



REPORT NO. 3

February 9, 2010

Introduction

This is the third (3rd) Progress Report of **Bantay Eleksyon 2010** or the **People's Coalition to Monitor the 2010 Elections** a *domestic election observation mission* that aims to monitor the entire process of the 2010 elections. This report highlights the state of preparedness of the Commission on Elections in the implementation of the Automated Election System (AES) for the May 10, 2010 National and Local Elections. It also includes the pre-election related activities from period December 1, 2009 to February 6, 2010. The report contains the following areas:

- A. Implementation of the Automated Election System
- B. Election Violence
- C. Presidential Candidates
- D. Supreme Court Rulings on Election-related Cases

A. Implementation of the Automated Election System

Learning from the lessons of the 2008 automated ARMM elections, the Commission on Elections (COMELEC) and the COMELEC Advisory Council (CAC) saw the relevance of using paper ballot in an automated system and having the counting at the precinct level. The CAC recommended the use of Precinct-Count Optical Scan (PCOS) technology in priority areas and Central-Count Optical Scan (CCOS) in areas not covered by PCOS deployment. The use of a Direct Recording Electronics (DRE) technology was no longer an option for COMELEC because of its cost. In consultation with the CAC, COMELEC decided to use PCOS nationwide and proposed a Php11.3 billion budget to Congress. The advantage of using PCOS system nationwide is an assurance of a more secure system since there will be no systems integration

required and conducting the counting at the precinct level will minimize the possibilities of election fraud. CAC has actively supported COMELEC in the budget hearings of both Houses (Senate and House of Representatives) until the budget was finally approved adopting PCOS technology for the 2010 national and local elections.

In the preparation and implementation of Request for Proposal (RFP) for the 2010 elections, the CAC differs from COMELEC on some issues: a) the precinct-identified ballots, and b) the outright rejection of the invalid or fake ballots instead of accepting them and putting them into a separate compartment of the ballot box. CAC pointed out that having a precinct-identified ballot would be a lot more secure than the municipality-identified since the said ballot can only be used in the precinct it is configured. On the second issue, CAC believes that the configuration for outright rejection of the invalid or fake ballots could be a deterrent to perpetrators/cheaters to stuff the ballot box, could be curative in terms of allowing the second chance feeding into the machine should machine reading error occur, promotes transparency to voters, and allows apprehension of cheaters if need be. The COMELEC twice agreed to this configuration through resolutions, and twice the COMELEC reversed its decision on the bases of speed of the process and custody of the rejected ballots, which will be through a separate compartment inside the ballot box. Eventually, the COMELEC en banc agreed to the recommendation of the Advisory Council.

The bidding process for the procurement of the automated election system (AES) using PCOS technology was conducted from May 4 to June 10, 2009. The entire process was transparent and stringent that even the losing bidders attested to its credibility. The COMELEC Special Bids and Awards Committee (SBAC) even went beyond the procedure of RA 9184 (Procurement Law) and RA 9369 in its hope to make the process transparent and credible. The video documentation of the entire process was played through a wide screen for better public viewing and the constant consultations made by SBAC with the procurement observers on matters arising in the process were unprecedented in the history of government procurements. There were ten (10) bidders who bought the bid documents but only seven (7) vendors actually submitted their bids. In the end, Smartmatic and the Total Information Management (Smartmatic-TIM) won with a Php7.2 Billion bid.

However, it is worthy to note that the process was not perfect. At times there were inconsistencies in the appreciation of submitted documents especially during post-qualification stage. It was not done thoroughly and meticulously just as the opening and evaluation of bids were. An example would be the Joint Congressional Oversight Committee's (JCOC) concern

regarding the certifying/authenticating entity. The Philippine Embassy would be the certification/authentication entity of Smartmatic documents despite the fact that their offices are located in Venezuela and the United States. The issue was only discovered and properly resolved after the bid was already awarded to Smartmatic.

The COMELEC and the automated election system's provider Smartmatic-TIM signed the contract on July 10, 2009. The contract was drafted on a milestone basis, which means payment to Smartmatic-TIM will depend on the delivery of each milestone identified by both parties. And, any changes in the contract will only be applicable if agreed to by both parties.

The implementation of the AES was for a time stalled by the petition filed at the Supreme Court by Atty. Harry Roque and company against COMELEC for alleged violation of some provisions in R.A. 9369. One of these is the requirement for a pilot test before doing a nationwide automation of the election process. The petitioners also questioned the credibility of the system provider Smartmatic and the integrity of the Contract entered into with COMELEC. Ultimately, the Supreme Court ruled in favor of COMELEC.

The Steering Committee, the Project Management Team/Office and other working committees were formally constituted on September 2009 to undertake the preparation and implementation of the AES for the 2010 elections. COMELEC Commissioner Gregorio Y. Larrazabal heads the Steering Committee, which is tasked to implement the automation in accordance with R.A. 9369. COMELEC Executive Director Jose M. Tolentino, Jr. heads the Project Management Team.

In a series of planning sessions and coordinative meetings of the Steering Committee, several areas of concern arose which are now being addressed by the body:

Transmission Facility and Electricity

The accessibility of transmission facility and electricity is an important component for the success of the implementation of AES in the 2010 elections. Site Survey was conducted by Smartmatic-TIM to map out the real transmission capability status of all the polling centers using GPRS network. The site survey data of the Smartmatic-TIM shows that of the 100% polling centers surveyed, the general figure of transmission coverage is: 63% with coverage and 37% without coverage. Comparing transmission coverage versus voters count, Smartmatic-TIM data shows 76% of the voters will have access to transmission via GPRS and 24% will have no access to it. This problem regarding transmission was among the concerns of the Joint Congressional Oversight Committee (JCOC) and the House Oversight Committee (HOC). As a contingency to

the areas without GPRS coverage, Smartmatic-TIM bought 5,000 units of Broadband Global Access Network (BGAN), a portable device to access satellite signals for data transmission. The BGANs will be deployed strategically such that one BGAN could be shared by a number of clustered precincts in a polling center.

The signal jamming device (SJD) is not a direct threat to cause failure of election. Contingencies are in place like physical transport of the Compact Flash card should a PCOS fails to transmit. SJD is not by itself capable of tampering with the result but it can cause delay in the process. The most bothersome part is the possibility of the SJD being used as a means to an end. COMELEC Advisory Council may recommend to the COMELEC to make the possession, use, and selling of the signal jamming device as election offenses and to include these in the ban.

The concern over the availability of electricity in the polling centers is not as serious as the transmission problem since the RFP requires a back up battery for each PCOS machine. According to Smartmatic, each battery can last up to 16 hours enough to power up the entire election process at the precinct level. The Smartmatic-TIM data shows that 87% of the polling centers have electricity and 13% do not have any. For the areas that do not have electricity, Smartmatic-TIM will be using a battery to run the PCOS plus additional one battery as back up.

In all of the provinces nationwide, Northern Samar is the area that has the least access to transmission and electricity. It has no GPRS coverage and hardly has electricity.

PCOS Production and Logistics

One factor that caused anxiety to the voting public regarding the implementation of the AES for 2010 was the alleged delay in the delivery of PCOS machines. Smartmatic-TIM was expected to deliver 40,000 PCOS machines at the end of December 2009 but could only commit to deliver 30,000 units because of the following reasons: 1) the transfer of the assembly plant from Taiwan to China due to the typhoon affecting Taiwan incurred delay in the production of the machines, and 2) the holiday season prevents them from shipping the entire volume of PCOS on time because of high cost of shipping and the traffic. The accountability of the system provider in the delay in delivery schedules is a major concern of the JCOC and the HOC. Thus, a query was had, in accordance with the stipulation on “delay” in the Contract.

To date, Smartmatic-TIM has already delivered around 56,000 PCOS machines in the Cabuyao Laguna warehouse. They are expected to deliver all the 82,200 machines on February 21, 2010, which is the end of the delivery schedule stipulated in the Contract.

Smartmatic-TIM initially partnered with the freight company 2GO in handling the logistical requirement of delivering the PCOS machines and its components nationwide. But in October 2009, Smartmatic-TIM rescinded the contract with 2GO because of the latter's internal problems with the Aboitiz company. Smartmatic has tapped other local couriers and forwarder companies to handle the logistical needs. COMELEC created a Logistics and Shipment Technical Working Group to ensure effective and efficient delivery.

General Instructions

One of the key elements for the successful implementation of the AES for 2010 elections is widespread public information campaign and intense voters' education. The content of all the materials for these campaign and education greatly depends on the General Instructions (GI) to be issued by COMELEC. R.A. 9369 requires that six (6) months before the Election Day there should be widespread public information dissemination on the new system. However, the COMELEC GI was only promulgated on December 29, 2009, barely five (5) months before the May 10, 2010 elections. To complement the COMELEC's own public information campaign, media networks like GMA7 and ABS-CBN have initiated their own effective media ads on the AES way before COMELEC came up with its own to educate the public. Various non-government organizations have also started their voters' education campaign based on the basics of the new system to prepare their constituencies and instill "critical acceptance" of the new system.

On the other hand, COMELEC and Smartmatic-TIM conducted demonstrations of the PCOS machines and the AES on a "by invitation" basis during hearings, political assemblies, media events and fora as early as August 2009. With the influx of invitations for public demonstration of the AES, COMELEC created a Public Demonstration Coordinating Unit (PDCU) to comply with said invitations.

Ballots

The printing of ballots will be done at the National Printing Office (NPO) in Quezon City. Partisan groups like Bantay-Balota of Noynoy-Mar camp tried to request from COMELEC to have the printing of the ballot at the Bangko Sentral ng Pilipinas (BSP). Unfortunately BSP refused. COMELEC and Smartmatic-TIM is now utilizing the space at the NPO building and hired their workers for the printing of the ballots. Smartmatic-TIM has bought four (4) Kodak VL 4000 printing machines and (5) Hunkeler sheeters for this purpose. The special paper which will be used for the ballots will come from Canada in rolls. COMELEC and Smartmatic-TIM

will be printing 51,738,000 ballots. 50 million of it will be used as official ballots for Election day. A large part of the 1 million plus sheets will be used for trainings, and the remaining will be for PCOS testings.

The ballot is secured by a bar code, UV ink and watermark. It has an approximate length of 25 inches for most of the regions, but for ARMM it will be 27 inches due to Arabic translation. Candidates' names are listed in four (4) columns, in alphabetical order. Each row consists of an oval at the left, followed by a number, candidate's last name, first name, middle initial, and below are the nick names and the political party. As for the party lists, after the oval and the number, only their acronyms will appear on the ballot.

Ballot Box Design

The ballot design will greatly depend on the size and length of the ballot. Given that the initial estimate of the ballot was 29 inches in length, the ballot box made of Polypropylene was designed at about 38 inches tall. It can store up to 1500 paper ballot without jamming or folding.

The ballot box was a separate procurement process apart from the AES. In the interest of time and given the proprietary ballot design provided by Smartmatic, COMELEC conducted a negotiated bid for the ballot box with the latter. COMELEC will buy a total of 77,000 units of ballot boxes. The delivery of the ballot boxes will start on February 24, 2010 and will end on April 10, 2010.

Field Tests and Mock Elections

The COMELEC and Smartmatic-TIM conducted field tests on January 27 and 29, 2010. Results showed that the Automated Election System using PCOS generally passed the tests, but with common problem in the transmission of data from the PCOS to the canvassing servers. Some of the polling centers were able to transmit through GSM network while others such as in Pateros used BGAN for transmission. Still in Pateros, 4 ballots were rejected by the PCOS for unknown reasons .

The Mock Elections held in Davao, Cebu, Metro Manila and Baguio encountered more challenges than the field testings. The process was a lot more complicated, though a close simulation of the election scenario. The number of ballots was five times more than the testings and was not pre-shaded. Thus, PCOS machine's appreciation of the ballots depended on the voter's shading of the ovals. In Tandang Sora, Quezon City some of the votes were not read because some of the voters merely put a dot in the oval which is less than the 50% threshold of

vote mark. In other areas, testers have done several retries before they have successfully transmitted the result.

Feedback from the Davao observers shows that the mock election was only for the accredited citizens' arm who already know the system and not for the public who want to observe and be familiar with the new election process.

International Certification

One of the requirements for the implementation of the AES according to R.A. 9369 is for the system to be certified by an established international certification entity. On September 23, 2009, the COMELEC has issued the Request for Proposal on AES Testing and Certification for the 10 May 2010 National and Local Elections, with the deadline for submission of the technical proposal on September 28, 2009 and for the financial proposal at 5:00 pm of the same day. There were three (3) companies that submitted proposals: the iBeta Quality Assurance, SysTest Lab, and the Wyle Laboratories. The COMELEC Technical Evaluation Committee (TEC) headed by DOST Director Dennis Villoriente evaluated the proposals of the three companies using the following criteria: 1) expertise and references; 2) project approach; and 3) proposed resources. The SysTest and iBeta garnered equal overall rating in terms of their technical proposal. The dilemma however was that SysTest offered the best project approach while iBeta offered the best proposed resources for the certification process. SysTest finally won since it offered the lowest financial bid of Php 70,046,693.00 compared to iBeta's Php 73,354,597.43.

TEC and SysTest Lab have already laid out the criteria and guidelines for the AES testing and certification. SysTest have done series of physical test involving stress test, moisture, temperature, salinity, etc. A review of the source code was also conducted by the SysTest and code discrepancies ranging from minor, to major and to critical were said to have been found in the system. The Smartmatic was advised to correct the said discrepancies and SysTest attested to the actions taken by the system provider. SysTest system security personnel expressed his confidence in terms of AES security because of the system ability to dynamically assign/generate digital signatures in every step of the process making it difficult to those who want to tamper or alter the data from the outside of the system. The system though is not 100% full proof but hackers or system intruders will not be able to do tamper with the system without Smartmatic knowing it.

The final trusted build of the AES was done on February 4, 2010. After which, the SysTest Lab will now draft its official recommendations to the Technical Evaluation Committee (TEC) for

the latter to issue its certification of the AES. The final code will be brought to the Bangko Sentral for escrow, and a read-only copy of the source code will be made available for the scrutiny of the interested parties under a controlled environment. The COMELEC Advisory Council together with the TEC have already proposed some guidelines for the source code review. To date, only the Liberal Party's Bantay Balota has applied to do a review of the codes.

Issues of Concern:

1. **Transparency in the Implementation of AES.** The bidding process for the procurement of AES was unprecedented in its transparency. However, COMELEC seems not up to the challenge of keeping the implementation process of AES equally transparent. There was little room for the public to be actively involved in the process. The public information dissemination was not pro-active. The mock election process, though public was not accessible to the observers especially in Davao. COMELEC must actively involve the public in the process to earn their trust and confidence on the new election system. The best way to handle criticisms hurled at the AES is to be transparent and be honest enough to admit the truth about the level of preparedness and confidence on the new system.
2. **Issuance of the General Instruction.** The GI was released towards the end of December 2009. While it was important for election advocates to finally have access to information regarding the new system, the awareness was not enough because the GI did not contain instructions or information about the canvassing system, contingencies that COMELEC planned for and the procedures on post election activities like the conduct of the random manual audit and election adjudication under the new system. Release of this information will better equip the election stakeholders to ensure credibility of the election. However, information dissemination should be done without compromising the security of the system.
3. **Decentralization of COMELEC public information dissemination effort/funds.** Apart from the media plans and road shows that COMELEC plans to do, it is important to decentralize the effort and capacitate/empower their local offices in the municipalities to educate their own constituencies. The problem involves availability of funds for the local COMELEC to conduct information dissemination. It seems that COMELEC's fund for public information is only limited to centralized initiatives. Local COMELEC has been complaining on their inability to launch their own public information campaign on the new system even if they are the ones who directly relate to the voting public.

4. **Smartmatic hiring of local IT persons.** Report from the field show that the process of Smartmatic's hiring of the local IT-capable persons is infiltrated by partisan individuals, to the extent that they are either identified with certain candidates or were actually fielded by the candidates themselves. Smartmatic should do background checking with their hired local IT persons. Coordination with non-partisan civil society organization on the ground could help in identifying these partisan people.
5. **Logistical Requirements.** The challenge to deliver the PCOS machines, ballot boxes and other election paraphernalia to the right destination is one thing; the challenge to have these things delivered "in tact" is another thing. Smartmatics' DRE machines used in 2008 ARMM automated elections come in portable and durable plastic containers or casings with foam cushion inside thus they were able to reach the far flung areas in ARMM functioning. The PCOS machines will be delivered in corrugated boxes with styro as cushion and sealed by a shrink wrap. SysTest findings on PCOS endurance to stress, temperature and moisture would be subjected to verification come the deployment day.

B. Election Violence

The gruesome death of 57 persons in Ampatuan, Maguindanao, is unprecedented in the history of election related violence in the Philippines, where the mortalities include the wife of Vice Mayor Ismael Mangudadatu, 30 media workers, women, lawyers and civilians. This incident of extrajudicial killing has earned for the Philippines the title of "the most dangerous country for journalists", even more hazardous than Iraq.

The alleged mastermind of what is now tagged as the Maguindanao Massacre, Mayor Andal Ampatuan, Jr of Datu Unsay town, is one of the many ruling Ampatuans in Maguindanao. The other Ampatuans who were subsequently included in the list of suspects for murder, and later on charged for rebellion are: Ampatuan patriarch Andal Sr. (former Maguindanao Governor), Zaldy (ARMM Governor), Sajid Islam (Acting Maguindanao Governor), Datu Anwar (Shariff Aguak Mayor), and Datu Akmad Tato (Maguindanao Vice Governor).

It is well known that the Ampatuans are close and favored allies of President Gloria Arroyo. A symbiotic relationship benefits both Arroyo and the Ampatuan clan that could be traced several elections back.

In the 2004 presidential election, Arroyo won overwhelmingly in Maguindanao against closest rival Fernando Poe, Jr. In 2005, Zaldy Ampatuan (then Shariff Aguak Mayor) was supported by Arroyo to run for Governor in the Autonomous Region of Muslim Mindanao (ARMM). In 2007, Andal Ampatuan, Sr. reportedly gifted Arroyo with a 12-0 sweep of the senatorial election in Maguindanao, where the administration's Team Unity trampled the Genuine Opposition. Some of the opposition candidates even obtained zero votes in 20 of the 22 municipalities in Maguindanao.

The arrest of the supposed chief perpetrator Andal, Jr. and consequently Andal Sr., Zaldy and other "high - ranking" Ampatuans led to one development after the other. Raids that were staged on the Ampatuan compound on different occasions yielded high- powered firearms enough to supply a battalion. Said weapons believed to be used in the massacre, even have the markings of "Department of National Defense and PNP (Philippine National Police) Camp Crame". This is more than tangible proof that warlordism is a norm in provinces reigned by clans and landlords not only in Mindanao but also all over the Philippines.

The Arroyo government's response to the exposure of one of its closest and most loyal allies is to issue Proclamation 1959 on December 4, 2009, declaring Martial Law in the province of Maguindanao. The Armed Forces of the Philippines and the Philippine National Police reported, "There were armed groups massing up and threatening to further cause disorder and lawlessness in Maguindanao". On this account, said groups' possible linking up with the massacre perpetrators and the recovery of a huge cache of high-powered firearms in Maguindanao constituted elements of rebellion according to Executive Secretary Eduardo Ermita, thus justifying the declaration of martial law in Maguindanao.

Quite predictably, Proclamation 1959 raised serious concerns among legal circles, civil societies and the public. This led to the filing of several petitions before the Supreme Court praying for the nullification of said proclamation. All the petitions pointed to the unconstitutionality of Proclamation 1959, citing that Article VII Sec. 18 of the 1987 Constitution limits the ground to declare martial law to rebellion and invasion.

On December 12, 2009, Arroyo lifted martial law in the wake of protests and the on-going joint session in Congress.

While the petitions filed in the Supreme Court may be deemed moot and academic in view of the lifting of martial law, many believe that the High Tribunal should still make a ruling in order that

“gross violation of the constitution may not be repeated in the future and the parameters of presidential powers may be defined to prevent its abuse”.

Nevertheless, even before the Maguindanao Massacre stunned the nation and the world, particularly those in the mass media, there is already a spate of violence unassumingly creeping across the provinces. Most of the victims are either leaders/ supporters of candidates or are the candidates themselves.

Below is a table of recorded killings perceived to be election related incidents covering the period from January 2009 to present:

DATA ON ELECTION VIOLENCE

NAME	POSITION	PLACE	DATE
Catherine Esteban	Councilwoman	Meycauayan, Bulacan	01/04/09
Froilan Rufino	Vice Mayor	Quirino, Sultan Kudarat	01/05/09
Karam Jakilan	Mayor	Al-Barka, Basilan	01/29/09
Ernesto Rollin	Radio Journalist	Oroquieta, Misamis Occidental	02/23/09
MaCarmelita Torre	Barangay Chairwoman	San Carlos, Pangasinan	04/03/09
Francisco Mectuan	Election Officer	Tulunán, North Cotabato	04/13/09
Ireneo Frondoza	Municipal Accountant	Parang, Maguindanao	04/17/09
Gumersindo Lasam	Regional Director – Dept of Agriculture	Solana, Cagayan	04/19/09
Rendon Gutierrez	COMELEC official	Cotabato City	04/20/09
Walter Abel	Former Barangay Chairman	Caloocan City	04/20/09
Lyndon Gutierrez	Election Officer	Libungan, Cotabato	04/21/09
Danilo Lancero	Chief, Anti CrimeTF	Meycauayan, Bulacan	04/27/09
Edgardo Dugay	Brgy. Chairman	Angadanan, Isabela	05/15/09
Antonio Castillo	Journalist	Uson, Masbate	06/12/09

NAME	POSITION	PLACE	DATE
Jordan Ibrahim	Councilor	South Upi, Maguindanao	06/17/09
Kadil Kusain	Councilor	South Upi, Maguindanao	06/17/09
Ismael Alam	Mayor's aide	South Upi, Maguindanao	06/17/09
Arsenio Prudente	Vice Mayor	Panukulan, Quezon	06/23/09
Michael Sivelleno	Councilor	Placer, Masbate	07/06/09
Carlos dela Cruz	Mayor	Matuguinao, Samar	07/18/09
Jerry Cajes(f)	Councilor	Compostela Valley	07/20/09
David Emralino(f)	Mayor	Candelaria, Quezon	07/26/09
Julian Bathan	Barangay Chairman	Lemery, Batangas	08/08/09
Alberto Rogador Jr	Barangay Chairman	Nasugbu, Batangas	08/08/09
Fr. Cecilio Lucero	Priest/ HR advocate	Layuhan, San Jose Samar	09/06/09
Noli Haspila	Councilor	Irosin, Sorsogon	09/09/09
Manolo Daza	brother of Governor Raul Daza	Rosario,Samar	10/02/09
Michael Valdez	Election Supervisor	Tumauini, Isabela	07/14/09
Jovito Diaz	ex Mayor/ Jail Warden	San Quentin, Abra	11/17/09
Maguindanao victims ¹		Ampatuan, Maguindanao	11/23/09
Jo-en Diego	Brgy. Chairwoman	Dingras, Ilocos Norte	12/28/09
Wilbert Origines	Barangay Chairman	Taganaan, Surigao del Norte	12/29/09
Bommex Sula	Councilor candidate	Banisilan, North Cotabato	01/06/10
Julio Esquivias	Councilor candidate	Casiguran, Sorsogon	01/05/10
Marciliano Dizon	LP Coordinator	Mexico, Pampanga	01/13/10
Motalliden Tapodoc	Councilor candidate	Labangan, Zamboanga	01/16/10
Hamira Agcong	LP Supporter	Pagadian City	01/15/10

¹ Annex "A" – Complete list of names of victims.

In an effort to minimize election-related violence, the COMELEC sometime in October 2009 has approved in principle the proposal of the Philippine National Police (PNP) to implement total gun ban. On December 18, 2009, the COMELEC promulgated Resolution No. 8714 imposing a nationwide total gun ban for the duration of the election period from January 10 to June 9, 2010. This measure notwithstanding, the rate of election violence continues to escalate to alarming heights. Efforts should be zeroed- in on dismantling private armies maintained by powerful clans most of whom are also members of political dynasties.

Issue of Concern:

- 1. Forging of Peace Compact.** The Commission on Elections should pro-actively promote peace compacts in areas identified as Election Watchlist Areas (EWA). COMELEC should support on-going peace efforts initiated by peace advocates and by the local churches. Election contenders should be required to sign a compact vowing not to resort to violent means in seeking public office in their respective areas.
- 2. Dismantling of private armies.** One key element to reducing election related violence is the dismantling of private armies. To effectively do this, the PNP and AFP should start cleaning its own backyard by replacing the commanders or head officers assigned to areas considered as EWA's. PNP and AFP should maintain their non-partisanship in performing their duties otherwise they will just be substituting the private armies.

C. The Presidential Candidates

Out of ninety- nine (99) candidates who filed for the position of President, ten (10) were declared eligible to run as national candidates by the COMELEC. They are Senator Benigno “Noynoy” Aquino III (Liberal Party), Councilor John Carlos delos Reyes (Ang Kapatiran), former President Joseph “Erap” Estrada (Pwersa ng Masang Pilipino), Senator Richard Gordon (Bagumbayan), Vetallano Jesus Acosta (KBL), Senator Ana Consuelo “Jamby” Madrigal (Independent), environmentalist Nicanor Perlas (Independent) , administration bet Gilbert Teodoro (Lakas-KAMPI- CMD), evangelist Eddie Villanueva (Bangon Pilipinas), and Senator Manuel Villar (Nacionalista Party).

Of the 10 presidential candidates, four are considered serious contenders by virtue of surveys and opinions of political analysts. They are Aquino, Estrada, Teodoro and Villar.

Benigno “Noy” Aquino -

After Aquino’s running mate for vice president Mar Roxas announced that he is withdrawing from the presidential race, and Forty (40) days after the death of his mother former President and Democracy icon Corazon Aquino, Noy Aquino announced his intention to run for President under the Liberal Party (LP). The effect of such announcement is mirrored in the result of surveys conducted first in the National Capital Region (NCR), and later nationwide. Even prior to the filing of his certificate of candidacy, Aquino consistently and phenomenally topped surveys commissioned by different representatives/ groups, enjoying wide margins against his opponents.

Despite leading the race since September 2009, however, his rating has begun to slip. There are several possible reasons for such decline. Some believe it is because Aquino has no definite platform, that he is merely relying on the popularity and legacy of his parents to propel him to power. Questions also arose as to his competency to head a country, given his lack-lustre performance in his 9-year stint in Congress and 2 years in the Senate.

The inclusion of former NEDA Chief Ralph Recto (who ran for the administration in the 2007 elections) in LP’s senatorial slate saw the withdrawal from the party of one of its stalwarts - former Senator Sergio Osmena III. This might be another contributing factor to his decline in survey ratings, which could also be interpreted as an expression of the public’s disapproval of politics of accommodation.

Lastly, the ghosts of Mendiola Massacre in 1987, the signing into law by then President Corazon Aquino of the Comprehensive Agrarian Reform (it included sugar lands in the coverage of the law and the Stock Option Distribution scheme), and the Hacienda Luisita deaths in 2004 continue to haunt Aquino’s bid.

Joseph “Erap” Estrada –

Even before former President Joseph “Erap” Estrada filed his certificate of candidacy, he has always landed in the top three of surveys, a testament of his steady appeal with the masses. During the latter part of 2009 however, his ratings started to drop. This may be due to the legal issues surrounding his eligibility to run again for president.

Debates had been had as to his eligibility to run for president. The legal discussion is centered on two points: (1) Sec. 4 Article VII of the Constitution, which provides: xxx The President

shall not be eligible for *any re-election*. No person who has succeeded as President and has served as such *for more than four years* shall be qualified for election to the same office at any time (underscoring ours); and (2) the Presidential pardon for his conviction for plunder did not include his disqualification to hold any public office.

Anent the first point, some legal experts argue that the word “The” before the word “President” pertains only to the incumbent and the second sentence that impliedly allowed those who have succeeded as president for less than four years to run again for president. Erap is not the incumbent, and was unable to finish his term, serving only two years because of a people’s uprising in EDSA (EDSA II), thus he is eligible to run again. In addition, those who take this position believe that the intention of the framers of the Constitution should not be mistaken for the interpretation of the people who ratified the Constitution.

On the other hand, some believe that the words “any re-election” is the operative phrase which should be construed plainly – that elected presidents, sitting or otherwise, can never run again for president. Also, it is stressed that Erap did not “succeed as President” but was elected to the office before he resigned and as such, the provision applied only to an incumbent vice president who succeeds the presidency when the office is vacated.

Further, some point to Chief Justice Reynato Puno’s ruling on *Tecson vs. COMELEC*² - “...the better policy approach is to let the people decide who will be the next president. For on political questions, this Court may err but the sovereign people will not. To be sure, the Constitution did not grant to the unelected members of this Court the right to elect in behalf of the people.”

As to the second point, former Chief Justice Artemio Panganiban believes “the presidential clemency granted to Erap was absolute and unconditional; it erased both the principal penalty of imprisonment and the accessory penalty of electoral disqualification. A condition retaining an accessory imposed a burden; hence, it should have been couched in clear language. However, the pardon did not contain any clear burdens; it expressly restored his civil and political rights.”

On January 20, 2010 the COMELEC’s Second Division dismissed the petitions seeking Erap’s disqualification. It held that Erap is “not covered by the constitutional provision barring an incumbent president from re-election because he was not a sitting president seeking a second term”. It went on further stating, “The Commission would not bar the people from deciding on

² GR No. 151434 March 3, 2004.

Estrada's political fate on May 10. It is the Filipino people who would act as the final arbiter on whether they would have Estrada sit again as president. On political questions, this court may err but the sovereign people will not. To be sure, the Constitution did not grant to the unelected members of the court the right to elect in behalf of the people."

It is worthy to note that the Commission on its ruling did not touched on the subject of Estrada's presidential pardon for his conviction for plunder.

Gilbert "Gibo" Teodoro

Teodoro belongs to the landed Cojuangcos (second cousin of Noynoy Aquino), his mother being the sister of business tycoon Eduardo "Danding" Cojuangco. During his 3 terms as Congressman of Tarlac, he was a member of Danding Cojuangco's Nacionalist People's Coalition Party.

The anointment of Teodoro as Lakas-Kampi-CMD's standard-bearer was done at the expense of former MMDA Chairman Bayani Fernando, who was then the true-blue member of the ruling party.

From the time he announced his intention to run for president as the Arroyo administration's bet, Teodoro's ratings in surveys reflected the public's distrust of anything that has to do with Gloria Macapagal Arroyo. His stint as Secretary of the National Disaster Coordinating Council did not do him any good either, as the onslaught of typhoons Ondoy and Pepeng proved the state of unpreparedness and incompetency of the government agency concerned to respond and deliver as the occasion calls.

The Maguindanao Massacre also hurt Teodoro's image even more, notwithstanding his strong denouncement of said incident and leading the call to expel the Ampatuans from the Lakas – KAMPI- CMD party. It would seem that Teodoro is bound to suffer the backlash of the "monsters" that Arroyo created in not only Maguindanao, but also elsewhere.

The long search for his running mate spoke of volumes of how people avoid being associated with the administration. The avoidance extended to lower elective positions as many Lakas members have already jumped ship. Tourism Secretary Ace Durano said no. So did Senators Loren Legarda and administration ally Ramon Revilla Jr. Actor and former Optical Media

Board Chair Edu Manzano agreed, but this formula is not enough to make Teodoro popular and acceptable to the masses.

Recently, Teodoro's rating has started to increase, though not necessarily surge to significant height. Some universities in the NCR have expressed their support for Teodoro after hearing him articulate his platform and argue his points convincingly, just like the top-notch lawyer that he is. Interestingly, in most of his public talks, he is often asked if he would prosecute or file cases against his Commander in Chief Gloria Arroyo if he is elected as President.

Manuel "Manny" Villar

Among the ten presidential candidates, Villar is easily the most moneyed. This is very apparent with the number of different "infomercials" he has and the frequency that they are being aired on television and radio. Moreover, as if the infomercials are not enough, Villar has tapped the potentials of daily television noontime shows in maximizing his exposure by "sponsoring" a segment in said program. The segment is called "Stop My Hiras" where audience contestants get a chance to win up to Php 25,000.00 worth of prizes, courtesy of Villar. It is a "portion buy" by the Villar campaign team.

In mid-January 2010, Senator Juan Ponce Enrile came out with the report recommending Villar's censure (which is reportedly supported by over 900 pages of documents) for his involvement in the C5 road extension project which supposedly profited him. Twelve senators believe that Villar has engaged in unethical behaviour that warrants a censure. This caused a debate involving a procedural issue, on whether a censure calls for a simple majority or a 2/3 vote of the senators.

Since the 200 million peso- worth C5 project controversy broke, Villar aired his side via press conferences before the media. He refused to heed the calls of his colleagues to face the Senate and clear his name before his peers. His constant evasion earned him serious criticisms and even more "political enemies". The C5 Project fiasco saw a great divide in the Senate, where the Senators bickered and threw mud at one another, inadvertently or advertently showing their true colors, so to speak.

On February 2, 2010, Villar finally faced the Senate and defended himself from the allegations thrown against him through a privilege speech. He disputed the findings of the Senate Committee of the Whole and accused the Senators who conducted the investigation that they

fabricated lies to destroy his reputation. However, he hurriedly left as soon as he delivered his speech without giving his fellow Senators the chance to interpellate him.

Issues of concern:

- 1. Need for a clear platform of governance.** To help voters arrive at an informed choice, the presidential candidates and other candidates for 2010 election should provide the voters a clearer and simplified platform of governance.
- 2. Transparency in Campaign Expenditures.** Presidential candidates should be required to liquidate all its campaign expenditures. COMELEC should exercise due diligence in auditing candidates campaign spending and pursuing investigation and prosecution to violators of the law.

D. Supreme Court Rulings on Election Matters

Premature Campaigning

In September 2009, the Supreme Court ruled that Rosalinda Penera, a mayoral candidate in Surigao violated Sec. 80 of the Omnibus Election Code which in essence states that it shall be unlawful for any person, whether or not a voter or a candidate to engage in an election campaign or partisan political activity except during the campaign period. The penalty for said violation is disqualification. This decision was based on Peñaera's act committed in March 29, 2007 when she filed her Certificate of Candidacy complete with the fanfare of motorcade, banners, balloons, posters and public speakers that announced her candidacy for mayor.

On November 25, 2009, the Supreme Court reversed its September decision in Rosalinda Penera vs. COMELEC³. According to the High Court, "there is no law banning politicians from airing infomercials and putting up campaign billboards and posters even after they have filed their certificates of candidacy and before the start of the official campaign period."

In a strong pronouncement, the Justices who dissented with the "majority" decision raised their concern on the implications the decision has created. Mainly, it emphasized that "**whether the election would be held under the manual or the automated system, the need for prohibiting**

³ G.R. No. 181613, 25 November 2009.

premature campaigning – to level the playing field between the popular or rich candidates, on one hand, and the lesser-known or poorer candidates, on the other, by allowing them to campaign only within the same limited period – remains. Again, the choice as to who among the candidates will the voting public bestow the privilege of holding public office should not be swayed by the shrewd conduct, verging on bad faith, of some individuals who are able to spend resources to promote their candidacies in advance of the period slated for campaign activities.”

The COMELEC through Commissioner Rene Sarmiento shares the view on the dissenting opinion that the less moneyed candidate would be put to a great disadvantage. Sarmiento added that the provision in the Omnibus Election Code fixing the campaign period of 90 days for national and 45 days for local candidates is now rendered moot and academic.

The Supreme Court decision on premature campaigning notwithstanding, the COMELEC recently has issued a warning that it will strictly enforce the rules in accordance with the campaign rules and regulations it released on February 4, 2009. They encouraged the public’s active participation by filing cases against politicians/ candidates who they feel have violated the rules.

COMELEC Chair Jose Melo observed that there are no stringent sanctions for violation of campaign laws, which would explain the unscrupulous observance of said rules by the richer politicians. This is also the reason why Melo thinks this year’s election could be the most expensive to date.

Further, Melo pointed out that the COMELEC cannot disqualify candidates for violation of campaign rules as there is no law providing for it, thus he reiterates the need for the public to be vigilant.

Appointed Officials Deemed Resigned upon Filing Candidacy – Unconstitutional

On December 1, 2009, the Supreme Court held in *Eleazar Quinto vs. COMELEC*⁴ that the second provision in the third paragraph of Section 13, Republic Act 9369, Section 66 of the Omnibus Election Code; and Section 4(a) of COMELEC Resolution 8678 are unconstitutional. Consequently, appointive public officials are no longer ipso facto resigned when they file their certificate of candidacy for an elective post. The “majority” decision opined that the assailed provisions are violative of the equal protection clause, thus, unconstitutional.

⁴ G.R. No. 189698, 1 December 2009.

This Supreme Court decision drew critical reactions and serious concerns from many legal luminaries. Associate Justice Antonio Carpio elucidated this in his dissenting opinion: “imagine if the Provincial Commander of the AFP files his COC for governor on 1 December 2009 for the 10 May 2010 elections. If he is not considered automatically resigned from office, he has until the start of the campaign period on 26 March 2010 to remain in his post, in command of hundreds, if not thousands, of fully armed personnel. The same is true for judges, cabinet secretaries, and other heads of offices that have some kind of influence and control over certain personnel and government resources.”

Chief Justice Puno in his own dissent stated: “there was a rational justification for excluding elected officials from the operation of the deemed-resigned provisions because of the mandate given by the electorate to these officials. Considering that elected officials are put in office by their constituents for a definite term, it may be justifiably said that they were excluded from the ambit of the deemed-resigned provisions in utmost respect for the mandate of the sovereign will of the people.”

Others point to a more preposterous but possible scenario, such that if the appointed officials who run for elective posts lose, they could just continue occupying their appointive posts. This runs counter to Section 6, Art. IX(B) of the Constitution which provides “No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government of any government-owned or controlled corporations or in any of its subsidiaries.”

Many believe that this Supreme Court decision is a “precursor “of more grim scenarios to come, which would critically compromise, if not destroy the credibility of the Judiciary.

Issues of Concern:

- 1. Need for a specific law prohibiting premature campaigning.** The current set up whereby no one may be prosecuted for premature campaign is against the “equal opportunity to public service” provision in the Constitution and UDHR. It only works for the moneyed candidates and do not promote a level playing field to contenders in an elective post. It is about time to regulate the campaign expenditures of candidates to level the playing field and minimize patronage politics and corruption in government. Genuine political party building should go hand in hand with the proposed law to make it more effective.

2. **Depolarization of the Supreme Court.** The Judiciary should exercise independence in the performance of its duties.

3. **Need for a law requiring mandatory resignation of appointed official before seeking elective post.** It is the height of undue advantage for an appointed official seeking an elective post to use his position to win support and use public resources for his personal gain. If in case the aspiring appointed candidate loses in the election, it is practical for the said appointed official to recover his financial losses by amassing the public resources. Besides, knowing that most of the appointed officials are co-terminus with their patron elected official, it is tempting to collect and save public resources for the “rainy days”.