

## A Case Study

# "Basurahan Affair," Ballot Pre-Loading, and Other Cases in Cagayan de Oro

## I. BACKGROUND

### Cagayan de Oro City Profile

Cagayan de Oro City's history takes its roots centuries before the Spaniards came when the territory was then called Kalambagohan. Its main town, Himologan, was a hill-top fortress some eight kilometers south of the present Poblacion.

When the first Spanish colonizers came in Kalambagohan in 1622, the people here had a tributary relation to nearby Sultan Kudarat and with the empire of Cotabato. However, instead of embracing Islam many people converted to Christianity.



As early as 1899, Cagayan de Oro, then known as Cagayan de Misamis, was where the Aguinaldo government was proclaimed for the second time. Also, it was where the new Philippine flag was first raised on the Mindanao Island. Kagay-anon forces led by then Mayor Don Apolinar Velez initially and successfully repulsed the Americans at the historic bloody Battle of Makahambus on June 4, 1900.

On June 15, 1950, President Elpidio Quirino signed Republic Act No. 521 granting the status of a chartered city to the municipality of Cagayan de Misamis. A year after, one of the first oldest media organizations in the country, the Cagayan de Oro Press Club (COPC), was formed. It was only on November 22, 1983 that Cagayan de Oro City was declared by the Ministry of Local Government as a highly-urbanized and independent city.

Based on the 2007 census, the city has an estimated population of 553,996. The city has two legislative districts thus giving Cagayan de Oro two congressmen. Meanwhile, each district has eight councilors or 16 for the two districts.

The city has produced national leaders, including former Vice-President Emmanuel Pelaez and former Sen. Aquilino "Nene" Pimentel, Jr., considered the father of the Local Government Code of 1991. The city is also home to two personalities who figured in the controversial "Hello Garci" tapes in the fraud-ridden 2004 National and Local Elections. One of them, Atty. Virgilio Garcillano, was the Comelec regional director twice. A number of Comelec officials known as "Garci Boys" are believed to be still operating in the city.

The city is also where three-term former Misamis Oriental Gov. Vicente "Dongkoy" Emano has a track record of scoring landslide wins for city mayor with a five-digit margin (30,000 to 60,000 votes) against his closest political rival in the 1989, 2001 and 2004 elections. Such lead was maintained when Emano ran for vice-mayor in the 2007 Elections.

But in the first Automated Election System (AES) last May 2010 and amid protests, Emano was declared winner in the mayoral race by a margin of only 2,130 votes against mayoral candidate first district of Cagayan de Oro Rep. Rolando "Klarex" Uy. Emano reportedly won 99,853 votes against Uy's 97,723. A case has been filed with the Commission on Elections to declare a failure of elections and to nullify the proclamation of Emano. The Comelec-Cagayan de Oro officer Atty. Gina Luna Zayas-Sabio has also been placed in a "floating status" over the alleged "Basurahan Affair" of May 10.

## The Case Study

The researchers of this case study gathered data through meetings, interviews, and consultations with Comelec officials, the Smartmatic-TIM regional officer, city officials, Philippine National Police (PNP) local officers, local heads of the Parish Pastoral Council for Responsible Voting (PPCRV), local candidates and lawyers of the losing candidate, Board of Election Inspectors (BEIs), a supervisor of the BEIs, poll watchers, and voters, among others.

Some of the information obtained in this case study is supported by videos, photographs, and documents turned over by voters, poll watchers, local media, and PPCRV as well as some sworn statements before investigating officers from Criminal Investigation and Detection Group (CIDG-10).

## II. FINDINGS

### A. Comelec and Smartmatic-TIM preparations

#### Voter education

Before the May 10, 2010 national and local elections, Comelec Region 10 conducted voter education in selected barangays. The Cagayan de Oro (CdO) city election officer, Atty. Gina Luna Sabio, said Comelec divided the city's 80 barangays into 358 clustered precincts. She added that they were able to register 287,057 voters. Only 213,057 voters voted on May 10 (or 74.2%).

For the entire region including CdO, there was only one Precinct Count Optical Scan (PCOS) that was loaned by Smartmatic-TIM for all of the 2 million voters of Region 10. Because of this, there was only one set of schedules for the AES voter education and PCOS demonstration.

The voter education seminars, which last usually for three to four hours long, had an average of 100 persons attending. Comelec officials admitted that they were not able to orient all the voters on what AES really is.

#### BEIs' crash course

The Board of Election Inspectors (BEIs) in CdO underwent a three-day training on the AES given by personnel from Comelec and the regional office of the Department of Science and Technology (DOST-10). The training seminars were conducted in March at five hotels in the city.

Zayas-Sabio showed records of 1,203 precincts assigned to 358 clustered precincts in 61 voting centers all over the city. These voting centers were manned by 720 BEI personnel coming from the Department of Education (DepEd).

In the training modules, the BEIs were shown how to use the PCOS with PowerPoint lectures regarding Comelec resolutions pertaining to their job as BEIs.

Comelec-10 assistant regional director, Atty. Carlito Ravelo, said they used some 100 PCOS machines to train the 720 BEIs for CdO. They conducted BEI trainings by batches of 40 to give each BEI the opportunity to have a "hands-on" exposure to the PCOS machines.

After each training, the BEIs were given exams to determine how much knowledge they were able to absorb. One of them, Rosemary Dullente, admitted that she failed the exam but was relegated to serve as BEI chairperson as it would mean having "lesser hands-on on the PCOS machine" during the election.

Lapasan National High School assistant principal Arnold Tejero, who served as BEI supervisor during the election, recalled that they were trained as election BEI supervisors only seven days before May 10. He believes the training for BEI supervisors was not enough with less time to study the modules given to them by the Comelec.

#### Smartmatic-TIM subcontracting story

In an interview with researchers, the Smartmatic-TIM regional coordinator for northern Mindanao said the consortium hired provincial coordinators for the region's five provinces - Bukidnon, Camiguin, Lanao del Norte, Misamis Occidental, and Misamis Oriental. However, the company had no coordinators for municipalities and cities such as Iligan City and CdO. He also said he was hired by the consortium as coordinator for northern Mindanao as early as April 2009. Yet for several months after he was hired, he and other local Smartmatic-TIM personnel received no instructions on what to do. There was no opportunity to take up many questions and uncertainties over the Automated Election System (AES) and its implementation.

Three subcontractors were also hired, namely, Ventureslink, Inc., Manila Resource Development Corporation (ManRed), and Placwell International Services. The three Smartmatic-TIM regional coordinators had no authority over the personnel and activities of the subcontractors that were fielded to the polling places. Because of this, Smartmatic-TIM coordination on the ground became impossible, he said. However, any fault or failure by the subcontractors' personnel, particularly on the technical aspects of the AES, was immediately blamed on the Smartmatic-TIM coordinators. Worse, they had no power to correct any technical errors or negligence committed or to investigate what happened.

Another matter raised was on how Smartmatic-TIM regional coordinators' actions became more reactive rather than pro-active. An example cited was on the arrival, storage, and delivery of the 3,232 PCOS machines in Region 10. He said that he received no information when the PCOS units will arrive and where these will be stored.

#### The "Regional Center"

Comelec-Region 10 created a joint committee and a "regional hub or center" to coordinate election activities during the May 10, 2010 election. Members deputized by Comelec to the joint committee included officials from the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), National Bureau of Investigation (NBI), Department of Education (DepEd), Department of Justice (DoJ), and Department of Interior Local Government (DILG). Also included were representatives of Smartmatic-TIM and the Parish Pastoral Council for Responsible Voting (PPCRV), among other agencies and organizations.

Atty. Reynato Magbutay, chairman of Comelec-Region 10, said that the committee installed high-tech facilities including what the military called a "Text Burst" technology. "Text Burst" has the capacity to send several short message services (SMS) or text messages simultaneously.

#### DOST: 11 CF cards' re-configuration

In a last-minute memorandum following the May 3 final testing and sealing (FTS) fiasco, the Comelec asked the DOST through its provincial offices to assist in the re-configuration of faulty CF cards. In Region 10, 11 CF cards were reconfigured - 3 from the municipalities of Bukidnon, 2 from the municipalities of Camiguin, 1 from Misamis Oriental, 1 from Misamis Occidental, and 4 from Lanao del Norte. Magbutay said not a single CF card from Cagayan de Oro was reconfigured locally.

He also said that the "burning" or reconfiguration of CF cards was done only on memory cards that were retrieved from clustered precincts and brought to the Smartmatic-TIM main plant in Cabuyao, Laguna for reconfiguration. The cards were still not functioning when these were used for the FTS held in the region's voting centers one or two days before the election and thus had to undergo another reconfiguration.

## B. Automated Election Irregularities

### The "Basurahan Affair"

The "Basurahan (dump) Affair" refers to the controversial dumping at the city's government-run landfill of three sacks of election paraphernalia including PCOS-specific CF cards that were reportedly used during the May 10 automated elections. Some of the election paraphernalia were found at the landfill while others were found at a local junkshop already mixed with other election campaign material debris.

To illustrate the "Basurahan Affair" is the following timeline of events:

**May 11:** Frederico Gempesaw, head of the City Economic Enterprises Department (CEED) together with his driver Cesar Cabanlit drives a white-colored mini dump truck with plate number JDB-507 to the government-run City Landfill Dump at Upper Dagong, Cagayan de Oro city around 3:10 p.m. and 3:45 p.m.

In a sworn statement, Gempesaw said he and Cabanlit dumped the unused sample ballots for the candidates they were supporting including former President Joseph Estrada, who ran for the presidency, and his running mate, Jejomar Binay. He added the sample ballots looked like the original ballots in size and that these were shaded in ovals indicating their candidates.

**May 12:** Comelec Cagayan de Oro city election officer Atty. Gina Zayas-Sabio is informed by her election assistant, Oona Mei dela Rosa, that some election paraphernalia were missing. In a sworn affidavit, Zayas-Sabio said accordingly she instructed her staff to search and retrieve the missing election paraphernalia.

**May 14:** Around 3 p.m., according to Fely Acuno, a long-time landfill garbage scavenger or "basurera", a yellow-colored dump truck with a logo of the CdO city government arrives at the landfill and dumps garbage. Acuno, in her two-page affidavit, says that she grabbed a half-filled sack containing cartoons and papers. That night, supporters of Klarex Uy go to the Ramirez junkshop located at Barangay Puntod to check reports about election paraphernalia bought by the junkshop that were said to have been found at the landfill.

Zayas-Sabio also narrates that at around 11 p.m. on the same day she received a call from Atty. Evangeline Carrasco regarding envelopes containing election results and keys from ballot boxes found at the Ramirez junkshop.

**May 15 (around 2 a.m.):** Comelec election assistant II Oona Mei dela Rosa goes to the Police Precinct 1 to report the loss of election paraphernalia. The police blotter that she and duty desk officer PO1 Ernie Fabre signed cites 40 keys of the ballot box and three keys from clustered precincts in barangays Cugman, Gusa, F.S. Catanico and Lapasan.

At 6 a.m. candidates who ran under Uy's banner together with supporters and Evangeline Carrasco, lawyer of Klarex Uy, arrive at the Ramirez junkshop. With them are members of the Parish Pastoral Council for Responsible Voting (PPCRV), Legal Network for Truthful Elections (LENTE), City Intelligence Detection Unit (Cidu) officer Reynante Royo Reyes, and the local media.

**May 26:** CdO city police director Sr. Supt. Benedict Lopez issues his "Investigation Report on the Reported Lost of Election Returns (ERs) and Paraphernalia from the City Comelec office on May 12, 2010". In his report, Lopez says that "human factor like drowsiness, over fatigue and overworks (sic)

also contributed for not taking extra precautionary measures to account all those ERs and paraphernalia that they received and bring all of those to Comelec office where it should be placed for custody." The loss of the ERs and paraphernalia were a "product of Gross Negligence by the COMELEC personnel who are tasked to receive and to take good care and custody of these important documents," the report also says.

**May 28:** Frederico Gempesaw issues his own sworn statement with queries from CIDG-10. He admits to dumping thousands of kilos of sample ballots and other campaign materials at the landfill on May 11, 2010, accompanied by his driver Cesar Cabanlit.

**May 29:** Santiago Emano issues a sworn statement with the CIDG-10 saying that he is a driver of a government-owned yellow-colored DT10 Hino Dumptruck with plate number SDK 293. He is accompanied by Nonoy Diaz, Bebot Deryada, Wilson Puntillas and Tirso Puntillas as his "helpers" whenever he collects and dumps garbage.

**May 31:** Fely Acuno executes a separate affidavit this time identifying Santiago Emano as the driver of the dump truck from where she was able to scavenge election paraphernalia and other election-related materials on May 14, 2010. On the same day, 4 CF cards found at the Ramirez junkshop are sent to Cabuyao, Laguna for forensic examination by Smartmatic-TIM technicians. The contents of the CF cards are found to be authentic, matching the ones in the Smartmatic main server.

#### Midnight coordinated PCOS transmission failures?

Comelec-CdO city election officer Atty. Gina Luna Zayas-Sabio together with City Prosecutor Fidel A. Macauyag and DepEd Schools Division Superintendent for CdO Myrna S. Motoomull, Ed. D., CEO V convened the City Board of Canvassers around 12 noon on May 10, 2010. They took a recess at 1:45 p.m. and resumed session at 7:27 p.m. at the City Council Session Hall located at the 3<sup>rd</sup> Floor of the City Hall building.

Between 7:55 p.m. and 12 midnight, the PCOS machines' transmissions from different polling places in the city reached the BoC's computer laptop without much incident. But around 12:46 a.m. May 11 Motoomull noted one incident. She wrote: "One clustered precinct at the West City Central School (WCCS) reported to the BOC that there was transmission failure." By 12:50 a.m., Motoomull said that 89.10 percent or 322 clustered precincts' transmissions were already canvassed. Motoomull's Minutes showed: "Following memory cards were submitted to the Board of Canvassers (BoC)." She even noted down the memory card numbers and the paper seal numbers of the envelopes containing these cards. These election results showed Emano and Uy were in close fight for the mayoralty seat.

#### CF cards brought to the BoC and manually loaded to CCS machine

At around 1:45 a.m. and thereafter, 29 of the remaining 36 memory cards were hand carried by BEIs from the different precincts in the city. Twenty-five of the 29 memory cards came from barangays in the First District of CdO, the congressional district where mayoral candidate Uy was the incumbent House representative. Nineteen of the 29 memory cards came from Barangay Carmen where Uy's wife Lorna was the incumbent barangay chairperson.

Barangay Carmen, the largest barangay, is located very close to the City Hall where the BoC was conducting the consolidation and canvassing of votes. The West City Central School (WCCS) where most of the memory cards were ordered to be hand carried is just a 5-10 minute ride to City Hall. There is transmission signal of the five big communication companies - Smart, Globe, Sun Cellular, Talk'nText and Touch Mobile in the area.

There were 2 memory cards from Barangay Baikingon and another 2 from Barangay Mambuaya. Barangays Mambuaya, Bayanga, Pigsag-an and Tumpagon each had one memory card hand carried to City Hall for manual loading to the CCS machine. All 6 hinterland barangays are also in the First District of CdO.

Only 3 of the memory cards that were hand carried belonged to the Second District- 2 from Barangay FS Catanico and 1 from Barangay Indahag.

#### Total number of cards which showed "No Data"

Three CF cards that were hand carried by the BEIs did not contain any data. The CF cards came from clustered precincts in WCCS in Barangay Carmen. Two of 3 CF cards were reported by Motoomull as having been "successfully loaded upon retry" separately.

#### Memory cards loading retries

Five of the total 29 hand-carried memory cards needed reloading to the CCS machine before they could be successfully consolidated. BoC watchers and the local media reported that the loading retries took several minutes to an hour before the CCS machine could accept the memory cards.

#### Parallel counts

Seven parallel counts were conducted for 7 memory cards. It was not exactly described how the parallel count was conducted only that the election results that were printed in hard copies were compared with the data contained and read by the CCS machine.

#### Board of Canvassers' last-minute recess

The BoC took a recess at around 8:30 a.m. on May 11 and reconvened at 11:45 a.m. after the CCS machine was said to have "overheated" after running for 13 hours. The last-minute recess was questioned by Atty. Evangeline Carrasco considering that there were only 13 memory cards left to be loaded to the CCS machine. However, her manifestation was overruled by the BoC members. Some BoC watchers and media practitioners observed well that there were accounts of how the manual loading of the hand-carried memory cards took several minutes to an hour.

#### The Carrascos' account

Atty. Mario and Evangeline Carrasco recounted that during the automated canvassing past 12 midnight of May 10 there was a sudden failure of transmission of the election returns to the canvassing machine stationed at the City Council Session, City Hall. According to the Carrascos, it was at this time that Comelec-CDO city election officer Zayas-Sabio "precipitately ordered the hand carrying of the flashcards to the City Hall where they would be inserted into the canvasser's computer." They alleged that Zayas-Sabio made this order "without checking thoroughly what caused the transmission failure and asking the technicians to do something about it."

The Carrascos said that "at this point, the speed, security feature of the automated system was compromised, especially because the watchers were not even allowed to accompany the BEI people on their way to the City Hall as per their affidavits. The insertions and manipulations could have been done at this point." For them, this was when "CF card-switching" could have happened.

#### Zayas-Sabio's account

Atty. Zayas-Sabio confirms that there was transmission failure. She also confirmed that election inspectors had to bring compact flash cards from the WCCS in Barangay Carmen.

#### Comelec's website weirdness

Comelec officials earlier claimed that the Automated Election System (AES) is better than the previous manual elections where election results will be fast and accurate, but also more transparent as transmitted election results would be immediately posted on the Internet.

But the site [www.electionresults.comelec.gov.ph](http://www.electionresults.comelec.gov.ph) shows weird results from the original mother domain [www.comelec.gov.ph](http://www.comelec.gov.ph) which is run by the Commission on Elections (Comelec). Also, an advisory dated May 18, 2010 was posted at [www.comelec.gov.ph](http://www.comelec.gov.ph) to wit:

PLEASE BE ADVISED that the election results as appearing in <http://electionresults.comelec.gov.ph> are generated from electronically-transmitted results to the Central Server from the different PCOS machines in the polling centers and are not being maintained by the COMELEC Website Development Team. If you have any complaints on the results as made available in this RESULTS WEBSITE, please send an e-mail to [electionresults@comelec.gov.ph](mailto:electionresults@comelec.gov.ph).

The researchers discovered several inconsistencies at the [www.electionresults.comelec.gov.ph](http://www.electionresults.comelec.gov.ph) for the 29 hand carried memory cards to the Board of Canvassers (BoC) at City Hall. Based on the research, only 25 of the total 29 clustered precincts were able to completely transmit their election results to the Comelec's Central Server and thus were reflected at its subdomain, [www.electionresults.comelec.gov.ph](http://www.electionresults.comelec.gov.ph).

#### No data available

The researchers visited the linked website several times for one of the hand carried memory cards, but it did not contain data at all. It also reads: "There is not available results (sic) for this particular region. Try again in a few minutes."

#### Data available only for President and Vice-President

One of the 29 clustered precincts only has data available for candidates running for president and vice-president. It is observed that the memory card for this clustered precinct (Precinct Nos. 0328B, 0329A, 0329B, 0330A, 0330B for Barangay Carmen) was manually loaded to the CCS machine at 2:45 a.m. on May 11, 2010.

#### Data available only for NATIONAL candidates

One of the 29 clustered precincts of barangay Carmen only has data available for national candidates.

#### Data available for all candidates EXCEPT City Mayor

One of the 29 clustered precincts has data available for all national and local candidates EXCEPT FOR THE POSITION OF CITY MAYOR. The researchers visited the same website URL link for a week - from June 18 to 25, 2010. It still contained the same data.

### **C. Other election irregularities**

#### Pre-shaded ballots

There are reports that some ballots used during the automated elections in Cagayan de Oro city already contained markings or were pre-shaded before May 10, 2010. The pre-shaded ballots were allegedly handed to a number of voters in Barangay Lapasan, Second District of CdO. This barangay is the bailiwick of re-electionist city councilor Teodulfo "Bong" Lao, Jr. who ran with Uy in the automated elections.

Atty. Magbutay denied the allegations of pre-shaded ballots given to voters. However, in an affidavit, a Barangay Lapasan resident and registered voter, Arcadio Agocoy, attested to how his official ballot under ID No. 4305240 had been pre-shaded to favor the PaDayon Pilipino-Pwersa ng Masang Pilipino under mayoral candidate Emano and the complete line of candidates with the latter.

The BEIs failed to give a "concrete answer" when Agocoy complained. He asked for another ballot but was not denied.

In a separate affidavit, Yolanda Pecson, a registered voter at Precinct 0588-B, said her ballot was rejected by the PCOS machine because "there was a mark point in the name of Vicente Y. Emano, when the mayor the (sic) I voted was Rolando "Klarex" Uy and that I did not mark or shade the name of Vicente Y. Emano." She also said she asked the BEI to give her another ballot but was refused.

Some of the pre-shaded ballots were found at the junkshop among the election paraphernalia that were thrown at the local dumpsite.

#### May 7 'Early Morning Show': Ballot pre-loading?

In an affidavit, Bernadeth Cosep said that there was an incident of a "pre-loading" of ballots to PCOS machines at the City Treasurer's Office around 4 a.m. of May 7, 2010 or just 3 days before the automated elections. At that time, Cosep was waiting for her husband – a city hall employee – and, together, later ate together. Her husband told her that there were suspicious persons inside the City Treasurer's Office and the Office of the City Vice Mayor.

Cosep's affidavit continues: The couple went to the City Hall then proceeded to the City Treasurer's Office and the Office of the City Mayor. They saw about 5 persons inside "putting something inside in a machine that is not familiar with me." She said some of them were "putting long papers into the said machines" but she did not exactly know what those "long papers" were at that time. She attested to seeing at least 10 machines.

#### Hinterland appearance of 94 flying voters?

Forty-seven persons said to be registered voters of Barangay Taglimao executed an affidavit enumerating no less than 94 persons whom they suspected as "flying voters." They said they "personally made a parallel check on the List of Registered voters to the actual/census residents of Taglimao" and found that the 94 persons are not bona fide residents of the barangay.

They said the suspected "flying voters" were "hailed by a mini-van" and upon getting off joined a group of registered voters of Taglimao. Barangay chairperson Jocelyn Guialani denied the allegation about the "flying voters" in Taglimao.

#### Other Automated Election Irregularities

##### Deliberately-engineered long voters' queue

Anywhere in the region the first problem during the Election Day was the long voters' queue.

In Cagayan de Oro City, both opposing political camps traded charges of deliberate schemes to disenfranchise their respective supporters on voting day. Emano supporters in PaDayon Pilipino bailiwicks said the supporters of the Uy camp were trying to corner their voter-sympathizers in their areas. The Uy camp, on the other hand, cited long voters' lines in pro-Emano barangays controlled by PaDayon Pilipino-Pwersa ng Masang Pilipino as well as in areas where there are beneficiaries of the PaDayon Pilipino Piso-Piso Land Program.

##### Vote-Buying with a new mode of verification under the AES

Accusations of vote-buying from each of the opposing camps were also observed. There were reports of suspicious individuals seen near the PCOS machines looking at the ballots as they were fed into the PCOS to verify pre-paid voters honored their word in exchange for money.



### III. CONCLUSION

The case of the "Basurahan Affair" is one of the patent manifestations of Comelec-CdO's lack of full preparation for the May 10 elections. At the minimum, they failed to devise a system of receiving, storing, securing, and accounting of election paraphernalia. The allegations of fraud in connection with this incident warrant deeper investigation considering the failure to observe election protocols and the alleged culpability of certain election officials.

A deeper investigation is especially in order with respect to the alleged pre-shading of ballots happening right inside the CdO city hall. The fact that such incident – and probably similar incidents in the region – would happen right inside a government institution amplifies the vulnerabilities of the automated election system including security risks in the safekeeping and storing of election paraphernalia.

These incidents alone, when proven true, would indicate that automation or no, the election process in the Philippines remains challenged by powerful cheating mechanisms. *EU-CenPEG Project 3030*

Annex



Ramirez junk shop



12 sacks containing election paraphernalia are hauled down from garbage truck for examination.



A yellow tape designating the police line and "no enter" area is put up.



Small envelopes containing flash cards and ibuttons were found still inside sealed brown envelopes.



One of what looked like official ballots with pre-shaded marks