

Bantay Eleksyon 2010
REPORT NO. 4
April 14, 2010

Introduction

This is the Fourth (4th) Progress Report of **Bantay Eleksyon 2010**, a *domestic election observation mission* that aims to monitor the entire process of the 2010 elections. This Report covers the campaign period (from February 9 to April 10, 2010) for national candidates and the start of campaign for local candidates. Included are data from the field from Bantay Eleksyon 2010 coordinators, COMELEC's management of and preparation for the automated election system, updates on election-related matters, and Supreme Court rulings. The report contains the following areas:

- A. Problem Areas in AES Implementation
- B. Conduct of National and Local Election Campaign
- C. COMELEC and Supreme Court Decisions
- D. Updates on:
 - 1. Party List
 - 2. Voters' List
 - 3. Civil Society Organization Initiatives
 - 4. Election Violence

A. Problem Areas in AES Implementation

With a month to go before the elections Bantay Eleksyon 2010 and other election stakeholders could not dispel the anxiety over the automated election system for several reasons.

Disabling of the Ultraviolet Ink Reader. The disabling of the UV ink-reader of the PCOS machines that verifies the authenticity of the ballot was made without consulting the Comelec Advisory Council on Election Automation. The latter was only informed about the problem and the decision of the COMELEC and Smartmatic one month after the disablement.

This security feature detects the fake from valid ballots. COMELEC said it decided to shut this down because of the inconsistencies in the UV ink

printing on the ballots that makes it difficult for the PCOS to read. COMELEC cited two possible reasons for this: 1) the ballot printing speed causes the misprinting of the UV ink to the proper spot and overlaps with the ordinary ink; and 2) the density of the UV ink printed on the ballot does not comply with the PCOS UV ink-reader specifications, which could either be due to printing capability, printing speed, or poor quality of the ink. The COMELEC Advisory Council's primary response to the issue was expressed in its Resolution No. 2010 – 004 dated March 1, 2010 recommending to COMELEC the immediate restoration of the UV ink reader of PCOS and to concentrate solving the Smartmatic's problem of UV ink printing on the ballot.

The COMELEC and Smartmatic however defended their decision to turn off the UV ink reader, citing the lack of time and the waste of resources by reopening sealed machines and reprinting millions of ballots. They instead decided to buy UV lamps for BEI's to manually read the UV ink on the ballot before distributing the ballots to the voter on Election Day. The UV lamp procurement process by the COMELEC is on going, with a bid price of P30 million on top of the P7.2 Billion budget for the 2010 election automation.

Anomalous purchase of ballot secrecy folder. The aborted 700 million-secrecy folder purchase added to the problems besetting the COMELEC. According to our source, the alleged anomalous secrecy- folder procurement process started from a P100 per unit cost on lease option with the OTC Paper Supplier through a negotiated procurement. This was increased to P250 per unit cost when the purchase option was availed. However when the contract was drafted the amount increased to P380 per unit cost on purchase basis. This procurement process is already flawed to begin with, as when the COMELEC made the OTC Paper Supplier's specification/design as its specification/design for the procurement of the ballot secrecy folders. Obviously, this was an arranged, overpriced deal that needs to be investigated by an independent body such as the Ombudsman.

Voters list bloating. The voters' list remains a constant source of public apprehension, for valid reasons. The computerized voters' list (CVL) failed to be purged of possible double/multiple registrants and other spurious or invalid names. COMELEC can only claim to delete close to 800,000 names. COMELEC believes that acting *motu proprio* on double/multiple registrants would cause unnecessary delay on the registration process, and consequently

the entire election process – a clear indication of COMELEC’s choice of speed against accuracy. Problems such as confusion on the precinct assignments and disenfranchisement of voters as well as the possibility of their use for cheating purposes should be anticipated.

There is evidently a COMELEC policy to deny easy access to the voters’ list, be it at the national or local level. It still is implementing a 2005 Abalos COMELEC resolution requiring absurd amount of payment for the copy of the voters’ list (the National voters List, for example, is tagged at PhP 4.5 million if one requests for a copy). Some of our Bantay Eleksyon volunteers have been prevented from getting a copy of the POP at the local level.

Lack of transparency in source code review. On October 30, 2009 COMELEC Advisory Council recommended in its Resolution No 2009-10-01¹, a resolution Promoting Transparency in the Implementation of the Automated Election System, that COMELEC ensure the transparency and integrity of the Source Code review without compromising the security of the automated election system. A copy of the Source Code had been made available but it is unfortunate that no interested party has conducted their own review. This is because the requirements are supposed to be “restrictive”, in terms of the reviewer’s qualifications and the provisions in the non-disclosure agreement. Apart from this, there was not much time to review and correct the codes for inconsistencies. For purposes of transparency, the COMELEC should have at least made public the findings or audit report of the SysTest Lab on the AES wherein minor, major and critical areas of concerns were identified. This information will help election stakeholders guard the vulnerabilities of the system given the non-categorical language used by the Technical Evaluation Committee (TEC) for its certification of the AES based on the review conducted by SysTest.

Delay and possible emasculation of the Random Manual Audit. As early as the October 30, 2009, the COMELEC Advisory Council already issued some proposed guidelines for the Random Manual Audit (RMA) through the same Resolution No 2009-10-01. The recommendations include the composition of the committee to implement the audit of which the Consortium on Electoral Reforms (CER) was a member, where the total number of precincts is to be randomly audited - that is one (1) precinct per

¹ ANNEX “B”

ballot face, and the time for the manual audit to be conducted, which is after the closing of the polls. Unfortunately, the COMELEC did not act on the recommendations nor did it bother to explain why it was adopted. On Nov. 10, 2009, the COMELEC En Banc acted on the Memorandum of Ret. B/Gen. Egardo M. Gurrea, Head Executive Assistant of the Office of the Chairman, that appointed the Parish Pastoral Council of the Philippines for Responsible Voting (PPCRV) as head of Technical Working Group (TWG) to draft the guidelines of the RMA, together with the Commission on Audit (COA) and Commission on Elections (COMELEC) as members. The said draft guidelines were due on November 23, 2009 according to the memorandum. To date, no official guidelines for the RMA have been released. Even the Joint Congressional Oversight Committee (JCOC) is asking for the RMA procedures to scrutinize them. There are two reasons given by the COMELEC on the delay of RMA guidelines: 1) the TWG could not finalize and formalize their recommendation because the COA backed out from its membership and they are waiting for National Statistics Office (NSO) to take its place; and 2) the COMELEC is planning to release the guidelines days before the Election Day so that election cheats will have no time to sabotage it. In such a case, there will also be no time for other election stakeholders to participate and ensure the credibility of the Random Manual Audit, which to the voting public is their last line of defense in ensuring that the PCOS machines function properly.

Useless digital signature. The non-requirement of the Board of Election Inspectors (BEI's) digital signature to attest the accuracy of the election returns is not a deliberate move on the part of COMELEC. It is either a result of a lapse in judgment or wrong assumption when COMELEC accepted the Smartmatic proposal. Each Smartmatic PCOS machine includes an iButton Key as the main access key of the BEI Chairman to the system, which also contain the digital certificate of the machine, plus another set of 4-5 iButton keys per unit on which the BEIs' digital signatures would be generated. However, the proposal does not include the process of collecting the BEIs data, translating them into digital signatures and burning them into the iButton keys. Given the budgetary requirement for this and the issue on who will generate and distribute these keys, the COMELEC decided to do away with the digital signatures of the BEIs. COMELEC believes that the digital signature of the PCOS machine will satisfy the requirement of the law on the digital signatures of the BEIs.

Refusal to use projectors in canvassing. The COMELEC's inaction on the recommendation of the CAC and the JCOC to provide projectors in canvassing centers in municipalities and provinces to allow better public viewing of the canvassing process is also a concern. Transparency of the canvassing process is very important considering that each canvassing center will only have laptops for election result monitoring.

No published contingency plans. The COMELEC has been accused of having no contingency plan because it has not released one yet. The General Instructions for the BEIs though do contain some of the contingency measures but the public needs to see more concrete and logical plans should the AES fail. Related to this is the issue on the mechanism for protest and adjudication of cases under an automated system. The COMELEC is expected to come out with this information /document as early as possible so that election stakeholders could do their share effectively in ensuring the credibility of the 2010 elections.

B. Conduct of National and Local Election Campaign

National Campaign

When the campaign period for presidential candidates officially started, Benigno “Noy” Aquino III, Manuel “Manny” Villar, Joseph “Erap” Estrada and Gilberto “Gibo” Teodoro occupied the top four positions, respectively in surveys. More than midway through the campaign, said candidates still occupy the very same spots, with Aquino enjoying a lead of 9% (SWS) – 12% (Pulse Asia) against Villar in the latest surveys.

As the campaign fever intensifies as evidenced by the flooding of TV and radio ads and campaign paraphernalia, the COMELEC announced that Aquino and Villar have exceeded their limit in media advertisement, which is considered as an election offense under the Fair Elections Act. Under said law, candidates found guilty of such violation shall suffer the penalty of imprisonment, fine, and disbarment from public and elective office.

The political parties of the presidential candidates are consequently caught in the heat of election fever as their respective camps resort to mudslinging. The Nacionalista Party (NP) accused the Liberal Party (LP) of masterminding the smear campaign wrought against their standard-bearer

Villar that has gone too personal. The call for Villar's censure in the Senate; his alleged involvement in other land and road scams; of him being the "secret candidate" of Arroyo ("Villaroyo"); his false claim of coming from poor beginnings, and the inaccurate story about the death of his brother.

The LP on the other hand complained of being targeted by "a grand conspiracy" set to cause the failure of elections, in the wake of Aquino consistently topping national surveys. LP cited the disqualification of its known candidates, namely Governors Grace Padaca (Isabela), Among Ed Panlilio (Pampanga), and Jonjon Mendoza (Bulacan), Palawan gubernatorial candidate Kahlil B. Mitra and Leyte congressional candidate Richard Gomez. LP likewise has claimed to be accorded the status of Dominant Minority Party in the 2007 senatorial elections, contrary to NP's assertion that they own the status. According to LP, the NP submitted an unauthorized coalition agreement with the Nationalist People's Coalition (NPC) beyond the deadline. It further averred that should the COMELEC award the status to NP, no other party would represent the true opposition in the counting of ballots. There is also the issue of retaining Vetellano Acosta's (KBL) name as number 1 in the official ballots despite having been belatedly declared as nuisance candidate.

Local Campaign

For 2010, there are 49,996 candidates running for Congress, governor, vice-governor, provincial board member, mayor, vice- mayor and councilor, as compared to 2007's 46,174. Of the congressional bets, there are several Arroyo Cabinet officials: Executive Secretary Eduardo Ermita, for Batangas, Agriculture Secretary Arthur Yap, for Bohol, Presidential Management Staff Hermogenes Esperon Jr. for Pangasinan, Justice Secretary Agnes Devanadera for Quezon, and Budget Secretary Rolando Andaya Jr. for Camarines Sur. 269 local candidates will run unopposed.

In terms of campaign finances on the ground level consisting of field data, Pera't Pulitika reported that Villar topped the campaign propaganda expenditures (after dominating the air war), followed by Aquino, Teodoro and Estrada².

² Pera't Pulitika First Monitoring Report, 6 April 2010.

For election violation, the most commonly reported are early campaigning and setting up of posters and tarpaulins outside the common areas prescribed by the COMELEC (Areas 3, 5, 6, 7, 8, 9, and 10-A).³

Area 5 (Bicol Region) field reports observed that the NP and LP had the most number of campaign materials. The COMELEC office in the region took an active part in implementing the rules and guidelines for posters and streamers. Local newspapers reported that in Albay the New People's Army (NPA) has begun imposing the "Permit to Campaign" on local candidates.

Area 6 (Central and Eastern Visayas) reported that NP's signature orange color dominated streets and big buildings. LP came in as second in terms of displayed campaign materials. The report stated further that the NP party worked its way into courting local Lakas-CMD bets, particularly in Cebu to "silently support NP candidates".

Area 8 (Northern Mindanao & CARAGA) observed that the NP has the strongest campaign machinery in Davao and Cagayan de Oro, and that COMELEC rules and guidelines were not strictly followed as to where, when and how the posters and tarpaulins should be posted.

Area 9 (Southern Mindanao, Regions XI and XII) reported that in Compostela Valley, supporters of national candidates (NP, Pwersa ng Masang Pilipino or PMP & LP) and party list groups (ANAKMINDANAO, AKBAYAN, ARC, ANAK PAWIS & GABRIELA) posted indiscriminately beyond COMELEC determined areas. In Davao del Norte, campaign materials (calendars, CV's and information sheets of candidates) were distributed from house to house a month earlier than the official campaign period. In SOCKSARGEN, Villar and Lito Lapid's (Lakas senatorial bet) posters were posted outside common poster areas and were seen on almost every tree and electric posts along main highways. Aquino's posters were also posted outside the designated areas and some measured 3x8 sq. feet. The COMELEC in GenSan regularly dismantled improperly posted campaign ads. However, the COMELEC in other SOCKSARGEN municipalities tolerated the glaring violations.

³ Bantay Eleksyon 2010 Area Clustering

C. COMELEC and Supreme Court Decisions

COMELEC

There are several COMELEC decisions that have set dangerous precedents, more than it caused public affront.

1. The wholesale rulings of COMELEC with regard 2007 electoral protests cases. The timing of the decisions could not be more suspect, as they were released only a few months left before the May elections. Cases in point are Second Division decisions that annulled the victory of opposition Governors Joselito Mendoza (Bulacan), Grace Padaca (Isabela), and Ed Panlilio (Pampanga);
2. The accreditation of 187 party list groups, where almost 40 of them are reported to be backed by the administration, and the approval of numerous bogus marginalized groups.
3. The belated decision to declare KBL presidential bet Vetellano Acosta as nuisance candidate and retaining his name in the official ballots; its decision to disqualify presidential bet Nicanor Perlas, Senatorial candidates Danilo Lim, and Miriam Santiago, then later on reversed itself.
4. Allowing former President Joseph “Erap” Estrada to run for president in the 2010 elections, despite having been convicted of plunder, and subsequently pardoned by Gloria Arroyo, its justification is “to let the people decide”.
5. The decision barring gay and lesbian party list “Ladlad” from running in the 2010 elections, on the grounds of immorality and offending Christians and Muslims.

Supreme Court

The 2010 elections have put to test the integrity and inadvertently, the loyalty of the more than majority Arroyo- appointed Supreme Court.

In *BANAT vs. COMELEC*⁴, the Supreme Court encroached on the powers of the Legislative branch when it amended the second clause of Sec. 11(b) of the Party-List Act when it awarded slots to those that secured less than 2% of the total votes cast, but limited the top-notchers to a maximum of three seats. In *Penera vs. COMELEC*⁵, the High Court reversed its September 2009 ruling and held that a candidate is not liable for election offense such as premature campaigning before the start of the campaign period. This opened yet another avenue for candidates, especially the more moneyed ones to abuse the playing field and give credence to the principle in Philippine politics that elective offices are for the rich.

The case of *Quinto vs. COMELEC*⁶ when first promulgated in December 2009 created a very grim atmosphere. The decision disregarded a long established election law by allowing appointed officials seeking for an elective post to remain in office even after the filing of their certificates of candidacy. Among the Arroyo appointees expected to benefit from the said ruling are Executive Secretary Eduardo Ermita, Justice Secretary Agnes Devanadera, Agriculture Secretary Arthur Yap, Budget Secretary Rolando Andaya, Chief Presidential Legal Counsel Raul Gonzalez and Presidential Management Staff Director General Hermogenes Esperon Jr. Two months after, the Supreme Court through Chief Justice Reynato Puno reversed the decision penned by Associate Justice Antonio Nachura. The Court stressed the perils of allowing an appointive official to retain his post while campaigning – “the systematic abuse perpetuated by a powerful political machine, so as to give itself and its incumbent workers an unbreakable grasp on the reins of power”.

D. Updates

Party List

The flawed Party-list System Act or RA 7941 has opened doors for abuses and circumventions, there being no hard and fast rule on what exactly is “marginalized”. To date, there are 187 party list groups approved by the

⁴ GR NO. 179271, April 21, 2009. Full discussion on BE 2010 Report No. 1.

⁵ GR No.181613, November 25,2009

⁶ GR 189698, February 22, 2010.

COMELEC accounting for the very lengthy ballot that is to be used in the elections. However, more important and alarming than the trivial issue of ballot length is the accreditation of 40 party list groups supposedly backed by the Arroyo administration.

Based on a 2006 memorandum released by the Malacanang Office of External Affairs, the following party- lists are identified as “pro – administration”: ANG GALING PINOY (first nominee is Rep. Juan Miguel Arroyo- who faces several petitions for disqualification), ABONO (first nominee is Jacky Lomibao, wife of ex PNP Chief Arturo Lomibao), 1-UTAK (first nominee is former Energy Sec. Angelo Reyes); BABAE KA, KALAHI, LYPAD, KASANGGA, AGBIAG and AGING PINOY.

A review of the initial batch of nominees (73 party list groups) submitted to the COMELEC revealed that there are 25 government officials (uniformed men, politicians and their relatives) vying for party-list seats.

Amidst the escalating public outrage focused on administration- fielded party lists and dubious groups, COMELEC’s response is to issue a resolution setting forth the criteria for nominees and the procedures for disqualification. As of this writing, COMELEC has yet to release said resolution.

Voters’ List

Despite the COMELEC’s claim of having purged 5 million voters from the list, the Joint Congressional Oversight Committee (JCOC) hearing in March proved that the voters’ list remains a potential instrument to perpetuate fraud and cheating. This issue came about when the Parish Pastoral Council for Responsible Voting (PPCRV) discovered about 40,000 voters in Davao who are either double, multiple or dead registrants.

In response, COMELEC admitted the anomaly in the voters’ list, but said the deletion of names of double registrants could only be done by the courts as prescribed by law, and that they have already issued guidelines in handling double registrants as early as last year.

NAMFREL and PPCRV fear that the number of double registrants could reach up to a total 3.2 million if the entire list would undergo scrutiny.

Others estimated more than 5 million total invalid registrants, based on the ratio of total registered voters to the general population (based on NSCB data). More cause for alarm though is the fact that the COMELEC included the double registrants in the total number of registered voters, which was the basis used for determining the number of ballots to be printed for the May 2010 elections.

Apprehension on the status of the voters' list is corroborated by the findings of National Movement for Free Elections (NAMFREL). It warned the COMELEC of the unreliability of the computerized voters' list (CVL) for not having been totally cleaned up. This is supported by data from the National Census and Statistics Board on annual average population growth rate. The rate increase of the number of registered voters from 2007's election should only be from 6-8%, not 12.65%. The difference, if translated into voters is equal to 3 million over-listed voters.

So far, the COMELEC has ordered the manual deletion of 704,542 double or multiple registrants and committed to complete the task before election day.

Civil Society Organizations

There is only one among the many citizens' arm accredited by the COMELEC – the PPCRV. This means only one organization will check the COMELEC. This uncomfortable situation unwittingly led to tensions among election monitors as other citizen arms, notably NAMFREL and NASSA, had their accreditation rejected.

PPCRV also applied for the fourth copy (citizen arm copy) of the election returns, traditionally given to NAMFREL for its quick count. It also applied for the 28th and 29th copy, thereby preempting other citizen arms access to the election returns.

PPCRV reportedly will use its copies only for internal procedures to determine the accuracy of the results of the voting. It does not plan to share the election returns with other civil society groups who may have a legitimate need for it.

There is an increasing alienation of the PPCRV from other election monitors because of its closet and go-it-alone behavior. There is already the accusation of non-transparency of its operations.

Election Violence

As reported in Bantay Eleksyon 2010's Progress Reports⁷, the incidents of election violence in relation to the new system of automated election may create an impact on the conduct of the 2010 elections.

From January to March 2010, Region V registered the highest number of incidents (11) followed by Region III (5), Region IV-A & ARMM (4). In Region V, the most number of incidents occurred in Masbate province (10) where Partisan Armed Groups and the New People's Army were mostly involved⁸.

In ARMM, there seem to have been a slow-down of incidents after the November 23, 2009 Maguindanao massacre. Those recorded this year could be attributed more to acts of hatred or *rido* that arose from the "massacre".

The following areas, according to *Vote for Peace 2010* need to be closely monitored:

1. DAVAO CITY – the rivalry between two contending camps is getting intense each day so much that the Davaoeños are feeling the heat of possible open untoward incidents. One camp is highly accused of having "death squads" while the other has behind him Ret. Gen. Palparan who holds the label of being "the butcher."
2. MONCAYO, COMPOSTELA VALLEY – the stakeholders of gold-rich Mt. Diwalwal are currently directly involved in the local elections, coupled with the participation of Mancao as a congressional candidate. What complicate the unstable political environment are the NPA guerrillas and roving-armed bands of the Ampatuans seeking survival.
3. MASBATE – the participating political clans are in survival mood – politically, and have been resistant to peace initiatives conducted and redeployment of police authorities in the province.

⁷ BE 2010 Report No. 1, August 25, 2009; Report No. 2, November 23, 2009; Report No. 3, February 9, 2010. [Reports 1-3 included as attachment]

⁸ Vote for Peace Public Report No. 2, March 26, 2010.

4. SORSOGON, QUEZON, MINDORO ORIENTAL and OCCIDENTAL, and NEGROS ORIENTAL – the intense political rivalries among contending parties is complicated by the aggressive operations of the NPA guerrillas against the police and military and for collecting PTCs.

CONCLUSIONS/ RECOMMENDATIONS

1. The conduct of the COMELEC preparations leaves much to be desired in terms of transparency and building credibility before election observers and the voting public. From an unprecedented transparency in the bidding process—universally lauded—the COMELEC has allowed itself to be caught -up in a web of secrecy and information obfuscation regarding the actual implementation of the Automated Election System (AES). This has the unfortunate effect of lessening public confidence in the Commission and on its conduct of the AES implementation. Though there is still a reservoir of goodwill towards the COMELEC due to public toleration of its mistakes and shortcomings in AES implementation, this is fast evaporating due to THEIR various decisions—without or in spite of sound advices by the Joint Congressional Oversight Committee, the COMELEC Advisory Council, various local and foreign election experts, and the general public opinion. There is a clear danger of the COMELEC once losing its acquired credibility and thus imperil the credibility of the AES and the whole 2010 election process.

Recommendation: COMELEC should review bad decisions that tend to alienate the voting public, and remedy what can still be remedied in time for the elections. It should take back its mantra for speed above all else and reconnect with the requirement of ensuring accurate vote count. It should open its entire procedure to public scrutiny, particularly to all legitimate election monitors and observers. Lastly, it should include transparency and receptiveness to public opinion in its guiding principles in making decisions on the electoral process.

2. The COMELEC is already late and lacks in crucial components of the election guidelines. Notably, this includes contingency or continuity instructions, policy and guidelines regarding the random manual audit, and protest instructions. Though it already issued the general instructions and the instructions for canvassers, as well as for handling precinct and canvassing protests, these still need to be modified or reviewed in the light of changing COMELEC decisions, as modified either by itself or by the Supreme Court.

Recommendations: COMELEC should immediately issue the needed procedures or instructions but only after appropriate public consultation or discussion with its advisers.