the scopes of work is physical count of the machines.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, you will give us a copy of that.

MR. C. LIM. Contract, Your Honor, yes.

THE CHAIRMAN (SEN. PIMENTEL). No, not only the contract but the result of the contract, I mean, the data, the information generated by the contract.

MR. C. LIM. Yes, Your Honor. In fact, Your Honor, we will be inviting the Honorable Committee to have a walk-through before we start the repair and the inventory of the PCOS machines. We will be inviting the Honorable Committee to our warehouse, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Continue, Ms. Jimenez.

MS. JIMENEZ. Because in the industry, sir, a third party inventory, third party audit, that's what check and balance is all about, has to be contracted or has to be assigned or has to be deployed or has to be asked to conduct this independent audit. We have never done this in the case of the Smartmatic PCOS machines.

THE CHAIRMAN (SEN. PIMENTEL). Okay. On that point, did COA ever physically count the machines?

MR. C. LIM. In the inventory, Your Honor, there is a COA representative. Always.

THE CHAIRMAN (SEN. PIMENTEL). If there would be a COA finding, then it would come out.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay.

Ms. Jimenez.

MS. JIMENEZ. This is very, very important. Because in the Philippines, the Procurement Law has long been abused and we would want very much that independent citizen groups, even with government, should conduct independent audit. Not just rely on the provider, on the business interest of one—the seller, which we actually described as Smartmatic.

No. 2, on the report of the Commelec Committee on Digital Lines, on December 4, the JCOC conducted a hearing and we were all disappointed that the promise of the Comelec and Chairman Brillantes was still there. They would submit to us, to the Committee, a full report on the Digital Lines. It has been one year. One year plus five months, too long to wait for a report on the Digital Lines. And until now, former Chairman Brillantes, is saying, “Hindi nga namin maintindihan kung saan nanggaling ito.” I mean, my god, you have already contracted Smartmatic, the seller of the PCOS machines and still you do not know where the problem lies. This is where and this is how important third party audit. We are democracy. We should practice this kind of principle in good governance.

No. 3, the overview on the alternative system should have been discussed, should have been long before not now, because we will now be invoking time constraint. You know, the language of time constraint has been with us since 2009. Time constraint, you should be short cutting everything, the process. We have a full report on how the 2010 elections was conducted. One main reason that always crop up was no more time. That is why they have to disregard many minimum capabilities, reduce, in fact, many other items that would allow transparent bidding, etcetera.

That is why on the No. 3 item on alternative systems, you know, we should now consider topping Filipino IT. Filipino ITs, one of the best in the world. In fact, during the recall of the 76,000 CF cards in 2010, there were no foreigners that did the reconfiguration of the CF cards. Mga Filipino po iyon, mga Filipino. Anyway, not to belabor on that point.

I would go to number 4. Inquiry on the bidders. For the information of everybody, the current, the incumbent provider of the PCOS machines, their specialization is not PCOS. When they made an exhibit with the IFES in 2009, we were there. Their specialization was on the DRE. That is for the record. I am into research and I will vouch for that. They have never gone into PCOS because the PCOS machines

that were used were owned by Dominion Voting Systems. That is why in 2012, they were engaged in a legal suit.

On the matter of Indra, I don't want to comment because I do not know them. If they do come in, we would have to do research. But what I know is that they have similar experience. Both Venezuelan owned Smartmatic had seed money coming from the government. Indra, of course, has the Spain government backup also. So you will have to look into this, JCOC, ownership of both vendors. But we have to consider also their profile and their reports. It is good that you have to ask them their objective profile so that you would know who are these business groups entering.

THE CHAIRMAN (SEN. PIMENTEL). Before you proceed to number 5.

Acting Chairman Lim.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). What are the rules, constitutional as well as legal provisions, on foreign ownership?

MR. C. LIM. Actually, Your Honor, in the case of *Roque vs. Comelec*, Your Honor, the Supreme Court, through Justice Velasco, mentioned that there is no prohibition allowing a foreign company to bid for voting machines.

THE CHAIRMAN (SEN. PIMENTEL). How about if the foreign company has government ownership? Does it change the rule? It does not change the rule.

MR. C. LIM. There is no also provision in the procurement contract.

THE CHAIRMAN (SEN. PIMENTEL). Actually, oo nga. I have also been researching but let's continue our research and rereading and maybe we will get a new perspective or understanding. But so far, foreign ownership should not be a hindrance and even foreign government ownership. Minority ownership should not also be a hindrance.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Continue, Ms. Jimenez. Mahaba pa ba?

MS. JIMENEZ. Hindi, sinusunod ko lang iyong agenda.

On that note, please also consider looking into the TIM partnership because as we went along during the election, iyong TIM had never appeared anymore. There was a quarrel between Smartmatic and TIM. Please look into that.

Number 5, report on the compliance of the minimum system capabilities. According to Section 6.../smv

MS. JIMENEZ. ...According to Section 6 of R.A. 9369, we have 15 such minimum capabilities; 12 of these 15 have never been complied with, were not complied with by Smartmatic. That includes, of course, the independent source code review because as we know the source code has just released before the 2013 elections. You have to look into Section 6, adequate security against unauthorized access, because in the last elections, 2010 and 2013, Smartmatic insiders were able to access the system and reconfigured and changed the figures all of a sudden.

THE CHAIRMAN (SEN. PIMENTEL). Which election, ma'am?

MS. JIMENEZ. 2010, that is about the CF cards that were recalled, 76,000. In a matter of days nagbago because there were mismatched, iyong ballot reading, etcetera.

In 2013, remember the 12 million vote surge. The 12 million, okay?

THE CHAIRMAN (SEN. PIMENTEL). Early in the quick count. Yes.

MS. JIMENEZ. Yes. Just a few hours after may 12 million and then we have a screen grab, of course, where Mr. Marlon Garcia was seen, of course, doing—yes, hello, Mr. Garcia.

THE CHAIRMAN (SEN. PIMENTEL). Doing something.

MS. JIMENEZ. Yes. And all of a sudden the numbers went back and the 12 million disappeared. How was that?

So, all of these about the minimum capabilities, I think, the JCOC should be able to look into because as we said, 12 of these minimum capabilities were not complied with by Smartmatic.

THE CHAIRMAN (SEN. PIMENTEL). Before you proceed.

Acting Chairman Lim, Section 7 which amends Section 6 of the old law, minimum system capabilities, what are we doing to make sure that we really comply in the 2016?

MR. C. LIM. Your Honor, we already submitted a report on the minimum system capabilities, Your Honor. In fact the reports prepared by the executive director, Jose Tolentino, we submitted that even before the December 4 JCOC hearing.

THE CHAIRMAN (SEN. PIMENTEL). Okay.

MS. JIMENEZ. Yeah, yeah. I just like to finish.

THE CHAIRMAN (SEN. PIMENTEL). Have you received a copy of the report? We can give this to the interested parties for them to give their comments.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). O, sige. That is our collaborative work. That would be our collaborative work, the report given by the Comelec on how they intend to satisfy or comply with the

minimum system capabilities is already in the possession of the Committee. We will give all of those interested copies and then let's comment, then we will consolidate all of your comments.

Okay. Anyway, we welcome this exchange naman, ano?

MS. JIMENEZ. Yeah, yeah.

THE CHAIRMAN (SEN. PIMENTEL). Go ahead.

MS. JIMENEZ. So, that would also include the posting, the clustered precinct, the results of the election, the website, etcetera. That should be included.

THE CHAIRMAN (SEN. PIMENTEL). That would fall under what letter in the minimum system capabilities.

MS. JIMENEZ. That is part of the system capabilities, minimum. Also included is the VVPAT, the verification, etcetera.

THE CHAIRMAN (SEN. PIMENTEL). Alam mo, ito ang pinakaimportante sa lahat.

MS. JIMENEZ. Yes, the VVPAT, very important iyon.

So that the voters would know that the votes that they cast in are the same votes that have been counted.

Yes, sir.

THE CHAIRMAN (SEN. PIMENTEL). Are you done, Ms. Jimenez?

MS. JIMENEZ. Just one more.

If you are going to base our discussion—in fact, Comelec has been basing their arguments on the July 10, 2009 contract—there is one provision there about penalties. To quote—this is Article 11.1, “Penalties are imposed for any violation, materially affecting the implementation of the project.” Unang-una pa lang, project target date. What was specified there is May 10. That’s not delivered.

The contract amount is 7.191 billion, etcetera, Article 4.1. If we are going to follow the penalties as prescribed in that contract, every day of delay in delivery after the speculated period, I’m quoting, “Liquidated damages in the amount 1/10th of 1 percentum of the total value of this contract should be charged to the provider.” Kung iko-compute namin ito, it would cost to the penalty of 7,191,484.74 or .001 of 7 plus billion. It should be imposed every day from the date of delivery until deficiency is completed. I think the JCOC should look into this because there are penalty clause on the contract.

THE CHAIRMAN (SEN. PIMENTEL). Can you give us a position paper on that particular point?

MS. JIMENEZ. Ah sure, yes, yes.

THE CHAIRMAN (SEN. PIMENTEL). Iyon lang, kahit iyong particular point na iyon.

MS. JIMENEZ. Okay.

We are invoking this, the contract because the former chairman is using this to justify the negotiated contract for the maintenance with Smartmatic. We shall have to use this same document and insist that all the provisions in the contract should be followed.

THE CHAIRMAN (SEN. PIMENTEL). How soon, Ms. Jimenez, can we get the position paper?

MS. JIMENEZ. We will do that as soon because, you know—

THE CHAIRMAN (SEN. PIMENTEL). So, you are looking at the criminal liability, huh. Hindi pala, hindi criminal iyon, financial penalty.

MS. JIMENEZ. Yes. Because like I said, you know, elections in the Philippines have become a big business. So, this is about taxpayers' money. And I'm a compliant taxpayer.

THE CHAIRMAN (SEN. PIMENTEL). We will pursue your point of view but just guide us through your position paper.

Congressman Barzaga, please.

REP. BARZAGA. Well, first of all, I would like to clarify from Mr. Garcia what was the statement given by Ms. Evita Jimenez that suddenly 12 million votes appeared on the screen and later on, nawala, it got lost.

THE CHAIRMAN (SEN. PIMENTEL). Mr. Garcia, please.

MR. GARCIA. Good morning, Your Honor.

First of all, I would like to clarify that as a matter of fact, I was present there. It was at the transparency server located at the PPCRV at that time.

REP. BARZAGA. That was during the elections.

MR. GARCIA. During the elections in 2013, on election day.

I would like to state for the record that I did not do anything. I did not touch anything. I was part of the technical team. I was a technology manager for the deployment. What happened was, that entity was announcing the results. One week prior to the elections, we conducted a training for all the interested parties—political parties, the media, the different representatives—that were allowed to have access to the results in real time. We told them, “You have two options to do that counting. We are going to provide two sets of data. You can have consolidated data per region or you can have all the results per precinct and you do all the counting. It’s up to you whether you are going to count.” When this entity that was announcing the results in real time came up with the first results, what happened is that they counted two results at the same time, so that is why you have twice the number of votes.

So what happened is—I didn’t do any magic, Ms. Jimenez. What I just told them is, “Gentlemen, you have two sets of data which is the same, if you put them altogether you are counting twice.” They

corrected the issue, they started using only one set of the data and the right results were starting to be published.

REP. BARZAGA. Well, certainly, that should not happen in the 2016 elections because this is a national election where we shall be electing the highest official in the land.

Second in that case, who is the one liable? Was it Smartmatic?

MR. GARCIA. No, sir.

REP. BARZAGA. Other companies, or the Comelec, or who? So that we can exercise our oversight functions and do the necessary measures to avoid the occurrence of such situation.

MR. GARCIA. At that point, it was a procedural error of the technician of PPCRV.

REP. BARZAGA. Technician of whom?

MR. GARCIA. PPCRV who was the one announcing the results at the moment.

THE CHAIRMAN (SEN. PIMENTEL). Meaning to say a technician can double the count?

MR. GARCIA. No, no, sir. We provided the results. It is like, I will give—

THE CHAIRMAN (SEN. PIMENTEL). Yeah, and then the technician combined?

MR. GARCIA. And they combined it.

THE CHAIRMAN (SEN. PIMENTEL). Could that happen in the national consolidation server?

MR. GARCIA. No.

THE CHAIRMAN (SEN. PIMENTEL). Why it did not happen?

MR. GARCIA. This is how the canvassing happened. As we all know, we conduct the elections at the precinct level. We finished all the counting at, let's say, 5:00 p.m., you closed. Before we transmit the results we print the ERs which is the count of all the results. Then we transmit one set of results to the municipal canvassing server, to the central server and to the transparency server. It is just the precinct level results. What is provided to the different representatives is a consolidation of all the results being received. The canvassing system will receive the results and that it will only count it once. If the results are received twice, three times, four times, the system will say, "I already received these results, I will not count it again." So, actually, as a part of the certification process, all of those tests are done to make sure that the system is accurate and it correctly counts all the results.

REP. BARZAGA. Just one point.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Congressman Barzaga.

REP. BARZAGA. Well, in that particular case, according to you that was the error of PPCRV employees, etcetera. Do you not have any.../admasicap

REP. BARZAGA. ...Do you not have any established procedure to avoid cases like this? Because based on my experience, if there is something unusual which would happen on election date or on the night of the canvassing, candidates, as well as the voters, are very suspicious that these unusual happenings were due to some forms of cheating. Sa amin, mawala lang ang electricity on the night of the canvass, sasabihin, "Kaya niya pinatay iyan para mandaya." And we have to consider that. Kaya you cannot say it's the fault of PPCRV.

THE CHAIRMAN (SEN. PIMENTEL). The question is, if it will happen again—and before you answer Mr. Cesar Flores, I remember also in 2010 where the number of voters of the Philippines was reported to be 250 million. So, how did that happen?

MR. FLORES. Yes. Those are two different issues.

THE CHAIRMAN (SEN. PIMENTEL). Ah, two different issues iyan. Okay, address—

MR. FLORES. Let me finish the PPCRV issue. As Mr. Garcia mentioned, in the transparency server, there are several organizations which are, according to the law, allowed to be there. And they have access to the election data. Right? So, they have also access to terminals where they can see the actual official canvassing. Let's say, some of the TV channels as well as PPCRV have decided to take their

raw data, meaning, the precinct data, and do their own independent, non-official canvassing, so he has nothing to do with the system that we do provide officially to Comelec for the official results. So, what happened, indeed, is that they took two sets of data and they—sorry—was there application. We have tried to minimize that by training them on how to properly handle that data. But as I mentioned, he has nothing to do with the actual services that we are supposed to render.

REP. BARZAGA. Just one comment, Mr. Chairman.

Well, of course, we have been hearing official and unofficial count. But insofar as the public is concerned, even candidates, what we conceived of would be the official—will be the same figures being seen in the official and unofficial. Because in most cases, the unofficial has never been completed. And that is the apprehension of everybody during the night of the election when votes are being canvassed or counted. So, the ideal situation is, official and unofficial count must be the same. As to how the Comelec or the providers will do it, that I do not know. But I think that would be the best procedure.

THE CHAIRMAN (SEN. PIMENTEL). Particular—

REP. ERICE. But the problem is...

THE CHAIRMAN (SEN. PIMENTEL). Congressman Erice.

REP. ERICE. ...there are some areas where there is no election—there's no NAMFREL, so—

VOICE. [Off-mike] No regulation.

THE CHAIRMAN (SEN. PIMENTEL). No, but this one is the parallel count of the PPCRV given wide national media coverage. I think Comelec intervention is needed there.

MR. C. LIM. May I just mention, I was the commissioner-in-charge of the server, the transparency server, Your Honor. I provided the designs on how to provide as much access to other entities other than that provided by law. Under the law, it's only the dominant majority party, dominant minority party, the accredited citizens and the KBP that are allowed access. But we designed a system that allowed other media entities including NAMFREL. Now, in that design, Your Honor, in terms of how you will churn out your data, we don't have any control of that. We don't inspect your computers on how you churn out data. We don't tell you how you churn out your data. We just provide you the raw results and it's up to you. Now, the beauty of allowing as much access as possible was that, it was easily determined that PPCRV was making the wrong count. But in terms of their computers, in terms of their program, we didn't have any control of that, Your Honor. It's what's in their headquarters. But in terms of the transparency server

and the computers that we allowed to be connected, that's what we had control and that's what we ensured that the counting was accurate.

THE CHAIRMAN (SEN. PIMENTEL). Our point is that, I think you should now be more concerned because it reflects on the credibility of the election. And you run the elections, so...

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). ...it will affect your credibility.

MR. C. LIM. Part of the con—we ask them to sign a contract whenever we allow them access. And part of that is that we are informing them that at any time, the moment we feel that they are manipulating the results of the elections or conducting trending, we will cut off their connection.

THE CHAIRMAN (SEN. PIMENTEL). Ito naman, mali, mistake. It was a real mistake, not a manipulation but a mistake.

MR. C. LIM. Mistake, Your Honor. In fact, we apologized for it.

THE CHAIRMAN (SEN. PIMENTEL). Iyon nga. So, the point of Congressman Barzaga is, what would you do now to make sure that it's not repeated in 2016. That's the question.

VOICE. Mr. Chair.

MR. C. LIM. Hindi, Your Honor, in terms of really inspecting the actual—how the entities conduct their count or how they tally their count, we don't really have much control on that. What we can do is we can always monitor if their count is on tally with the official, unofficial Comelec count. That's what we can do.

THE CHAIRMAN (SEN. PIMENTEL). What happened here, when you noticed that they were not tallying—

MR. C. LIM. We called their attention, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, how many days did this persist, this problem?

MR. C. LIM. It was on the same night, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, halos hours lang.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). And you're able to fix it, five hours?

MR. C. LIM. No, actually, we cannot fix it because it's their system, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Ah, you were not able to—

MR. C. LIM. We just informed them what the problem with their system was.

THE CHAIRMAN (SEN. PIMENTEL). Yes. You were able to call their attention and they were able to fix it.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Chong, yes.

MR. CHONG. Sir, can we make the presentation on the digital lines, sir?

THE CHAIRMAN (SEN. PIMENTEL). Hindi, for a while. Sandali. For a while.

MR. CHONG. So that we can—

THE CHAIRMAN (SEN. PIMENTEL). Yes, Mr. Garcia.

MR. GARCIA. Sir, one of the procedures that could be implemented in the upcoming elections to minimize or to mitigate these issues is that instead of providing the two sets of data—the regional and the precinct count—we can just provide one set which is the precinct count and have each ... count all the results. So, there is no room for errors.

THE CHAIRMAN (SEN. PIMENTEL). Who should decide that?

MR. GARCIA. Well, it's up to the Comelec to decide.

THE CHAIRMAN (SEN. PIMENTEL). Yes.

So, tama, Comelec, if you make these small decisions, malaking epekto na.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Congressman Barzaga, please.

REP. BARZAGA. Just one point. Well, of course, I'm glad that Ms. Evita Jimenez pointed out the alleged violations of Republic Act 9369. A while ago, I asked Indra to submit to us their experience using the same machines or the same procedure subject matter of the bidding of the Comelec. And I distinctly remember that I did that because of the provision of Republic Act 9369. Under the second paragraph of Section 12 of Republic Act 9369, and I read for the record, "With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness." And that's the reason why I requested Mr. Moreno or Mr. Guevara to give us the experience which they have using the proposed technology in the bidding to be conducted by the Comelec.

THE CHAIRMAN (SEN. PIMENTEL). Did you understand, Mr. Guevara, the point of the Congressman that there's a requirement?

MR. GUEVARA. Sir—

THE CHAIRMAN (SEN. PIMENTEL). Yes.

MR. GUEVARA. Your Honor, in fact, we are compliant to the technical requirements that in the bidding process of the Comelec were requested. So, this is something that the Comelec is in evaluation and it cannot—

REP. BARZAGA. No, no. Well, just to cut you short, we are not questioning—we are not saying that you are not qualified. We are not saying that the Comelec did not comply its obligations. In the exercise of our oversight function, we just want to have copies supporting this in order that after the 2016 elections, Ms. Evita Jimenez will not be coming here and saying that this was violated by Indra in the event that the contract would be awarded to you.

THE CHAIRMAN (SEN. PIMENTEL). Kasi it's a request for documents or reports.

MR. MORENO. No, wait. This requirement is part of the bidding...

THE CHAIRMAN (SEN. PIMENTEL). Yes. Can you give us—

MR. MORENO. ...of the bidding documents and we have already submitted the certification and it's now on Comelec and they can evaluate—

THE CHAIRMAN (SEN. PIMENTEL). So, you are prohibited from submitting to our committee your own paper? Just give us a copy that you are compliant with this requirement.

MR. MORENO. That's fine. That's fine. No problem.

THE CHAIRMAN (SEN. PIMENTEL). Because if I remember correctly, even Smartmatic was questioned on this provision that in 2010, they had also no experience on this scale. And according nga—your research DRE and then PCOS, so—But they are over it already because they have now—Maybe in your corporate papers, you are also citing your Philippine experience as one of your experiences.

MR. FLORES. Absolutely, sir.

THE CHAIRMAN (SEN. PIMENTEL). To sell your ano—to make that—

MR. FLORES. In fact, one important remark to make is that the Philippines is the largest PCOS user in the world. There is no largest implementation of PCOS technology in the world. That's a very important—

THE CHAIRMAN (SEN. PIMENTEL). Mr. Flores—
Congressman Padilla.
Sandali.

REP. PADILLA. Just a clarification, Mr. Chairman.

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The point that was just raised by the Honorable Barzaga, will this
not prevent therefore Filipinos .../jlf

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REP. PADILLA. ...prevent therefore Filipinos from participating in such an exercise? Because it is a provision of the law, it requires track record here or abroad. I wonder if there is any Filipino who can qualify, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). Congressman, that's why the chair of your panel whispered to me, we might need to amend the law.

REP. PADILLA. Anyway, I'm just raising that because I noticed that this is one of the popular clamors being elated here.

Thank you, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). Dr. Celis, please.

MR. CELIS. Yeah. In the past, Mr. Chairman, I already raised the issue on the promulgation of the rules and regulations of RA 9369 because there had been a lot experiences that we had in 2010 and 2016. Just like what happened in PPCRV, there is no rule on that. What happened in the 256 million registered voters in the Batasan and 150 million registered voters in PICC which Cesar Flores said it was error in application. And then the 76,000 recalling of the CF cards replacing it in one week, that's a tampered CF card. Because those CF cards were originally tested and certified by the TEC. And how come on May 3 during that final testing and ceiling, it was different. So it is very important that we should have implementing rules and

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regulations. And I think JCOC should push this, as mandated by law, it's Section 37 of RA 9369.

Thank you, Mr. Chairman.

THE CHAIRMAN (SEN. PIMENTEL). Can we get a response from the acting chairman? How about the IRR?

MR. C. LIM. Your Honor, when you say "IRR," it would depend on the system being used for this particular election. When we promulgate rules regarding the source code review, the qualification, is it not an implementing rule? When we promulgate the general instructions for the BEI, isn't that an implementing rule?

THE CHAIRMAN (SEN. PIMENTEL). So separate?

MR. C. LIM. Yeah, separate.

THE CHAIRMAN (SEN. PIMENTEL). It's a topic approach.

MR. C. LIM. You cannot have an implementing rule that can apply for all elections under one republic act because it would depend also on the system that is going to be used. Like in the case of this coming election, we will be using the old OMR, the new OMR, the DRE. So there will be three sets of general instructions that we will have to issue. You cannot have a rigid application on that, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So there will be different sets of rules for the old OMR and the new OMR?

MR. C. LIM. Yes, Your Honor, and DRE.

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THE CHAIRMAN (SEN. PIMENTEL). Iyong DRE, I would understand the DRE kasi iba talaga iyon.

MR. C. LIM. There will be also--

THE CHAIRMAN (SEN. PIMENTEL). So that means there's a possibility that the 23,000 new OMRs are not compatible with the old OMRs?

MR. C. LIM. Yes, as long as they are compatible with the consolidated canvassing system. That is the minimum requirement set by CAC.

THE CHAIRMAN (SEN. PIMENTEL). So the paper for the new OMR cannot be used for the old OMR?

MR. C. LIM. It's possible.

THE CHAIRMAN (SEN. PIMENTEL). So a mix-up is also possible? That an old paper—gamitin ko lang iyong terms ko—when I say "old paper" that's for the old—an old paper is delivered to a precinct where there is a new OMR, that can happen through a mix-up?

MR. C. LIM. That's possible, Your Honor. In fact, in 2013 we delivered a paper designated for, I think, Mindanao to Baguio that happened--

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THE CHAIRMAN (SEN. PIMENTEL). Iba iyon, iba iyon kasi that's a different precinct. Kung sasabihin, let's say, it's a correct precinct with a new OMR but unfortunately printed on the old paper.

MR. C. LIM. No, Your Honor. The bidding for the new OMR is bundled with the ballot paper and the printing, Your Honor. We bundled it up. So we can be ensure that whoever wins in the bidding, the paper that will be used will be compatible with the system. Now, the basis also that's why we set the areas as province-wide for the use of these machines so that there will be general instructions for the entire province. There will be no confusion that for this province, we will be using certain OMR and certain instructions.

THE CHAIRMAN (SEN. PIMENTEL). What you are assuring us is that whether old OMR or new OMR once they report the results, there will only be one system to accept?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Hindi iyong two systems and then suma-total iyong two systems?

MR. C. LIM. No, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Only one?

MR. C. LIM. That's part of the criteria.

THE CHAIRMAN (SEN. PIMENTEL). How would this be possible?

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MR. C. LIM. We provided the basic EML file to allow the bidders to configure the output that it can be accepted by the canvassing system. This was provided by Smartmatic because they were the ones who developed the software for the canvassing system.

THE CHAIRMAN (SEN. PIMENTEL). So we will follow the reporting of the old OMRs, the 81,000?

MR. C. LIM. No, Your Honor. If you imagine, Your Honor, let's say, for the City of Dasmariñas, when the OMRs are deployed and they generate results, the city board of canvassers for Dasmariñas will be using the canvassing system of Smartmatic. So that will be the one to consolidate all the results from the precincts. And that will be the one also to go up to the national board of canvassers.

THE CHAIRMAN (SEN. PIMENTEL). So what happens now to the precinct result reported to a server?

MR. C. LIM. Your Honor, the server will also be using the same canvassing software. So pareho lang, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga. That is what was used in 2010 and 2013?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So the new OMRs must be able to transmit following the transmission format of the old OMRs?

MR. C. LIM. Yes, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). So ganoon iyong mangyayari. That can be done?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So that's software?

MR. C. LIM. Software, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So a provider of the hardware can provide a different hardware for as long as the software—the result transmitted is in accordance with what you specify?

MR. C. LIM. That's going to be a pass-fail criteria in the post qualification, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Dr. Celis.

MR. CELIS. I disagree with Acting Chairman Lim na if you have different sets of technologies, you won't have any specific implementing rules and regulations. Source code review is generic. Whether it's DRE, whether it's a PCOS machine or CCOS machine, there should be a source code review. But how do you do that? And transmission, how do you do that? Digital signatures whether it's DRE, PCOS, CCOS or any technology, there should be digital signatures. And what is the implementing rules and regulations with regard to digital signatures and so many instances that had happen the PPCRV, how do we handle that? The recalling of any CF cards, how do we

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handle that? These are specific instances that really happened in the past. So that by 2016, these should not be repeated again. There should be implementing rules and regulations.

THE CHAIRMAN (SEN. PIMENTEL). Dr. Celis, both chairs are interested in your point. But can you give us a written report on what are the areas of the AES as well as other aspects of election which are not yet covered, in your opinion, by specific IRRs? Can you give us a written report para ma-audit po namin with you—we will audit together with you.

MR. CELIS. Yes. We will do, Mr. Chairman. And possibly, if the Senate and the Lower House would also deliberate on what is the standard operating procedures, if we were going to come up with a law specifically on republic acts or Republic Act 9369.

THE CHAIRMAN (SEN. PIMENTEL). Right, right. Sige.

Ms. Jimenez.

MS. JIMENEZ. Yes, just to follow up on that.

Excuse me, Atty. Glenn.

You know, this only shows how powerful Smartmatic has become in running these elections. You see, we just heard a while ago the explanation of our good friend here, Acting Chair Lim, when he said that whatever Smartmatic would prescribe, that is how it would go. That has been what is being done. Example, Section--

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THE CHAIRMAN (SEN. PIMENTEL). We will give you a chance to respond.

Finish your point, sige, Ms. Jimenez.

MS. JIMENEZ. For example, sir, Article 7.3 of the 2009 contract states that, "The AES"—I'm quoting—"shall include provision for voter-verified paper audit trail and system of verification to find out whether or not the machine has registered his choice. The printing of the VVPAT to show that the votes cast were properly recorded by the PCOS machine was actually disabled by Smartmatic." Smartmatic, and we would like to quote him, Cesar Flores himself said—he claims that "his company bilaterally agreed with"...

/rjo

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MS. JIMENEZ. ...bilaterally agreed with." That is part of the newspaper account and we saw it on TV when you said this, "bilaterally agreed to disable the feature of the VVPAT." But the VVPAT is a requirement of the law. It is a requirement of the law. Why did they disable the VVPAT? The source code review, they said it was available when they said that it would have to go through stringent requirements. What happened? The truth was, the source code was never with them.

I think if we will have to go back before Resolution 9922, even Smartmatic, Cesar Flores was saying, "Comelec, you do not contract anybody else," just us. I think everybody knows about this statement.

You know, the JCOCAES should look into this how powerful the vendor has become in running the elections. If they say that they went wrong on this, Comelec accepts. You know, this is a lawyer-dominated Comelec. And we would not, of course, expect Chairman Brillantes to say and to speak like an IT. I mean, we are going automation. Cesar Flores is not even an IT. What has become of our elections? I mean, automation is good, but if it is not controlled by a foreign company and says what it wants and even threatens people, even NGOs and CSOs like us, wow, where are we going now?

THE CHAIRMAN (SEN. PIMENTEL). What is that PAT you mentioned, ma'am? What is that VVPAT?

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MS. JIMENEZ. This is the Verified Paper Audit Trail.

THE CHAIRMAN (SEN. PIMENTEL). Ah, VV. Okay, yes.

MS. JIMENEZ. VVPAT. That is a very important requirement of the law.

THE CHAIRMAN (SEN. PIMENTEL). Okay. That is Section 6.

MS. JIMENEZ. Para makita niyo po na ito iyong aking binoto.

THE CHAIRMAN (SEN. PIMENTEL). Paragraph (e), provision for voter.

MS. JIMENEZ. Yes, Paragraph (e).

THE CHAIRMAN (SEN. PIMENTEL). Okay. So, it's time Smartmatic to respond.

Chairman Lim, you tell me your time because—Let's give Chairman Lim baka malimutan natin.

MR. C. LIM. I want to object on the statement—

THE CHAIRMAN (SEN. PIMENTEL). Yes, you did not say those words, 'di ba?

MR. C. LIM. In fact, I wish that Ms. Jimenez will state this under oath so I will have a legal remedy. Can you require that, Your Honor?

THE CHAIRMAN (SEN. PIMENTEL). Okay.

MR. C. LIM. All the words that she has been been saying, can you put that under oath?

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THE CHAIRMAN (SEN. PIMENTEL). The records will bear what you really said.

MS. JIMENEZ. The transcript of records would verify.

THE CHAIRMAN (SEN. PIMENTEL). Yes. I don't think you captured it accurately. Anyway, he did not say those words.

Cesar Flores of Smartmatic, source code was mentioned. You might as well tell us about the case of Dominion and Smartmatic what is the real status of your rights to the software and what else?

MR. FLORES. The VVPAT?

THE CHAIRMAN (SEN. PIMENTEL). About the characterization of the former chairman of the contract, if you confirm it.

MR. FLORES. Okay.

THE CHAIRMAN (SEN. PIMENTEL). Okay, go ahead.

MR. FLORES. Yes. Am gonna cover all those points? Before I forget, I also want to make a comment or a question given that Mr. Celis participated as member of the Philippine Computers Society. And as he is one of the members of the Philippine Computers Society, a signatory in the case filed in the Supreme Court, and I need to ask because on Saturday 17 of January, I was sitting in the Shangri-La Hotel at 10:00 in the morning and actually Mr. Leo Querubin and Mr. Angelo Aberia who are members of the Comelec Advisory Council and,

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therefore, a non-voting member of the Bids and Awards Committee, were meeting with two officials of the Spanish company, Sitel for over two hours. I went there, I even say "hello." And it strikes me as very odd that this meeting took place. So, I just wanted to check if it's possible that they report what the content of the meeting was about. Having said that, then let me now—

THE CHAIRMAN (SEN. PIMENTEL). In the Philippines, we have freedom of association. So, they can meet whoever they want to meet.

MR. FLORES. Absolutely, sir. But let me remind you that under Republic Act 9369—

THE CHAIRMAN (SEN. PIMENTEL). Actually, two nights ago, I had dinner at the Spanish ambassador's residence, okay.

MR. FLORES. Yes, sir. But under Republic Act 9369, the Comelec Advisory Council is a non-voting member of the Bids and Awards Committee and I have to remind that there is an ongoing bid. Therefore, there should be connection between bidders and members of the Bids and Awards Committee.

THE CHAIRMAN (SEN. PIMENTEL). I think they know the limits, the allowable actions because, you know, if your point is they're crossing the line between what is permissible and what is corrupt practice, then they should be careful.

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Sige, go ahead.

MR. FLORES. Okay. Let me cover some of the points.

For example, Section 6 mentions provision for voter verified paper audit trail. Remember these capabilities have to spread between the two possibilities of systems, DREs and PCOS, as mentioned in the law.

Now, let's deconstruct the word. So, voter-verified paper audit trail means there has to be a trail that allows you to audit the system and it has to be verified by the voter. Voter verified paper, audit trail. Meaning, if a voter or politician has a way to trail what happened in auditing the system, this condition is complied with. Therefore, the ballots themselves were verified by the voters and are currently used for the audit of the system. Why is this terminology? Because this clearly shows that some of these experts really don't know anything about elections.

In the early '90s, in the US, when the touch screen voting systems were started to be implemented, they did not provide any printout or trail of the options made by the voters. Therefore, people were believing blindly in this type of systems. So, the term "VVPAT" was coined, in fact, by an expert called Rebecca Mercury. Rebecca Mercury coined the term "VVPAT" as a way to be able that the touch screens provide a way for the votes to be recounted. This is now the

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industry's standard and I don't know of any new technologies that are being offered, DRE technologies, without it.

When we go to paper-based voting system, such as PCOS or CCOS which is the expertise done in UK and Norway, actually, the voter provides a paper trail which is the ballot itself. And, therefore, it's complied with. In fact, the law doesn't say printing of VVPAT. It's just a provision of VVPAT.

Anyway, I am not lawyer and that's up to Comelec. If Comelec wants to have a printout in the PCOS machine, it's doable, it's totally doable. I am just saying that the law is complied with with the presence of the ballots.

About the source code review--

THE CHAIRMAN (SEN. PIMENTEL). Before you move on.

MR. FLORES. Yes.

THE CHAIRMAN (SEN. PIMENTEL). I'll ask the Comelec. Has this been questioned before the Supreme Court that the PCOS machines currently in use do not comply with Section 6 (e) on the VVPAT? Wala? No? So, this is still open to question.

MR. BRILLANTES. No. Settled na ho iyan, in Capalla case.

THE CHAIRMAN (SEN. PIMENTEL). Ah, settled na, sir?

MR. BRILLANTES. Oho.

THE CHAIRMAN (SEN. PIMENTEL). Which case, sir?

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MR. BRILLANTES. All of these were raised already in the Supreme Court.

MR. C. LIM. 2009.

MR. BRILLANTES. 2009 contract.

THE CHAIRMAN (SEN. PIMENTEL). Which case, sir, the same case? Ano ba iyong case?

MR. C. LIM. Capalla.

THE CHAIRMAN (SEN. PIMENTEL). The Roque case, Chairman.

MR. BRILLANTES. Roque, Capalla.

THE CHAIRMAN (SEN. PIMENTEL). Okay, Bishop Capalla case.

MR. BRILLANTES. Paulit-ulit na ho iyan.

THE CHAIRMAN (SEN. PIMENTEL). Opo. Sigepo. Okay.

Go ahead.

MR. FLORES. Okay, about the source code review, let me clarify again what happened in 2010 and 2013. Again in 2010, Comelec came out with certain rules, it was not Smartmatic. It was Comelec who created certain rules on how this source code review should be conducted on their certain security conditions, et cetera. And one of the conditions, for example, was that the reviewers cannot take the code with them outside of the premises, et cetera.

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And I remember—I don't remember exactly when, but I think a couple of months before the election, this process was opened. And as far as I remember because I am not a member of Comelec, nobody actually filed a petition to review the source code. Later on, some of the groups went to the Supreme Court and I remember because you were the counsel.

THE CHAIRMAN (SEN. PIMENTEL). I was the counsel for that group.

Okay. What happened to your case with Dominion?

MR. FLORES. Okay. Yes. We actually reached a settlement, an agreement where the case in the Delaware has been dismissed. And basically, we renewed our licensing agreement. Then we now have an encumbered access and we renewed access to all the license technologies of Dominion, including all the source code and all the blueprints, et cetera, of the technology for our own use.

THE CHAIRMAN (SEN. PIMENTEL). What did you pass to the Comelec?

MR. FLORES. We passed that announcement of the agreement including a confirmation of Dominion to Comelec.

THE CHAIRMAN (SEN. PIMENTEL). Which among your rights have been passed to Comelec?

MR. FLORES. All the rights that are within the contract.

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THE CHAIRMAN (SEN. PIMENTEL). Can you enumerate?

MR. FLORES. The right to have access to the technology, to check the source code.

THE CHAIRMAN (SEN. PIMENTEL). To check the source code, to also allow interested parties and stakeholders to review the source code.

MR. FLORES. Yes, exactly. That's right.

And also let me point out that in 2013, even though I am one of the persons to say that it started late, the source code review was indeed checked and representative of UNA, the LP and PPCRV checked the source code for several weeks and there is a report to it. Comelec can confirm whether what I am saying is true or not. So, all these times that you said 2013, the source code review did not take place, it's actually not correct. And you can check, and you can ask UNA, and you can ask LP about this.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So, what was the other point? About the content of your...cpc

THE CHAIRMAN (SEN. PIMENTEL). ...About the content of your P240 million contract. Do you confirm the statement of former chairman?

MR. FLORES. Yes. Let me clarify again what we talked about when we mentioned extended warranties. Many of you, for example, when you go to the US—because I don't have the experience buying a computer in the Philippines. But if you go to a store and you buy a computer in Best Buy, they normally ask you, "Do you wanna buy an extended warranty?" And if you pay, I don't know, \$50, \$60 every year or for two years, for three years, you pay an amount, then the warranty is extended. Everybody is familiar with that concept.

So in 2014, actually beginning of the year, we started mentioning to Comelec that, you know, the machines are in the warehouse after the 2013 elections and we would like to offer basically an extended warranty. Meaning that we will take all the risks as a warranty entails. And for three years, for P1.2 billion, we are going to offer an unlimited warranty. So whatever happens to the machines, we are going to fix it. So basically we started talking, negotiating, etcetera, etcetera about this. And, of course, they first requested a budget for a brand new set of machines. And recently, DBM only approved a number of new machines and the old machines must be reused.

THE CHAIRMAN (SEN. PIMENTEL). We know this already. But the one you signed, what does it cover, the scope of work?

MR. FLORES. So basically we are going to have preventive maintenance of all the PCOS machines. We're gonna repair any damages that do not require a complete replacement of the machine. And by the way, let me correct the statement, that, indeed, if in the diagnostics, there are machines that present digital lines, we will change the Mylar.

THE CHAIRMAN (SEN. PIMENTEL). So you will do something in your examination where you will see if the machine creates digital lines, you will do that?

MR. FLORES. Yes, absolutely. In fact, we have always done that, sir. In 2010 and 2013, every time the machines leave the warehouse—

THE CHAIRMAN (SEN. PIMENTEL). But still they created digital lines.

MR. FLORES. No, the machine did not create the digital lines, absolutely not. In fact, what I'm trying to say is that, in 2013, all the PCOS before they leave the warehouse, they all retained ballots and a count is made. And there was 100 percent accuracy of that count. On election morning, if you remember, all PCOS machines go to a testing and sealing process. And there were no reported incidents of

mismatch of the counts. So up to the morning of election days, there was nothing interrupting or clouding any type of reading in the PCOS machines. And the difference between 2010 and 2013 is that we did not provide the paper and the pens as we did in the 2010 where this case did not occur.

THE CHAIRMAN (SEN. PIMENTEL). So when the machines were being used now for quite a number of ballots, they now started producing digital lines.

MR. FLORES. The machine does not produce the digital lines.

THE CHAIRMAN (SEN. PIMENTEL). Because the design of the machine, they used—I have encountered this term—“contact scanning.” The architecture is that you use contact scanning. And because of contact scanning, there is possibility that ink, dirt, small pieces of paper can accumulate to produce the digital lines.

MR. FLORES. But they were not there in the morning of elections.

THE CHAIRMAN (SEN. PIMENTEL). Yes, because the testing and sealing is 10 ballots.

MR. FLORES. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Yes. But we know we clustered precincts for 1,000 voters. So the machine should be

designed not to produce digital lines even after the 1,000th voter has cast his votes.

MR. FLORES. And they are designing that purpose. But you have to use the right type of paper and the right type of pen. In fact, I will submit to this Committee a study conducted by HP where they actually compare qualities of papers and the implications they have on deterioration of their hardware both in printers and scanners. And they actually point out to paper that comes from China that has a component of talc and calcium carbonate that actually—

THE CHAIRMAN (SEN. PIMENTEL). Did you make this point very clear to the Comelec before the 2013 elections that you have to use the right kind of paper and the right kind of pen and ink?

MR. FLORES. Absolutely. And in fact, if you remember, I was here in 2012 complaining about the way the bidding took place at the MPO.

THE CHAIRMAN (SEN. PIMENTEL). Acting Chairman Lim, what lesson have we learned from this? Do you agree that we made a mistake in the paper and the pen?

MR. C. LIM. It's possible, Your Honor. That's why we're considering bundling paper and pen as one component in the bidding instead of bidding it separately.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Bundling paper and pen. But the quality of the paper siguro.

MR. C. LIM. We will be stricter in the specifications of the paper and the pen.

THE CHAIRMAN (SEN. PIMENTEL). So hopefully nothing goes wrong this time. But for the record, Smartmatic has said that even the Mylar, they will conduct ocular, not only ocular of the Mylar but also some tests on the machines to determine if there are digital lines. And then if there are, then you would first suspect the Mylar and change the Mylar.

MR. FLORES. Yes, sir. In machines where we found that there is an occurrence of this, we will change the Mylar.

THE CHAIRMAN (SEN. PIMENTEL). Yes, because in your contract, which is being questioned in the Supreme Court, part of the work that you will do is examine each machine. There is an examination you will do to find out if there is digital line being generated by the machine.

MR. FLORES. Yes, sir.

THE CHAIRMAN (SEN. PIMENTEL). Okay. What will you do next? You will suspect that it is caused by the Mylar?

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MR. FLORES. Yes. If there is presence of digital lines, the machines will be opened. And if the Mylar is damaged, it will be changed.

THE CHAIRMAN (SEN. PIMENTEL). Okay. From an ocular examination of the Mylar.

MR. FLORES. Yes.

THE CHAIRMAN (SEN. PIMENTEL). Okay.

MR. C. LIM. Just to clarify, Your Honor. What we were saying is that the coverage of the contract is that the Mylars that have been affected will be changed. But what we are intending is even though the Mylars that are not affected, we want to change all the Mylars of all machines to ensure that it is brand new. That is not covered in the contract. What they're saying is, what they will replace are those that were infected with a digital line.

THE CHAIRMAN (SEN. PIMENTEL). Ang tanong namin, bakit hindi n'yo pa ginawa, in the first place, sa scope of work sinulat na ninyo iyong replacement ng Mylar? Bakit? Will that be too expensive?

MR. C. LIM. It might raise the cost, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). How much? How much is the Mylar?

MR. FLORES. The thing is not so much the cost of the Mylar but the fact that will imply opening all 82,000 machines.

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THE CHAIRMAN (SEN. PIMENTEL). Eighty-two thousand machines.

MR. FLORES. Eighty-two thousand machines need to be opened. So the scope of the whole program will be extended.

THE CHAIRMAN (SEN. PIMENTEL). So in this contract you have entered into, it does not required the opening of the entire—

MR. FLORES. Only those who are damaged.

MR. C. LIM. We attempted to have all the Mylars replaced, Your Honor. But they were the ones who rejected that.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, I think we have the deconstructed machine ready for our examination now.

Are you done, Mr. Flores, with all—sige lang. Anyway, you'll be here.

MR. FLORES. I have so many points.

THE CHAIRMAN (SEN. PIMENTEL). Mr. Averia, please.

MR. FLORES. I just want to make one last comment.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Mr. Averia, excuse us.

MR. FLORES. So I want to emphatically correct certain statements. I want to emphatically say that neither of the Venezuelan nor any government in the world owns any shares of Smartmatic or any of our affiliated companies. That's our statement. We can prove

it. In fact, we have always complied with Comelec requirements of showing our ownership. I remember to the JCOC also in 2010, we submitted all the lists of our shareholders. So we have no government intervention whatsoever unlike some of our competitors.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, preliminary study, it should not matter.

Atty. Santiago is here of the Government Procurement Policy Board. Pero I really wanted to invite you to comment on the procurement but it's pending before the Supreme Court. So, thank you for your attendance. But I will not solicit any opinion from you.

Mr. Averia.

MR. AVERIA. Your Honor, because my name was mentioned, Mr. Chair. I do confirm that I met with Mr. Leo Querubin and some representatives from Cytel. But I wish that Mr. Flores had read the full provision on the CAC. Certain CAC members would also engage with Bids and Awards Committee as non-voting members. But there is also a limitation that members of the CAC that represent IT industry associations are not allowed to participate in the Bids and Awards Committee as member of the CAC. So that's the limitation. So I acted on that. That's my guidance. So I wish that Mr. Flores had corrected that rather than casting some aspersions on my person.

REP. ERICE. Anyway, Mr. Chairman, may I ask Mr. Averia? What's the topic of your meeting with the competitor in the bidding?

MR. AVERIA. We discussed Internet voting, making it a possibility in the Philippines.

THE CHAIRMAN (SEN. PIMENTEL). Because Cytel claims to be an expert in Internet voting.

MR. AVERIA. That's correct, Mr. Chair.

THE CHAIRMAN (SEN. PIMENTEL). Mr. Flores.

MR. FLORES. I want to read from 9369. It says, "Any member of the advisory council is prohibited from engaging directly or indirectly with any entity that advocates, markets, imports, produces or in any manner handle software, hardware or any equipment that may be used for election purposes for personal gain." "Any member."

THE CHAIRMAN (SEN. PIMENTEL). I know. But there are many requirements there. It must also be for personal gain.

Anyway, let your lawyer.../alicc

THE CHAIRMAN (SEN. PIMENTEL). ...Anyway, let your lawyer study that if you want to pursue something out of that meeting.

I think the machine is ready. So the request of examining it in executive session is granted. Only the—

Congressman Erice.

REP. ERICE. Mr. Chairman, I just like to reiterate our request for submittals from the Comelec and from Indra several documents, particularly for Indra we are requesting their records on what countries they did use their PCOS, the OMR that they are offering to the Philippines.

THE CHAIRMAN (SEN. PIMENTEL). Indra, how soon can you give us the report on your past experience using the system? How soon?

MR. GUEVARA. Beginning of next week, Your Honor, on Monday, we will deliver the documents.

REP. ERICE. This is the same machine you are offering in the Philippines?

MR. GUEVARA. The same system, I mean, machines evolution—the machines...

REP. ERICE. But different machine?

MR. GUEVARA. Of course, I mean, the same system, the optical recognition mark. In fact, machines change all the time and we

are a company that repairs machines for every different bits. I mean it's totally—the machine that is going to be used in case that we finally are awarded for this contract is a latest technology and it has been proven in the technical demonstration that was done by the Comelec.

REP. ERICE. We will not discuss the technical.

THE CHAIRMAN (SEN. PIMENTEL). Early next week, sir, as you promised.

We have prepared lunch for you. We are not yet suspending the session. We are just going into executive session to examine the deconstructed PCOS machine to look at the Mylar and then let's have a 15-minute lunch break, then we will come back and resume.

MS. JIMENEZ. Sir, clarification, may I just ask something?

You see, two weeks ago, AESWatch wrote the JCOC appealing—this was an appeal actually, appealing that the Filipino IT be given the opportunity to show, to demonstrate that the PCOS machines are prone to manipulation, specifically internal manipulation. And in the IT industry, that would, of course, require the cooperation of the Comelec and the vendor.

Actually, we were given copies of some winning cases that were decided that showed that the PCOS machines were actually or actually produced results that were borne out of internal tampering.

Now, this is something very, very serious and our Filipino IT would be very much willing. I think this is also—

THE CHAIRMAN (SEN. PIMENTEL). When will you be ready?

MS. JIMENEZ. For one, Mr. Gus Lagman—

THE CHAIRMAN (SEN. PIMENTEL). Huwag lang today.

MS. JIMENEZ. Of course, not today.

THE CHAIRMAN (SEN. PIMENTEL). Will you be ready soon?

MS. JIMENEZ. If the committee would allow that, we would need the cooperation of Smartmatic and Comelec.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Can you write to us, Ms. Jimenez, what particular acts you need Comelec to perform, what particular acts you need Smartmatic to perform and then titingnan namin. We will also use our judgment if we are already, you know, compelling them to do acts against their will.

MS. JIMENEZ. Yes, sir. Yes.

MR. BRILLANTES. Comelec will help them manipulate the machine.

MS. JIMENEZ. This is actually one of the accepted practices in the IT industry. And that would be a public demonstration just to end all issues. I mean, this would have to be—

THE CHAIRMAN (SEN. PIMENTEL). You need to have their cooperation before your presentation, hindi ba?

MS. JIMENEZ. Yes, of course. Because we would, of course, be using the PCOS machines.

THE CHAIRMAN (SEN. PIMENTEL). Okay, it's a multistep process. Your group will have to tell us specifically what acts of cooperation you need from Comelec, what acts of cooperation you need from Smartmatic and we will go over your proposal. If we like it and we will pursue it, then hopefully they will now cooperate and then you will prepare your report—

MS. JIMENEZ. Yes. Open to all.

THE CHAIRMAN (SEN. PIMENTEL). In the committee, it is only the presentation of your report.

MS. JIMENEZ. Yes. We will now call that Smartmatic PCOS 101 and we would invite all the schools IT because this would be a very critical demonstration, sir. Thank you.

THE CHAIRMAN (SEN. PIMENTEL). So we need the first step muna. It will be the listing of what acts of cooperation they need.

Mr. Flores, why are you reacting?

MR. FLORES. I just have to laugh because it's really laughable that after five years of accusing the system to be able to be hacked and that there's many hackers hooking at said machine and after we

have challenged them—I do remember in the Barzaga-headed committee, to show it, now we have to do it for them.

I think that's the lamest excuse that we have to hack it for them. We can place a PCOS ad they can hack it... but we're not going to do it for them.

THE CHAIRMAN (SEN. PIMENTEL). Never mind. Let's wait for the list of acts that they want from Smartmatic.

MR. FLORES. Are you an IT?

THE CHAIRMAN (SEN. PIMENTEL). Mr. Flores, please observe decorum.

MS. JIMENEZ. Non-IT but I am an IT researcher.

THE CHAIRMAN (SEN. PIMENTEL). Ms. Jimenez, let's end this word war.

Acting Chairman.

MR. C. LIM. Mr. Chairman, subject to really reading the actual list but in terms of public policy that you want to show to the public on how to tamper the PCOS machines, I think, I don't really—I don't know how—

THE CHAIRMAN (SEN. PIMENTEL). Let me wait for their communication and, of course, we will also intervene. The committee will intervene. We will go over their request and if it is not against public policy, we might grant it.

MS. JIMENEZ. Let us allow the JCOC to do its oversight task, please.

THE CHAIRMAN (SEN. PIMENTEL). But the initiative must come from you. Write to us.

So in the meantime, we have prepared lunch for you. Let's have a 15-minute break.

The committee members will join Comelec commissioners only to go to look at the deconstructed machine.

Okay, are we ready? Hearing is suspended.

[THE HEARING WAS SUSPENDED AT 12:28 P.M.].../meln

[THE HEARING WAS RESUMED AT 12:57 P.M.]

THE CHAIRMAN (SEN. PIMENTEL). Let us resume.

In the next session, kasi ako rin mismo, aside from the digital lines, I am concerned about our compliance with the law. Ang interpretation ko kasi, when it's a minimum system requirement, it must be complied with kasi minimum. So, in the next session, we will list down all the 15 and then can you demonstrate to us how we will comply.

MR. C. LIM. Yes, we will bring the machine for that.

THE CHAIRMAN (SEN. PIMENTEL). Okay. But are all those machine-based, iyong 15? Basta be ready. Basta be ready. Go over one by one.

MR. C. LIM. Yes, yes. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). We just want to be assured that, you know, let's say, if there were symbolic compliance before, we want now substantial compliance or real compliance in 2016. Kasi pangatlong ano na natin ito, eh. Third election na with an AES.

Okay. Actually, isa rin, Acting Chairman Lim, iyong in 2010, after the elections, I was so glad that I could access on line the results. Iba na ngayon, dot com, naalala mo iyon? You remember?

MR. C. LIM. Hindi po, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Basta, ako I access. Iba na ngayon, dot com. But number one, I was disappointed that that count did not total on a per LGU basis. You just posted per precinct result. Okay. For the 2013, did we post on line the results?

MR. C. LIM. Yes. I understand, yes. But however, Your Honor, for those results that were manually uploaded to the canvassing system, this could not posted on line, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). What improvements can we do in 2016? Ikuwento ko muna sa iyo iyong disappointment ko sa iba na ngayon. Iyon na nga. Iba na ngayon. You look at your precinct, there will be the results. But people look at the per LGU results. They are more interested in the per LGU. "Sino ba ang nanalo sa city ko na senador? Sino ang nanalong mayor sa city ko?" Iyon iyon, eh. So, sana we can improve. And then, one criticism is that the Comelec took down quickly or immediately that website where people are supposed to, you know, find out the results in their precincts. So, what improvements— are going to offer this kind of convenience and transparency to our people in 2016 and what improvements will you put in place?

MR. C. LIM. Siguro, Your Honor, what we can do to enhance that experience, Your Honor, is that we can also post the canvassing

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results at the lowest level whether at the municipal canvass ano. Not only precinct, 'di ba? Ang nangyari, Your Honor, is it's just precinct but you have to manually tally. But what we can do is we can post the canvass results in the website, Your Honor, para makita n'yo iyong bawat resulta, ilang votes nakukuha.

Ang isang tinitingnan din po namin is iyon nga, as much as possible, we want to avoid the lowering of the threshold kasi maraming kulang, eh. Kaya lumalabas maraming unaccounted votes for.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Iyong threshold before you report to the next level, 'di ba, that was the problem in 2010. How did you solve that in 2013?

MR. C. LIM. Actually, ganoon pa rin, Your Honor. They were able to lower the threshold for purposes of proclamation of the local positions.

THE CHAIRMAN (SEN. PIMENTEL). And it is within the power of the Comelec. No need for a law.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, what was the threshold you used in 2013?

MR. C. LIM. Ang standard namin, Your Honor, is—we cannot say exactly. For this city, it's 90 percent or it's 95 percent as long as

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the incoming votes will no longer materially affect the results of the election.

THE CHAIRMAN (SEN. PIMENTEL). Of the local.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kasi in 2010, even the national were held up, 'di ba, because you required 100 percent, 'di ba?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, now it's a judgment call because it will no longer affect the local. Okay. So, you now allow the transmission of the results of that LGU to the next higher canvassing level which is now national, 'di ba?

MR. C. LIM. Provincial, Your Honor. Per province then national.

THE CHAIRMAN (SEN. PIMENTEL). Okay. So, how are we to ensure that those which were not included in the—those which have been omitted when you gave the go signal would find their way to the final tally at the national?

MR. C. LIM. What we did, Your Honor, in the 2013 was that after we proclaimed the last senator, that was Senator Gringo Honasan, we looked at the—before we proclaimed Gringo Honasan, we looked at the lead of Gringo Honasan to the next one. It was Senator

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Gordon. And it was about 750,000. Based on the reports from the field regarding the unaccounted—that failed to transmit, it was about 200,000. So, we knew that it would not be. Now, what we did, Your Honor, was after the proclamation of the 12th senator, we pulled out all the results that were either unaccounted because the CF card malfunctioned or the PCOS itself malfunctioned, there was no replacement. We pulled it out, we brought it to the main office and we fed in the presence of the parties the machines and they generated the results. That's why when we looked at the senatorial results after the last canvass for the senatorial, there were votes added to the senators, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). This is only for the senators, no longer sa local.

MR. C. LIM. No longer for local. We did for senators and Party-list.

THE CHAIRMAN (SEN. PIMENTEL). And party-list. Actually, ang concern ko iyong Party-list, eh.

MR. C. LIM. Party-list, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, since the party-list elections are closer or more tightly contested, the proclamation took longer of the final winning parties.

MR. C. LIM. Yes, Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). Pero no issue there, no issue, that the difference between the last proclaimed Party-list and the following Party-list candidate is not to be affected by unaccounted votes?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). But we ended 2013 still with some unaccounted votes?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). What's the total?

MR. C. LIM. Actually, the ERSD is—

THE CHAIRMAN (SEN. PIMENTEL). Okay. Let's say figure X. Okay. Give us the figure later. But ang tanong ko lang is how can we improve that sana—is it ever possible that there is no unaccounted vote?

MR. C. LIM. It will perhaps, Your Honor, logistically speaking, it will take longer.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. Kasi, I mean, ano na lang iyon, eh. It's for your records purposes. It's for your accuracy of your records kasi proclaimed na lahat.

MR. C. LIM. Puwede, puwede. We can do that, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). How come we have never been interested in accounting for all the votes?

MR. C. LIM. Siguro, Your Honor, I could say that perhaps the expense involved kasi we are pulling out all the—

THE CHAIRMAN (SEN. PIMENTEL). Siguro, alamin natin, Acting Chairman, what is causing all of these unaccounted votes. Dapat may study din siguro tayo. Is there a precinct na paulit-ulit hindi ma-account iyong votes niya? Is there an LGU, is there a barangay na election after election, we do not get results?

MR. C. LIM. Hindi. It's too random, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Random.

MR. C. LIM. Random iyong ano.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. Ang gusto kong sabihin at least if you could please study that phenomenon and then iyong "X," iyong whatever—can you just give us that "X" ha, iyong unaccounted for 2010. Ganoon na lang. For 2010 and 2013, I want to see kung bumababa.

MR. C. LIM. We'll submit a report na lang, Your Honor, on that.

THE CHAIRMAN (SEN. PIMENTEL). And then siguro naman ang strategy—kasi ang ating mantra is every vote counts, so let us account for all the votes. Automated na tayo, eh.

MR. C. LIM. Opo, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). I mean, do you share my concern that every vote counts?

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MR. C. LIM. Yeah, I agree with you, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). And then give us the strategy of the Comelec to—kung hindi man maging zero iyong unaccounted for, it should be lower than the 2013 figure.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Sana substantial improvement.

MR. C. LIM. Opo.

THE CHAIRMAN (SEN. PIMENTEL). Okay.

Ms. Jimenez.

MS. JIMENEZ. Yeah, yeah. This is based on our research. I hope you won't get mad at me, Acting Chair, sorry. I just have to do my job.

The data that we have is, we did a study on the election results. There is a provision in the law that the results of the election should be posted for. . . (*nam*)

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MS. JIMENEZ. ...should be posted for three years, continually, so that we can verify, reverify, check—but nowhere the posted, you know, votes had been pulled down already. We have a report on that for the committee sent by our IT expert, Dr. Pablo Manalastas, we submitted that report, incomplete. Now, we're going to 2016. That's why you cannot blame us if we say we have accidental winners. We do not question who won, who did not win. But the point is, how accurate were the counting? Ilan ba? Kasi kahit na 30 votes lang iyan, lamang, it could matter a lot at the local level. That's why posting the election results on the website, official, is very, very important to all stakeholders.

THE CHAIRMAN (SEN. PIMENTEL). And then the period of time that it's posted, Acting Chairman. Ito yatang iba na ngayon three months lang inano na—

MR. C. LIM. Hindi, Your Honor, siguro ang ibig sabihin kung ang habol ninyo po ay ang precinct results, iyon ang wala na. But we have still posted in the website the consolidated results, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga, you were able to post the precinct results, what was the urgency in taking this down? Why? As policy, let it be. Pabayaan niyo.

MR. C. LIM. I was told that there was a confusion between the unofficial results and the official results.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. Sana iyong website should be Comelec maintained. What you post there should be coming from your official data.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So ang laking tulong po. Ako, I was glad to be able to access, but I only saw my precinct result, I couldn't see Cagayan De Oro consolidated results. Sana iyong ganitong improvement ba.

MR. C. LIM. Sige, we'll look into that, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Improvement into the consolidation and in the period of time, the length of time that it is allowed to be accessible through the internet.

MR. C. LIM. We will look into that, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Ito, Acting Chairman, what is the urgency in taking the results down? Bakit?

MR. C. LIM. Actually, I didn't know until now, I just learned nabura na pala sa website, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Mabilis na nawala.

MR. C. LIM. Yes. For me, personally, I don't really find the problem posting that result, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Hindi naman siguro cost, 'no. Hindi naman siguro sa renta ito?

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Atty. Chong, yes, please.

MR. CHONG. Mr. Chair, may I put that in the right perspective?

A case was filed before the Supreme Court for the annulment of the 2013 senatorial elections by *Ric Penson, et. al.* That was filed last March 2014. Then the Supreme Court asked the Comelec to comment on May 6 or 10, and the result was removed after that one. So, let's just put this in the right perspective. The result was removed after the petition was given due course by the Supreme Court.

THE CHAIRMAN (SEN. PIMENTEL). Do you remember the website? Kasi iyong akin...

MR. CHONG. *Comelec.gov.ph.*

THE CHAIRMAN (SEN. PIMENTEL). Kasi iyong akin, iyong *ibanangayon.com* was in 2010...

MR. CHONG. Sir, that's *comelec.gov.ph* po ang tsini-check namin.

THE CHAIRMAN (SEN. PIMENTEL). Ah, doon niyo nilalagay. Okay.

MR. CHONG. And the results or discrepancy between that and in *rappler.com* and the *comelec.gov.ph* on May 18 and May 29. Kasi noong May 18, *rappler.com* reported 39.8 million votes were accounted for, as of May 18. Ten days later, noong tsinek (check) namin iyong website ng *comelec.gov.ph*, the total votes cast was only 31.5 million

on May 29. So, where can we see an election na bumaba iyong numbers, and I'm just stating this one, Your Honor, but the more important is the presentation that I'd like this Committee to see.

THE CHAIRMAN (SEN. PIMENTEL). Well, anyway, to avoid siguro iyong misinformation that website should be Comelec maintained, official data to be posted.

VOICE. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay, hindi. Before we go to Atty. Chong, Mr. Alvia—any comments from other—Mr. Oxales, feel free before we suspend. Okay lang?

MR. OXALES. Senator, we just want to reiterate again, part of transparency and also increasing the credibilities we need to provide full access of the data results to everyone and the longevity of the data. Because just recently, last year, the Indonesian election was heralded successful, and it wasn't questioned. Because a lot of groups, individuals, who were concerned with the results had access to the data and they were able to process it. And if there were any comments, either by the local candidates or by the national candidates, they could just compare each other. So, here is a result of full disclosure, full access to everyone, and it enhanced the credibility, and even it added a deterrent effect to would be fraudsters. So this is

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a classic case of, again, providing data. This is the best way to everyone.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, the Acting Chairman agrees. So, sabi ko nga kay Chairman Sarmiento we don't need to put this into law. I mean, okay lang, Acting Chairman.

MR. C. LIM. Your Honor, also may I add, unanswered question mo, Your Honor, ilang votes were not counted. Based on our data, Your Honor, the number of precincts with the registered voters of 58,597, iyon iyong hindi na-account.

THE CHAIRMAN (SEN. PIMENTEL). In 20?

MR. C. LIM. 2013.

THE CHAIRMAN (SEN. PIMENTEL). Fifty-eight thousand five nine seven.

MR. C. LIM. Pero based on registered voters iyon, Your Honor. Hindi pa kasama iyong actual turnout. Hindi pa namin alam.

THE CHAIRMAN (SEN. PIMENTEL). Yes, oo. I understand. Oo. Okay, but in 2010, wala kayong figures? Higher--higher siguro? Basta, please, sana iyong figure na iyon if we are really true to our belief that every vote counts pababain po natin iyong 58,000 na iyon.

Atty. Chong, how long is your—Dr. Celis.

MR. CELIS. Mr. Chairman, I would like to suggest also to this particular scenario, iyong data access, posting retention should also be

included in the implementing rules and regulations so that it's going to be very, very clear to everybody. So, whether it's a PCOS, CCOS, or DRE the posting of the results, the access of the data should be there.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga, but if it will still prove to be a problem in 2016, then maybe we have to put it in the law kung ganoon na nga ang mangyari. But I think our acting chairman being young, and dynamic, and progressive, he shares our point of view, our perspective.

MR. C. LIM. Your Honor, I hope that the incoming chairman also shares the same.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. For as long as you are there infect them with this point of view. Puwede naman, hindi ba, Acting Chairman?

MR. C. LIM. Yes. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Chong, the House Panel Chair is asking how long is your presentation?

MR. CHONG. It will not take long, Your Honor. Not more than 10 minutes.

THE CHAIRMAN (REP. SARMIENTO). Yes, please, not more than 10 minutes. We do have another meeting.

MR. CHONG. Yes. Yes, sir.

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THE CHAIRMAN (REP. SARMIENTO). My colleagues left already because they also have to attend to some other meetings.

THE CHAIRMAN (SEN. PIMENTEL). Okay, so we proceed with the presentation of Atty. Chong, please.

MR. CHONG. Sir, these are based on—

THE CHAIRMAN (SEN. PIMENTEL). And give us a copy. Give us also a copy.

MR. CHONG. The softcopy is already there, sir. It's already saved.

Now, this is the basis for our questioning the—

THE CHAIRMAN (SEN. PIMENTEL). Excuse me.

Acting Chair, 10 minutes lang, then we will suspend na.

Okay, thank you.

MR. CHONG. This is the basis of our questioning the results of the digital lines report nila, sir.

If you look at this, this is a list of the ballot images, of all ballot images both 2010 and 2013 elections. The file naming conventions says that the other half is the CP number, clustered precinct number, to your left. To the right is the random number which is generated by a sort of random number generator. The PCOS generates numbers from 1 to 999,999 in all ways in ascending order. So, iyong first ballot could be 1,250 (?). If you look at that one, in the case of Nueva Ecija,

that's 1,270, and then the next one is 3,000. You look on the right side, the last six digits, these are the file names of the ballots, as recorded by the PCOS. The left side—the right side pala. The last six digits are always random numbers. They're generated by a random number generator. Ito ho iyong listing ng mga PCOS ballot images. [Pointing a slide] Ito. That one. Where is the red light? There. Ito iyon. These are the randomly generated numbers.

Next slide, please.

If we arrange that, the ballots would appear like that. The first ballot would be number 1227, ito iyong nasa CD ho na ibinigay sa amin from this committee noong in-open iyong ballot images ni Brother Eddie. This is the CD. I just reproduced it there. The first ballot image was numbered 1227 because this one is the clustered precinct number. The next ballot image would be 3072. If you look at the previous slide iyan iyon, 1227, then 32, then subsequent. Next slide again. Ito iyon. The first half is the previous ballot. The second half is the subsequent ballot. That is also the arrangement in the laptops that was shown to us by Comelec when we opened the 383 clustered precincts ng digital lines examination. .../mrjc

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MR. CHONG. ...digital lines examination.

So next slide, please.

Ito iyong pictures ng mga computers doon sa Project Management Office when they opened it. Now, when bumalik ho ako noong hapon, tsinek (checked) ko ho iyong mga laptops doon sa Comelec isa-isa and this is what I saw: Look at Laptop No. 1, the first ballot is numbered 1-5-2. The next ballot is 1-5-3. Bakit naging sequential iyan? These are supposed to be randomly generated numbers, bakit naging sequential iyan? Ang first ballot is 1-5-2, the next ballot is 1-5-3.

Pero mayroon pang ballot iyan previously, Your Honor, 1-5-1; 1-5-0.

THE CHAIRMAN (SEN. PIMENTEL). Before you proceed, Acting Chair, just take note of those ano, we'll ask you to answer, huh?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). If not now, in the next meeting or in writing.

MR. C. LIM. Okay. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Kasi number one, ang point niya is iyong second part, iyong six-digits, random daw iyon. So you answer that kung tama.

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Then number two, kahit random, increasing in number dapat iyon.

MR. C. LIM. Yes, Your Honor.

MR. CHONG. Your Honor, these are the basis for those randomly generated numbers and they still bear the logo of the Comelec. This was printed from the CF cards itself and the other one is from the CD of Brother Eddie Villanueva.

THE CHAIRMAN (SEN. PIMENTEL). Okay, let's allow the intervention of Mr. Flores. What's the answer?

MR. FLORES. Okay, it's very simple, there's nothing hidden or mysterious about this.

As you know, the ballots are stored in the memory of the PCOS machine. Every ballot is stored randomly, blah-blah-blah, and, of course, this is a file that is assigned a number just for future reference. These are randomly saved in the memory.

Now, the memory is encrypted. So, the process in, let's say, a protest case is that this is taken to a different application that we provided to Comelec. This application, Comelec typing the necessary password to decrypt and use this digital signature and then they take the actual images to be printed. So this, let's say, third party, this third step software, it's all the same images and puts it in another file to be printed.

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Now, in 2010 and 2013, we used two different external applications to export these images from the CF cards. And it used to happen that one--or just leave them in the same random way that they were safe and the other one just place them in a sequential list. But that doesn't mean that they were not stored randomly in the memory to begin with.

THE CHAIRMAN (SEN. PIMENTEL). In 2013, those two systems?

MR. FLORES. No, we used a different one and it just happens that it prints them in a different format, that's all.

THE CHAIRMAN (SEN. PIMENTEL). If we go sequential, this one.

MR. FLORES. No. I mean, it assigns a sequence but the ballots are not in the same sequences, they were stored in the memory to begin with. So it's just an issue of using two different applications that will assign a different format to the ballot image.

THE CHAIRMAN (SEN. PIMENTEL). Let the explanation--

MR. FLORES. But if you go to the actual ballot image, you will find that the system was also randomly saved.

THE CHAIRMAN (SEN. PIMENTEL). Let the explanation stay in the record and then the Filipino experts will study the validity of the explanation.

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MR. GARCIA. Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Any remark, Mr. Flores?

MR. FLORES. Just one minor clarification here.

What we have in the list printed or shown by Mr. Chong is a list of how it is seen inside the CF card. You see random numbers and it's not organized.

What you are seeing here is a PDF file which is a container of all the images so it's ordered that is why you have the sequence.

So, if you order it and the random numbers are near to each other, you will see cases like this. So that is why you say it is ordered.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Continue, Mr. Chong, your representation.

MR. CHONG. Let me refute him. This is a PDF file. But even if this is a PDF file as he has said, this is randomly generated numbers. Random ang number dito, hindi tulad niyan.

So in other words--

THE CHAIRMAN (SEN. PIMENTEL). We will study. Anyway both sides, the observation and then the explanation are on record. And if we need the help of experts, we will ask your help to comment.

Continue, please.

MR. CHONG. Last slide.

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Now this assumes significance--you go to the last slide--because all the 13 laptops are all sequential. Now, if these were simply--This was not a PDF file.

The previous slide--

Your Honor, this was one of the pictures that was provided to us by our informant. And this shows a white board and there are very important four items there that I highlighted.

Next slide, please.

If you look at that, it says "view ballots created:" one for the ARMM and one for the non-ARMM.

Create ballots; import certificates; set tabulation configuration; and print election files.

I think someone has to answer this because it would tend to show na puwede kang gumawa because the other one says, "make election files," at the bottom. Who will make election file except the PCOS itself.

So that's why I have to put this one because those randomly numbered or sequentially numbered ballot images has a direct bearing on this one.

THE CHAIRMAN (SEN. PIMENTEL). Director Roxas.

MS. ROXAS. Sir, good afternoon. Sir, i-explain ko lang iyang dalawang iyan.

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Actually, we're using two sets of script in decrypting the ballots. One iyong as they are being stored in the CF card; and the other one, iyong sequentially.

Actually, sir, iyong sequentially, ang gumawa ng script niyan DOST. Kasi sabi ko for purposes of iyong verification ng digital lines, mahirap iyong hindi sunod-sunod. Kasi pag sunod-sunod, at least, pag nagkaroon ka ng guhit sa una, madali, tuloy-tuloy. Iyong isa ginagamit namin pag may kaso kasi iyon randomly, depende kung papaano in-store iyong ballots.

THE CHAIRMAN (SEN. PIMENTEL). So, the file never lost its original random identifier?

MS. ROXAS. Yes, sir, we can prove that. Gamitin natin iyong randomly at saka iyong sequentially, pareho lang ang results niyan. And besides, if you will compare it with the results of the election returns which was printed prior to the decryption of the ballot images, pareho lang po ang result. Sana tinanong na lang kami ni Mr. Chong noong nandoon siya sa office.

THE CHAIRMAN (SEN. PIMENTEL). Hindi, kailangan din po namin ng explanation para maintindihan.

Pero the use of the words, iyong mga ganyan?

MS. ROXAS. Sir, hindi ko po naintindihan iyan kasi kaming nagde-decrypt, hindi kami mga programmers.

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THE CHAIRMAN (SEN. PIMENTEL). Saan ito napiktyuran, Atty. Chong?

MR. CHONG. It was provided to us by our source within the Comelec.

THE CHAIRMAN (SEN. PIMENTEL). Anyway, we will give you a copy if you care to just comment. We'll give you time.

MR. CHONG. Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Yes, Atty. Chong.

MR. CHONG. If we have two different file-naming conventions, it really makes the election system so questionable. I think we have to agree that if you have a voter-verified paper audit trail that you can really audit with--CPA din ako, we should have that kind of system. Hindi iyong pabago-bago iyong file names. Remember file name is very important.

And, Your Honor, in the next Joint Congressional Oversight Committee, I would like to ask your permission--we will present also another set of evidence which shows na posible iyong transmission from the PCOS when it arrived at the laptop, parang nag-self-transmission iyong laptop.

Actually, it's here but since we do not have time, we will present it to the next Joint Congressional Oversight Committee just to show

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that this election system that we have is really riddled with inconsistencies.

THE CHAIRMAN (SEN. PIMENTEL). Can you tell us where this picture was taken? Sa Comelec iyan?

MR. CHONG. Ang nag-provide ho sa amin, these are Comelec sources, from Comelec.

THE CHAIRMAN (SEN. PIMENTEL). So, in relation to the digital lines study?

MR. CHONG. It was actually given to us, sir, noong, if you remember, may mandamus for those pictures from--iyong mga excess ballots. Those pictures--

THE CHAIRMAN (SEN. PIMENTEL). Words lang kasi iyan kaya--

MR. CHONG. Those excess ballot pictures were actually ours, galing ho sa amin iyon with the comparison of the fake ballots and the officially packed ballots.

THE CHAIRMAN (SEN. PIMENTEL). Tingnan niyo ang nangyari when we use two systems, iyong script--Sino ang gumawa noong unang script, iyong may random, Smartmatic? And then DOST, script to sequential.

MS. ROXAS. Opo.

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THE CHAIRMAN (SEN. PIMENTEL). So, because of the two systems, nagkakalituhan tayo. People think that there is something fishy happening.

Now, I'm worried about your two-OMR system. I mean--

MR. C. LIM. Actually, Your Honor, that's one reason why we wanted a brand new system. That's why we wanted a brand new para isang system. But, of course, the CAC recommended it so we followed it. In fact, we were told by one ano that we will be the only country using possibly three or four systems.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Anyway, as long as you're just exercising your power.

Ms. Evie.

MS. JIMENEZ. You know the implication of all these. We have different systems. Remember the transparency server fiasco? Now the PPCRV is being blamed. I mean, who's really in charge?

Remember in 2013 we were poll watchers. We do not know, we did not know what to believe. The official count is there, in the website.../mhu

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MS. JIMENEZ. ...in the website, it is different, transparency server was different until Smartmatic came in and said, "It's fixed." Remember, it was fixed. It did not come from us. It came from Mr. Garcia and he said through--the spokesperson of PPCRV said, "It's okay now, it's fixed."

This is just to manifest the concern of poll watchers. Remember, much different from what we were used to before, now we only have to wait for the results from the machine. How can we know if this is verified, if this is the official one or the projected results?

THE CHAIRMAN (SEN. PIMENTEL). Ang point kasi ni Atty. Chong, the ballot has already an ID, digital ID niya is doon. And then, although random iyong second part, it is sequential or increasing. So you will know which is the earlier ballot, hindi ba? Iyon iyong point niya. So what was the point in creating a script file which will give it now as sequential talaga? What was the point?

MS. ROXAS. Sir, para lang for purposes of verification namin ng digital lines.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Pero ang gusto kong sabihin, even if you use the original ID niya, you could have seen the sequence also because—kung tama iyong sinabi niya na it's an increasing random number. Hindi ba, sa left side would be the precinct number? So okay na iyon. It will differentiate the ballots from the

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other precincts. And then the right side would be a random number, six-digit random number of increasing order.

MS. ROXAS. Hindi rin, sir.

THE CHAIRMAN (SEN. PIMENTEL). You cannot? You will not be able to sequence the ballot?

MS. ROXAS. Tinray (try) namin iyan, sir. Mahirap sa aming nagbe-verify kasi pwede ang first ballot may line, second, third, fourth, fifth walang line, tapos sixth na naman may line. So mahirap baka magkamali pag-taras iyong mga tao namin na nagbe-verify. Habang if we use the sequentially arranged ballots, once na may makita kang first ballot may lines, tuloy-tuloy iyan.

MR. CHONG. Sir.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Chong.

MR. CHONG. Let me refute that. It is really in ascending order. Kung titignan mo itong all the list in this particular precinct are all in ascending order. Hindi mo pwedeng sabihing hindi ito sequentially arranged in ascending order.

THE CHAIRMAN (SEN. PIMENTEL). Iyon ang point ko. Anyway, Atty. Chong, can you give us a position paper with your analysis.

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MR. CHONG. Sir, I will also give you this one. The last time that I presented this, sabi mo hindi klaro diyan. Hindi nga tugma ang shade ng PCOS, ng original ballot at ang shade ng nasa scanned copy.

THE CHAIRMAN (SEN. PIMENTEL). Sa scanned. Okay. Sige, please.

MR. CHONG. Kaya nga kino-question ko and I will give you this to you because this is clearer and they have to answer. Hindi nga tugma iyong shade doon sa original at saka iyong ballot image.

THE CHAIRMAN (SEN. PIMENTEL). Okay. In the next hearing.

And Atty. Chong, you raised the Lapu-Lapu case. Tapos na ang kaso, hindi pa?

MR. CHONG. Ganito ho, sir.

THE CHAIRMAN (SEN. PIMENTEL). Kasi interesado rin akong malaman what happened.

MR. CHONG. Ganito ho, sir. The First Division already ruled on that particular case. Hindi minention (mention) sa decision iyong ballot images when in fact, all the ballot images are there, very clear.

THE CHAIRMAN (SEN. PIMENTEL). Hindi. Ang interest ko diyan, if the case has been terminated, then the Committee can now look into all of those--

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MR. CHONG. There was already decision by the First Division ng Comelec, sir.

THE CHAIRMAN (SEN. PIMENTEL). Pwede na bang pakialaman iyang kasong iyan to look at all of the evidence?

MR. C. LIM. We will just check if there is pending motion for reconsideration and we will inform the JCOC.

THE CHAIRMAN (SEN. PIMENTEL). Yes, Acting Chairman.

MR. CHONG. What I am aware, Your Honor, is that we have Precinct 67 and 193 in Lapu-Lapu. There is one in Balamban, there is one in Asturias, there are five in Northern Samar and there is also in Mindoro and Masbate.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Seven areas iyon. Can you give us the specific, Atty. Chong. Kasi kung wala, if there are no contests or protests covering those places, tignan natin before you pursue.

MR. CHONG. Yes, sir. I will try to get all the lists.

THE CHAIRMAN (SEN. PIMENTEL). Yes, Mr. Flores.

MR. FLORES. I have a remark about the randomization of the ballots that happened even before the elections. I'm gonna speak about 2010 because it is when we were involved in the printing. We were not involved in printing in 2013. But however, let us say, we print all the ballots for one precinct at the MPO. Comelec then takes

all these ballots and they have, I don't know, 40-50 PCOS at the MPO and they scan every ballot to make sure that they are properly printed and alienated. So when they file them back into a package, they are already randomized. First, first thing. So it arrives at the precinct. And as you know, voters vote simultaneously. So when you give several ballots and they don't vote also in the same sequence, so there is another natural randomization of the ballots. Then when they are restored in the memory, they are randomized again. Now, let's put it this way. You are number one, you are number two, you are number five, you are number six. In the memory they are stored as seven, six, eight, two one. But these applications that you still has then takes it and seven becomes one, eight becomes two, five becomes three and that's the sequence that we are seeing here as basic.

THE CHAIRMAN (SEN. PIMENTEL). Sequence as scanned?

MR. FLORES. No. Sequence as they appear in the memory.

THE CHAIRMAN (SEN. PIMENTEL). What is the first image in the memory card? It is the first ballot which was scanned.

MR. FLORES. No.

THE CHAIRMAN (SEN. PIMENTEL). Why?

MR. FLORES. No. Imagine an empty carton of X. The ballots are restored randomly. It doesn't go into the first slot. It can be into the ...

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THE CHAIRMAN (SEN. PIMENTEL). So the script created by DOST tells us which was the first ballot?

MR. FLORES. No.

THE CHAIRMAN (SEN. PIMENTEL). No.

MR. FLORES. The first in the memory but that's not the first one that was restored.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Is there a way to find out which was the first ballot scanned?

MR. FLORES. No.

MR. C. LIM. The reason for that, Your Honor, is to protect voters secrecy. Because the moment you know the sequence, you can check who the voter, how he voted, you can easily ascertain so to protect the vote--

THE CHAIRMAN (SEN. PIMENTEL). Kasi Chairman, when we were talking about the digital line, sabi ninyo maybe it was clean up to ballot number 10 and then ballot 11 to 15 marked by—but how will we know of that ballot 11 to 15 is the correct sequence when there is no way according to Smartmatic. There is no way to determine which ballot was scanned first and which ballot was scanned 10th, was scanned 20th, was scanned 1,000. There is no way?

MR. FLORES. No.

MR. CHONG. Your Honor.

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THE CHAIRMAN (SEN. PIMENTEL). Teka muna. Maybe the Committee on Digital Lines has—

MR. C. LIM. No. Ang explanation ko diyan, Your Honor, is if you look at the precinct and you look at the images of all CF cards, not all CF cards—not all images have lines. It is like, some, if you look at there's 1,000 images, there could be or just 100 images with lines while the 900 do not have lines. So that's a possibility that the lines were cleaned during the process.

THE CHAIRMAN (SEN. PIMENTEL). Kaya nga. But our theory is that, you know, the 10th ballot was the dirty ballot which left the ink and then the 11th to 15th had the lines and clean the mylar so that the 16th ballot is now clean, no line. That's a wrong approach because there is no way, according to Mr. Cesar Flores of Smartmatic, for us to determine which was the 10th ballot, which was the 11th ballot, which was the 12th ballot.

MR. CHONG. Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Chong.

MR. CHONG. If we go by the argument of Director Roxas na ginawa nilang sequential iyon so that makita nila kung which part nag-start and continuously, it will not jibe with what he is saying, ni Flores, because there is actually no way of arranging the ballots sequentially. So therefore—

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THE CHAIRMAN (SEN. PIMENTEL). Hindi. Precisely that's what we found out today.

MR. CHONG. Yes. I don't bite her argument.

THE CHAIRMAN (SEN. PIMENTEL). That is why I am asking the Committee on Digital Lines, iyong ating assumption, we have to review. Because iyon iyong assumption natin, when the DOST script file, arrange them one to 500, it doesn't mean that in reality si one was the first ballot.

Now, is Indra listening?

MR. CHONG. It's completely randomized.

THE CHAIRMAN (SEN. PIMENTEL). Is your system better? Can you tell us which is the first ballot and the second ballot and the third ballot?

MR. MORENO. I think that as Commissioner Lim said, this cannot be done because otherwise you could trace a voter to vote. So it's a practice that shouldn't be. Don't.

THE CHAIRMAN (SEN. PIMENTEL). Why? Do we list our voters? When I am the first voter, is there another list that I am signing may number 1? Wala namang ganoon.

MR. C. LIM. Magagawaan ng paraan iyan, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). There is no way. Wala. You cannot convince me that you can trace ballot number one to voter

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number one because there is no separate list listing the order of the voters.

MR. C. LIM. Not officially, Your Honor, but I am sure the watchers know how to do that. I mean, locally. Iyong local elections iyon.

THE CHAIRMAN (SEN. PIMENTEL). Pero masyado na pong ano iyon—I mean, for us to have been conscious of that from the very start and we disable this ability to determine the sequence, maybe we are just justifying it right now. But I am sure, we did not think of it that way na from the very start you disabled a marking system to determine the sequence because you were concerned about voters secrecy. And then, because of the memory of the watchers, they will now be able to reconstruct who voted first. Ganoon iyon?

MR. CHONG. Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Atty. Chong.

MR. CHONG. These random numbers, Your Honor, has been consistently used in all protest cases from 2010 until 2013. That I don't find any cogent reason to accept the sequential numbering.../smv

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MR. CHONG. ...accept the sequential numbering that they are proposing when in fact the ballots cannot actually be traced, in the first place.

THE CHAIRMAN (SEN. PIMENTEL). At any rate, Indra also confirmed that in your practice you disabled that system because of voter's secrecy. So, you subscribe to the reasoning of the Comelec.

Okay.

Yes. So, Mr. Flores. One more.

MR. FLORES. Regarding this image, can I comment?

THE CHAIRMAN (SEN. PIMENTEL). For the record, yes.

MR. FLORES. I mean, I wasn't there. As you know, how the system work is, first there is a system called EMS which is the system where all the data of the election is put in. Let's say, these are the precincts, these are the candidates, these are the positions to be chosen and this creates basically the image that goes in every PCOS machine and in every canvassing machine. This, from where I look briefly, these basically are instructions on the order that you have to follow on the EMS to generate or create the election files that go into the PCOS machine into a memory. But I want to highlight because if they believe this is accurate, I want to highlight when they said "in four(?) certificates." And that is very important because these groups have always claimed that there are no digital signatures in the PCOS

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machines. And actually here, we're clearly seeing that Comelec follows the process of importer's(?) certificate into the election files of the PCOS which are critical for the generation of digital signatures in the PCOS machines.

MR. CHONG. So, Your Honor. Let me briefly refute him.

THE CHAIRMAN (SEN. PIMENTEL). Oh, sige. And then I'll proceed to another matter.

MR. CHONG. Actually in the subsequent hearing, Your Honor, we will show proof that from the PCOS itself, immediately after the creation of the EML results file and prior to the actual transmission, sinasabi ng PCOS, there is no BEI key with which to sign the results. Nandoon iyon, uniformly in all audit logs that we have examined.

THE CHAIRMAN (SEN. PIMENTEL). Can you give us advance copy naman so that we will be able to follow you?

MR. CHONG. Sige, sir.

THE CHAIRMAN (SEN. PIMENTEL). Advance copy.

MR. CHONG. I'll email na lang ho copies of—nandiyan ho.

THE CHAIRMAN (SEN. PIMENTEL). The next hearing.

MR. CHONG. Yes, sir.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Two other matters I'd like to pursue before we suspend, DRE and Internet voting.

Can you tell us what will happen in Pateros in 2016?

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MR. C. LIM. Iyong Pateros, Your Honor, we have set for bidding approximately about 411 DRE machines.

THE CHAIRMAN (SEN. PIMENTEL). Lease or purchase?

MR. C. LIM. Lease. Lease with option to purchase, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Okay.

MR. C. LIM. The allocation is based on 100 voters per DRE machine. So, in terms of the exact—how many DREs we will put in a precinct, we are still discussing that whether it should be 800 to a clustered precinct or 400 because the BEI will be now dealing with eight machines instead of just one machine.

Basically, the system is that there will be DREs and the BEI will have a control to turn on and turn off the machine kasi the danger is any voter will just go in and just touch it. So there has to be a control system by the BEI.

Second, the machine will also print a receipt regarding the choices made by the voter then the voter will put it in a ballot box, Your Honor. And that will be the paper trail to be used.

For Internet voting, actually that has yet to be discussed by the Office of Overseas Voting.

THE CHAIRMAN (SEN. PIMENTEL). Going back to DRE, you have started the bidding process?

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, okay na.

Iyong Internet kasi, I read it that you were also going to bid out an Internet, so ang sabi ko—

MR. C. LIM. No, Your Honor. Actually, it was just my personal opinion that Internet voting is a form of DRE. That was the... but I don't know if the other members of the *en banc* share the same opinion as I do, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). There is no current movement in the Comelec to now bid out Internet voting, wala? There is no plan to implement Internet voting in 2016.

MR. C. LIM. Nothing as of the moment, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Because as per my reading of the law, we authorized you to study Internet voting, not to adopt Internet voting.

MR. C. LIM. That's the debate, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Yeah. And when we crafted that, that was the intent as far as the Senate is concerned.

So how about this—I heard the interview of Chairman Brillantes about this voter identification system?

MR. C. LIM. The VVS, Your Honor. We've already started the bidding, Your Honor, for 23,000 units. Since there is already a law requiring mandatory biometrics, we will use that to pilot test, also in

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the same areas as we will be using the new OMRs wherein the voter will just use his biometrics to be able to avail—

THE CHAIRMAN (SEN. PIMENTEL). What is the technical name of the system?

MR. C. LIM. VVS, Voters Verification System.

THE CHAIRMAN (SEN. PIMENTEL). So, kasama si Pateros doon.

MR. C. LIM. Kasama po.

THE CHAIRMAN (SEN. PIMENTEL). Kasi you need that more for Pateros.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). So, maybe you don't need to turn off-on the system because of that VVS.

MR. C. LIM. Ang danger, Your Honor, is that if all the systems are on and one voter goes to vote in this machine, after voting he might go to the next machine, if it's still on and still vote for that, so we need to have a control system.

THE CHAIRMAN (SEN. PIMENTEL). Ms. Evie.

MS. JIMENEZ. We are talking about different electronic systems. They just have to make sure that the 15 points in the minimum capabilities are strictly followed and I would like just to pursue the point of—let us make sure 2016 is okay again or being

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followed. What we are asking is accountability here. I mean, Smartmatic that did not comply with the minimum requirements should be sanctioned and should be given—in fact, this is what the Procurement Law and what the law is all about.

THE CHAIRMAN (SEN. PIMENTEL). You give us a paper, right—on the financial liabilities of ano—

MS. JIMENEZ. Yes, yes, yes. We will do that. Nothing personal here, it is about—you know, the culture of impunity has been with us in the Philippines. We have to learn. If there is something wrong, somebody violated, there should be punishment, there should be penalty.

THE CHAIRMAN (SEN. PIMENTEL). Do you agree, Acting Chairman, that the minimum system capabilities is applicable to all? Both DRE, OMR and whatever.

MR. C. LIM. Yes, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). if ever may Internet ka. Whatever in the future.

Okay, I think we have sufficiently discussed what we intended to discuss for today.

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So, thank you very much for your presence. We will suspend the hearing and you will be informed of the next schedule.

MR. C. LIM. Thank you, Your Honor.

THE CHAIRMAN (SEN. PIMENTEL). Hearing is hereby suspended.

Thank you.

[THE HEARING WAS SUSPENDED AT 1:44 P.M.]

.../admasicap