THE PITFALLS OF MANAGING A MODERN ELECTION SYSTEM

There are several issues in the 2010 automated elections that point to critical management failures and shortcomings, from failure of change in management, lack of transparency in election contracts, to lack of quality assurance, near-anarchic voting queues, and lack of security and accuracy safeguards.

Since it was created in 1940 based on an amendment of the 1935 Constitution, Comelec, as stated on its official website, had been given the mandate "*to give life and meaning to the basic principle that sovereignty resides in the people and all government authority emanates from them.*" (See Annex C for a rundown of the mandate of Comelec). To be able to fulfil this, the Commission was vested by the law with administrative, quasi-judicial and judicial powers.[1]

This mandate had essentially remained the same even in the context of an automated election, but with a particular attention to the basic tenets of a "democratic" election. This was clearly stated on the title of the Automated Election Law, RA 9369 (January 2007), itself: "*An act authorizing the Commission on Elections to use an automated election system in the May 11, 1998 national or local elections and in subsequent national and local electoral exercises,* **to encourage transparency, credibility, fairness and accuracy of elections***...*"[Emphasis supplied].

I. The AES Organizational Structure

Before the automation of the elections, Comelec worked in relative independence from other government agencies as an independent body, as defined by the Constitution. On paper, Comelec is expected to be independent of the three government branches: executive, legislative and judicial. However, the automation of the 2010 elections necessitated the redefinition of Comelec's roles in the elections and the inclusion of other agencies and actors in its implementation. Below is a basic description of various actors and Comelec committees' roles[2]:

a. **Comelec and its Commissioners en banc**: The Commissioners en banc serve as the main decision- and policy-making body, while its chairman has chief executive officer (CEO) functions. As such, the commissioners and the chairman are expected to have a complete grasp of the election laws and its roles and responsibilities. (See Annex B for list of members of the Commission)

   Within the Commission itself are different departments. Directly under the chairman is the Executive Director who implements policies crafted by the Commissioners en banc. The Executive Director also assumes administrative functions. Within the Comelec national/central office, meanwhile, are 10 departments.

   Throughout the country are 16 regional election directors, 79 provincial election supervisors, and 1,609 election officers and staffs. They are essentially in the field to carry out election activities in their jurisdictions. (See Annex A for the Comelec organizational chart)

b. **Comelec Advisory Council (CAC)**: The CAC has recommendatory and advisory functions. Its existence aims to address Comelec officials' lack of expertise on ICT and on the automation process. Among its primary tasks are to recommend a technology for the 2010 automated elections that meets the standards set by RA 9369.

The Comelec Advisory Council is composed of representatives from the Commission on Information and Communications Technology (CICT), Department of Science and Technology (DOST), Department of Education (DepEd), the academe, select professional ICT organizations such as the Philippine Computer Society (PCS) and Philippine Electronic and Telecoms Federation, Inc. Election advocacy NGOs such as the Parish Pastoral Council for Responsible Voting (PPCRV) and Consortium on Electoral Reforms (CER) are also CAC members. The CAC, insofar as AES 2010 is concerned, has been chaired by Rey Anthony Roxas-Chua.

c. **Project Management Office** – The PMO leads the implementation and operations of the automation process. It is headed by Comelec Executive Director Jose Tolentino, Jr. Director Tolentino figured in election-related controversies such as the alleged overpricing of ballot secrecy folders.

d. **Technical Evaluation Committee** (TEC) – The TEC, headed by Advanced Science and Technology Institute (ASTI)[3] Director Dennis Villorente, is an independent committee with members from the Comelec, CICT and DOST. Among its tasks was to certify the automated election system by categorically stating that the hardware and software components of the AES are operating properly, securely and accurately. The TEC had received criticisms for certifying Smartmatic's PCOS-OMR technology in a non-categorical language, saying that the "*the AES, as submitted, with full adoption of the recommended compensating controls, CAN securely, accurately, and properly be used by voters, boards of election inspectors, local and national boards of canvassers, and Comelec in the May 10, 2010 National and Local Elections.*" [Emphasis supplied]

The TEC, through ASTI Director Villorente was also the same committee that issued the directive to provincial DOST offices to assist Smartmatic and Comelec in reconfiguring defective CF cards following the May 3, 2010 final testing and sealing (FTS) fiasco. This directive was a response to a memo sent by PMO Executive Director Jose Tolentino, Jr. who had asked for the involvement of local DOST offices in the CF card reconfiguration. Their participation was not deliberated upon by the Commissioners en banc.

e. **Special Bids and Awards Committee (SBAC):** The SBAC is the main working body for all bidding activities. This includes the bidding for the AES vendor and for various election paraphernalia.

f. **Smartmatic-TIM**: Smartmatic-TIM, having won the bid as a vendor, provided the election technology. It also assumed responsibility for the major technical and logistical requirements of the automated elections in its capacity as a "complete solutions provider" (as claimed by the company itself).

g. **Parish Pastoral Council for Responsible Voting (PPCRV):** PPCRV was the only Comelec-accredited election watchdog. Its main task was to carry out a nationwide voter education campaign about the new system of voting.

h. **Armed Forces of the Philippines and Philippine National Police**: Comelec deputized the Armed Forces of the Philippines (AFP) and exercised supervision and control over the Philippine National Police (PNP) to ensure a peaceful and orderly election.

To illustrate the flow of the decision-making process among these committees and agencies, let's take the AES technology bidding process as an example. The Technical Working Group (TWG), which works under the Special Bids and Awards Committee (SBAC), reviewed the bidding documents submitted by the AES technology bidders. The SBAC, led by Comelec's Law Department Chair Atty. Ferdinand Rafanan, headed

this process. This same committee recommended Smartmatic-TIM to the CAC, which in turn echoed the recommendation to the Commissioners en banc. It was the Commissioners en banc who sealed the deal by signing the Notice of Award to Smartmatic-TIM.

This process shows that the decision-making process flows from the bottom committees up to the Commissioners en banc, which by design should always have the final say on vital decisions.

II. Management Issues

There are several election issues in the 2010 automated elections that point to critical management failures and shortcomings.

1. No proper coordination with other election actors

There is no doubt that Comelec officials, especially those who had served in previous elections, are already familiar with the manual election system. This does not only include the physical needs such as ballots, but also other requirements such as smooth coordination with various stakeholders in election implementation. Whereas before, they mostly had to deal with actors from within their agency, now in automated elections, Comelec had to work with new faces and varied institutions and agencies, in and outside the government and even based in and outside the country. Smartmatic, for one, is a foreign company. So is SysTest Labs, the U.S.-based international certification entity hired by Comelec to certify the AES technology. This certification included the conduct of a source code review. This is one of the major challenges of Comelec in the elections. And it is interesting to see how it was able to adapt to other changes that went with a major migration from a pure manual election to a full automation of the election.

However, based on reports on the field and interviews with local Comelec and Smartmatic-TIM officials, it appears that Comelec failed on at least one level of coordination, between the Comelec central office and its field offices. For instance, an information as elementary as the number of transmission modems that will be provided in the areas was not properly relayed from the national down to their local counterparts. Local Comelec officials interviewed by the project for the case studies admitted that they assumed that there will be one transmission modem for every PCOS machine in every clustered precinct. But on election day, clustered precincts actually had to share modems, which is said to have been one of the reasons for the delayed transmission of election results from the precincts to the canvassing centers.

The lack of proper coordination among agencies is also one of the reasons for the absence of National Printig Office (NPO) security markings in all Autonomous Region for Muslim Mindanao (ARMM) ballots used in the elections. NPO wanted to have its own security markings on the ballot as proof of their authenticity, that these were actually printed by their office. But both Smartmatic-TIM and Comelec claimed that NPO communicated this so late that the printing of ARMM ballots had already been completed by the time they finally decided to include the NPO markings. NPO markings had always been one of the features in the ballots in previous elections.

At the local level, proper coordination was also made more difficult with the absence of a direct communication line between local Comelec and Smartmatic-TIM. In at least one case study area, local Comelec officials confirmed that they didn't know the office address of local Smartmatic-TIM. The only communication line was a Smartmatic-TIM official's cell phone number.

2. Source code review and hiring of SysTest Labs

Another management issue centers on the legally-mandated source code review and the hiring of the international certification entity that would certify the technology and review the source code, which was largely hidden from the general public. At the onset, the bidding documents were not released to the public. This raised questions among concerned groups during the election preparation stages on whether bid documents actually exist and if bidding actually did take place. In fact, it came as a surprise for many election

monitoring groups last October 2009 when Comelec announced that it had awarded SysTest Labs, a Colorado-based company, Php 70 million to test and certify the PCOS-OMR technology. This was at the height of protests and pressures from CenPEG and other groups for Comelec to release the source code for independent and pro-bono review by interested groups as stipulated in RA 9369.

Aside from the absence of a public bidding, it appears that a due diligence background study on SysTest Labs was not undertaken. SysTest Labs was once suspended by the Election Assistance Commission (EAC), a U.S. government agency, in October 2008 after it was not accredited and certified by the U.S. National Institute of Standards and Technology (US NIST)[4]. It was later reinstated in March 2009.

The certification of the PCOS-OMR technology was also cast in a bad light by the fact that it was Smartmatic that recommended SysTest Labs to Comelec. Aside from the possible legal infringement, this placed the credibility of the certification on the line even before the process had started. Where else can a company that's haggling for its technology to be used in a country's first ever automated elections, the same company that is gunning for dominance in the Southeast Asian market as an election technology provider, have a say on which company should test and certify the soundness of its own technology?

3. Bidding irregularities

The bidding for the AES technology conducted a year before the May 10, 2010 elections was done in spite of the absence of a public consultation with the Filipino ICT community. And although the bidding process itself was open to the public, the preparation of the AES technical specifications and requirements was not transparent.

The bidding of other election requirements also proved to be controversial. An example was the bidding for the ballot secrecy folders which was initially awarded to OTC Paper Supply for Php 380.00 per folder. PMO Executive Director Jose Tolentino, Jr. had been suspended for his role in the alleged overpriced deal. OTC Paper Supply also participated in the bidding for the ultraviolet (UV) lamps. The contract was eventually awarded to Philand Industries Inc. for Php 30 million worth of 77,000 UV lamps. This turned out to be a waste of taxpayers' money as majority of the lamps were unused on election day. Many of the BEIs didn't know what they were for, with some mistaking them for flashlights.

4. No direct accountability

Aside from this, Comelec consented to having limited powers over major election actors. For example, it allowed Smartmatic-TIM to subcontract the deployment of the PCOS machines. The three logistics firms hired, in effect, did not have a direct accountability to Comelec, and were instead accountable only to Smartmatic. The Terms of Reference/Request for Proposal (TOR/RFP) for the AES technology indicates that the bidder, specifically Smartmatic, should be responsible for machines deployment. The general public was also kept in the dark on the hiring process in the absence of a public bidding.

Manpower agencies contracted by Smartmatic to hire technicians were also not directly accountable to Comelec. Reports of underpayment or delayed payment for technicians' services were common during the May 2010 elections.

5. Lack of GIS

Another requirement prior to elections was a Geographical Information System (GIS). A sensible GIS includes a survey of the road conditions, power availability, and telecommunications infrastructure, the most important in an automated election project. The GIS was supposed to be one of Comelec's principal basis for choosing a technology for the 2010 automated elections that would best suit the existing conditions in the country.

In 2006, a budget for a GIS had been allocated to Comelec. This, however, was never implemented. Comelec instead relied on Smartmatic to conduct its own site survey from October 2009 to January 2010. This

on hindsight, according to one local Comelec official, may not have been accurate, judging from the transmission problems and transmission modem shortages that hounded election day.

6. Comelec calendar

In the RFP/TOR for technology bidding in May of 2009, an implementation calendar had already been drawn up by Comelec. Much of those in the calendar, however, were not followed, mainly by Comelec itself. The automated elections was replete with delays and shortcuts that the Comelec calendar had to be revised at least six times. This basically stems from the lack of an Implementing Rules and Regulations (IRR) for RA 9369 that for some reason, Comelec decided to forego. It instead resorted to the issuance of Comelec resolutions and guidelines, the most critical of which were released late or reactively prepared. This includes band-aid resolutions on the CF card problem, FTS problem, lowering of thresholds and extension of the voting period.

It even had to bend some rules to accommodate last-minute changes, reflecting Comelec's utter lack of foresight and detailed planning. These changes include changing the ballot design, disablement of the UV detection feature and deactivation of the voter verifiability feature in the PCOS machines, and imposing restrictions on voters on acceptable vote marks on the ballot.

In terms of delays, among the most notable were the deliveries of PCOS machines from Chinav, the certification of the technology, and poll workers' trainings. All of these activities are at the very heart of the automated elections of which many other activities were dependent on.

The delay in the start of the BEI training meant that the training duration had to be shortened, negatively impacting the quality of training of the BEIs. A complete dry-run of the elections, as recommended by SysTest Labs on its certification report, was also not conducted because Comelec had run out of time. Glitches experienced on election day such as transmission problems, timestamp errors and errors on the registered voters count may have been avoided had a dry-run been conducted. And although a continuity plan was drafted by Comelec in the form of a Comelec resolution, it was released too late, a mere two months before election day. This was also not properly operationalized for lack of material time.

Project 3030 IT Consultant Lito Averia observed that the Comelec calendar was too tight, leaving little leeway for adjustments. He added that these delays were masked by Comelec through revisions "*at the expense of false perceptions that everything was on schedule.*" In fact, both Comelec and Smartmatic-TIM had become adept in downplaying the degree and impacts of delays and problems during the AES preparations, most especially the delays in deployment of PCOS machines and the May 3, 2010 FTS fiasco.

As a whole, the inability of the Comelec to fulfil pre-determined deadlines as illustrated in delays in many preparations and activities led to cutting corners, tighter schedules, doing away with many key requirements, and other management problems thus affecting quality assurance and the need for thorough preparations. All these management weaknesses would exact their toll on election day.

7. Training of poll workers and voter education

Because the AES was technology-centered, the training of stakeholders was not on the top of Comelec's priority list. Longer time was devoted to preparing the hardware and technical requirements than to preparing the voters, the voters' lists, the teachers, etc. This was already evident on the delayed and apparent lack of quality Board of Election Inspectors (BEI) training. Key informant interviews for the case studies show that the BEIs were not sufficiently trained, especially on the continuity plan and the use of UV lamps that were supposed to help detect spurious ballots. This could be the offshoot of a compressed training timeline or poor training design or both. Based also on information gathered from the field, it appears that the Smartmatic technicians were not sufficiently trained to handle technical problems.

The design of the voter education, on the other hand, was a watered down version of what a voter education for a new voting system should be. The orientation was focused only on how to shade the ballots

and feed the ballots in the machines and not on the technical aspects of the AES. There was no orientation, for instance, on how the machine will read and register a voter's ballot. Voters' understanding of the AES and how their votes were counted lacked depth, their appreciation of the voting process superficial, and expectations kept at a minimum.

As a whole, Comelec's and PPCRV's voter education was over-simplified by focusing only on the technical procedures of voting using the PCOS system. The objective was to make sure that the voter adjusts to the technical requirements of the PCOS however limited these were – instead of the technology being designed to suit the level of political culture and the level of technical understanding of the voter. Voter education failed to promote informed voting with the voter left without understanding the implications to voter's rights of the absence of voter verifiability, independent source code review, digital signature, and other critical components of the AES.

8. Precinct clustering: Failure of change in management

Being technology- or machine-oriented, Comelec collapsed the system of precinct-level voting used in the manual election to precinct clustering, whereby several precincts are consolidated into precinct clusters based on the availability of machines. As a result, a precinct cluster's number of voters ranged from 600 to 1,000 and voting centers to several tens of thousands in many places. The clustering was based on the limited number of PCOS machines deployed – some 76,000 – and other technical election paraphernalia including modems and satellite transceivers that suffered a shortage on election day. The most damaging effect of precinct clustering was the long queues of voters that were phenomenal nationwide. The unprecedented queues, where a typical voter waited from 3-6 hours – in many cases, up to 11-12 hours – to be able to cast his/her ballot were aggravated by BEIs' lack of training, poor or conflicting crowd management, lack of IT technicians, and a high incidence of machine breakdowns and other glitches.

For this management failure, Comelec should be made to account for the high incidence of voter disenfranchisement on election day.

III. Analysis of Comelec Management

1. **Comelec chose a technology and expected the country and its people to adjust to the technology instead of the other way around.**

2. **The AES was technology-centered and not voter-centered.**

The AES was designed to be technology-centered not people-centered, a major deviation from the standard IT project framework. This was manifested, for example, in the voter education design, late release and unoperationalized continuity plan, the clustering of too many voters in one precinct, and the poll body's inability to cleanse the voters' list.

3. **Comelec lacked the technological know-how.**

The technical knowledge was centralized and exclusive instead of participative.

The commissioners are not ICT-capable and had to rely on consultants. One proof was Comelec Chairman Jose Melo's and some of its commissioners' inability to give direct answers to technical questions posed by lawmakers in various Joint Congressional Oversight Committee (JCOC) on the AES hearings as well as by automated election watchdogs and IT groups.

This lack of technical expertise was a major factor in Comelec's failure to fulfil its mandate as the primary decision-making body. Because of its lack of know-how on the PCOS-OMR technology, its decisions had become heavily reliant on the recommendations of Smartmatic-TIM. The supposed centralized decision-making power of Comelec and the Commissioners en banc as the managers of the election was deflected to

Smartmatic-TIM. Also, Comelec's tendency to macro manage when it comes to Smartmatic-TIM allowed Smartmatic-TIM to do its own thing and follow its own whims. This hands-off policy is a consequence of putting too much trust on the company and the technology.

It is also alleged that although there were CAC members who are also ICT experts, no one among them had expertise on the automated election. This limited the council's ability to assist Comelec, and the supposed Comelec technical brain was not able to fully perform its functions.

4. Comelec did not tap the Filipino ICT sector

From the beginning of the implementation of AES, Comelec adopted an exclusivist policy. The other face of outsourcing the election technology is the failure to tap and mobilize the expertise of the Filipino ICT sector and local poll technology that has evolved since parts of the election process were computerized in the late 1980s. Definitely, Filipino ICT which is at par with world standards is more qualified to provide the election technology applicable to the country's "actual conditions," as the election law provides. The constitutional provision that calls for the promotion of Filipino science and technology and its use in domestic affairs and endeavours should have been the guiding principle in the implementation of AES. Aside from this, transparency and accountability is best ensured under a system that uses local technology and local providers. There will always be constitutional questions whenever a critical domestic political exercise such as election is entrusted under an outsourcing arrangement to a foreign profit-making company.

The 2010 automated elections was a lost opportunity to harness Filipino ICT.

Related to this, there should be full transparency and accountability on the role of a foreign-funded election promoter like the International Foundation for Electoral Systems (IFES). Claiming to be an NGO, IFES is funded by the U.S. state department with election programs in many countries aside from the Philippines. IFES's engagement with Comelec has ranged from consultancy and training to marketing modern election technology. IFES has been asked to conduct a post-election assessment for Comelec for which all election documents were turned over – the same public information whose disclosure was denied to CenPEG and other election watchdogs.

The role of the U.S. government and its agencies in Philippine elections is a historical fact since this political process was introduced by the Americans at the turn of the 20th century when the country came under U.S. colonial rule. In the current situation, IFES's partnership and technical assistance with Comelec dates back in 2004 and involves developing strategies for electoral reform and modernization and training of poll inspectors. In November 2008, the foundation sponsored an election technology conference and vendors' fair to promote the latest election equipment and supplies.

Based on its own website (www.ifes.org), IFES as an "NGO" is strategically funded by the U.S. government and its key policy development agencies, namely the State Department, Agency for International Development (USAID) and Education Department, among others. As a U.S. government-funded "non-partisan" electoral "NGO" providing "technical assistance" and "applying field-based research to the electoral cycle worldwide," IFES operates various election projects in at least 54 poor and conflict-ridden countries world-wide where the U.S. government maintains strategic geo-political interests - including Iraq, West Bank/Gaza, Haiti, Bangladesh, Afghanistan, Yemen, and the Philippines. Its key figures are right-wing members of the Republican Party, reports say.

Comelec's partnership with IFES and SysTest Labs, both U.S. groups, and Smartmatic, a Venezuelan company, raises questions with regard the poll body's engaging the services of foreign agencies in disregard for IT expertise and technology that is either available or can be developed at home. A constitutional and sovereignty issue was raised by the former Chief Justice of the Supreme Court during the oral arguments for the TRO case filed by the Concerned Citizens Movement against the Comelec-Smartmatic contract in mid-2009 particularly on the matter of a domestic electoral exercise where the system is outsourced to a foreign company. Moreover, Comelec's refusal to disclose election documents to CenPEG and other Filipino

watchdogs who desire to exercise their right to public information in pursuit of research while turning over the same materials to a foreign agency – IFES – is restrictive and discriminatory, to say the least.

5. Comelec failed to hold Smartmatic accountable for not meeting commitments.

Among the expected deliverables that Smartmatic failed to meet were the on-schedule delivery of PCOS machines from China and the absence of BEI's digital signatures in election returns. Smartmatic also failed to ensure the security of the system as shown by inaccurate timestamps and an independent source code review.

Comelec, instead of holding Smartmatic culpable for its major blunders in the May 2010 elections, gave the company a kid-glove treatment and a pat on the back.

6. Overall lack of transparency

The AES was not transparent from the issue of the source code and the denial of access to election-related documents for the study of interest groups such as CenPEG and AES Watch. It is also not transparent down to the provision of wrong information to the general public that the reconfiguration of CF cards after the May 3 fiasco will all be done in Smartmatic's warehouse in Cabuyao. Even the utilization of the chosen technology at the precinct level, the PCOS machine, lacked features that would lend transparency to the counting process.

Transparency is a basic election tenet. They serve as the citizens' mechanism in exacting accountability from election actors. But Comelec and Smartmatic-TIM's adherence to the principle of exclusivity and antagonistic stance toward inquiries, criticisms and suggestions from election watchdogs restricted the space for election watchdogs to do their work and ensure an accurate, secure and credible election.

7. Comelec outsourced a "democratic" exercise to a foreign entity.

Smartmatic-TIM is 60% Filipino owned, but it was only the Venezuelans or Smartmatic officials themselves who were visible during the entire course of the AES. If we are to recall back in 2009, right before the awarding of the winning bidder, TIM tried to back out from its consortium with Smartmatic. Comelec even attempted to mediate between the two companies, showing shades of partiality toward Smartmatic-TIM. Smartmatic and TIM were eventually able to overcome this rift, but TIM it seems had intentionally or unintentionally kept itself on the sidelines of the AES implementation.

Atty. Harry Roque on behalf of the Concerned Citizens Movement (CCM) filed a case in the Supreme Court alleging that Comelec had surrendered its mandate to Smartmatic-TIM to run the elections and that the Smartmatic-TIM partnership is a violation of the Anti-Dummy Law.

The hiring of a foreign company to run the 2010 automated elections has also been called into question in light of the fact that the country has an ICT industry whose competence is comparable to ICT industries of other countries. The 2010 automated elections was a lost opportunity to harness Filipino ICT.

8. Change in management

Additional research and data from informants knowledgeable with Comelec administration showed that change management as an important systems integration discipline that includes configuration, contract, finance, procurement, quality, risk, resource, requirements, support, training, and integrated logistics in the context of implementing a mission-critical project of national scope was never conceived formally much less implemented as evidenced by the ad hoc manner by which changes in the entire electoral system were implemented. In the case of the AES implementation, the only focus was on the technical aspects of the project with the other equally critical components for a successful roll-out dealt with only as "afterthoughts" or reactively in response to various snafus.

Sources told Project 3030 research that even with Comelec commissioners having no full grasp of the whole AES system their mindset was dictated by the gung-ho objective of pushing the AES at all costs. At the Project Management Office (PMO) level, there was a lack of competence in the technical and project management skills aspects that are critically needed for a successful implementation. Nobody among the Comelec insiders in the PMO even had any formal training in project management.

As far as preparing for change management is concerned, the same sources said the most that was done was a short, high-level introductory session on the AES. Risks and quality were not covered as evidenced by the many operational lapses that happened and legal violations committed characterizing the entire implementation especially in the area of security.

At the field level, the focus was on how to operate the system only if it works perfectly. Nothing was imparted upon the thousands of poll inspectors about the handling of system abnormalities when they happen. As shown on May 10 itself, the BEIs and BOCs were generally clueless on what to do during the many emergency situations that arose.

Considering that the vote verification functionality was dropped out of fear that the voting cycle on the PCOS would be the bottleneck, this is unacceptable since what was sacrificed was a basic voter right. Some careful and correct pre-election simulation studies could have resolved this issue had these been done - definitely a change management area of concern. There was a Usability Study that could have covered this and which was to be conducted by De La Salle University long before the technology choice was made but nothing happened to it. In the end, the technology choice was made without a really exhaustive comparative critical analysis of all technology options.

In another area, the Comelec Advisory Council (CAC) is a law creation and functioned as required in a going-through-the-motions mode but what happened was a case of blind-leading-the-blind. The council could not have counselled effectively and correctly when nobody in the CAC or its supporting entities is an elections and elections-technology savvy person, the informants said. Suggestions forwarded by Comelec in the election-day operational aspects were not listened to by the CAC (especially the chairman who it is doubtful whether he has ever project-managed a large systems integration project of equal or bigger scale anywhere yet the law requires that all CAC members must have such minimum qualification).

On surface, the defined relationship between the Comelec and Smartmatic-TIM is that of a normal client-provider tie-up. However, looking closely at the financials and project management aspects as well as the deliverables, the contract had a lot of departures and distortions from the requirements of the RFP/TOR in favor of the provider. For example. the payment schedule is one of the sweetest deals one can see ever in an elections automation contract that favor Smartmatic-TIM. Logically, payments except for mobilization and tangible components such as hardware and systems software, etc. should be a no-results-no-pay deal. The endpoint of the automated elections system should be the material delivery upon the proclamation of all the winning candidates based on uncontested electronic results. But the contract stipulates that 90% of the contract price will be paid even before the first winning candidate had been proclaimed. The Venezuelans could have left on the last flight out on the night of May 10 and forgot about the remaining 10%. That's how lopsided the contract was!

At some point, the performance bond was reduced drastically leaving a pittance for the Comelec to run after in case of non-performance. On the deliverables, many items which are supposed to be included in the original contract and the RFP/TOR were made as add-ons with Comelec paying separately on top of the contract price. Examples of this are the voter education and BEI/BOC training, data communications links, UV lamps, delivery of the machines, and so forth. These add-ons run into several billions the bulk of which were awarded to the provider which did nothing but to subcontract these to others. The participation of TIM in the project management is widely known as insignificant in contrast to what the 60-40 ownership connotes.

Consequently, the provider became the pseudo-Comelec during the entire period of AES implementation. They were the "kings of the ballot box" - an unconstitutional situation as stated by a UP constitutional law professor and S4S. This situation is a no-choice or convenient-choice thing for Comelec for the commission was ill-prepared from the beginning. A very clear quid-pro-quo arrangement - the provider does all it wants to do at its advantage and Comelec accedes at the cost of legislating, forgetting the right of suffrage of the voters and ignoring strict legal requirements. The provider has been sued by an ex-mayor of San Jose del Monte. Its contract expires December 31, 2010.

IV. Electoral Knowledge Network's Administrative Considerations in Election Management

Below is an enumeration of Electoral Knowledge Network's <u>Administrative Considerations</u>[6].

Based on these guidelines, it is clear that the 2010 automated elections was poorly managed by the Comelec

Principal Administrative Considerations

<u>**Transparency**</u> - *the process must be open to scrutiny and accessible to all participants*
- Comelec failed by denying the public access to pertinent election documents and the AES source code.

<u>**Accountability**</u> - *there needs to be clear ownership and accountability of the electoral process; everyone needs to know where responsibility lies for decisions and what the line of command is*
- Comelec failed largely due to its dependence on Smartmatic-TIM and limited technical know-how. Comelec relinquished many of its responsibilities as election manager to Smartmatic-TIM.

<u>**Secrecy**</u> - *the participants must be confident that the actual voting process is secret and secure and that the choices of individual voters remain personal to them*
- Comelec failed, for example, by choosing to use long ballots.

<u>**Fraud and electoral offenses**</u> - *there must be proper systems to avert fraud during the electoral process and a clear code of offences so that all the participants know the penalties for inappropriate behaviour*
- Comelec failed by removing or failing to put proper safeguards in the AES

<u>**Open communications**</u> - *there must be ability for all participants and the general public to obtain information about the electoral process and, in turn, the effective distribution of information about the process by the electoral managers*
- Comelec failed by denying access to election documents and information and by hiding pertinent information behind a cloak of exclusivity throughout the AES implementation

In terms of administrative process, emphasis must be placed on:
- A clear strategic plan setting out the core areas of activity and what has to be achieved,
- A clear operational plan setting out the detail of the process and the time scale,
- Procedures to appoint key staff and properly train and equip them in advance of the process, as well as systems for the appointment and training of temporary staff,
- A fair and widely publicised system for dealing with complaints,
- Systems and processes in accord with the electoral law with the goal being to implement systems that are simple to apply and to understand. The electoral process at the operational level is likely to be in the hands of temporary staff; complex systems require more time to explain and to train staff and are more likely to result in mistakes.

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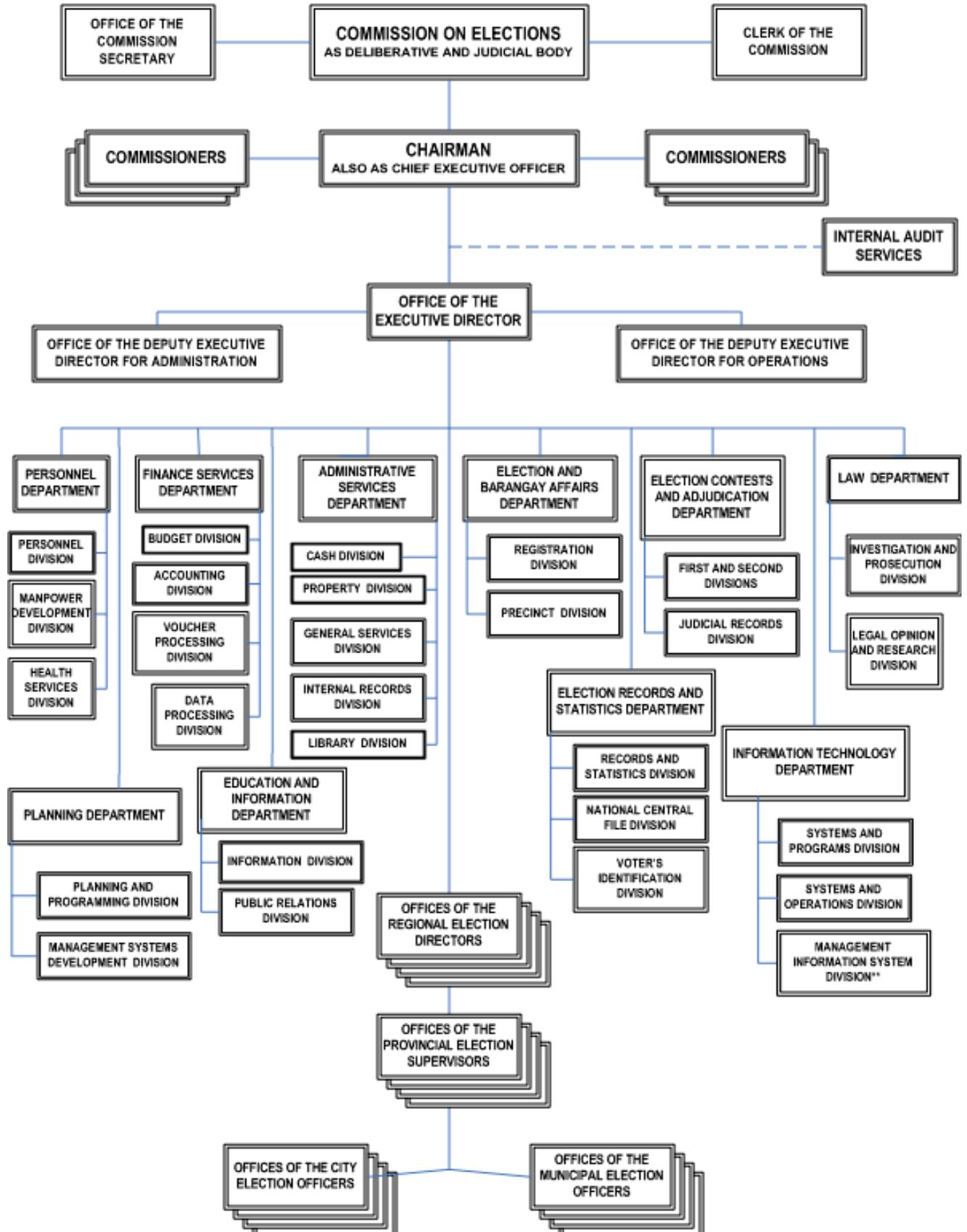
Source: Comelec.gov.ph

Annex B: Members of the Commission

Chairman Jose A.R. Melo

Commissioner Rene V. Sarmiento

Commissioner Nicodemo T. Ferrer

Commissioner Lucenito N. Tagle

Commissioner Armando C. Velasco

Commissioner Elias R. Yusoph

Commissioner Gregorio Y. Larrazabal

Annex C: Mandated Functions of the Commission

1. Enforce and administer all laws and regulations relative to the conduct of and elections, plebiscite, initiative, referendum, and recall.

2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay official decided by trial courts of limited jurisdiction.

3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

4. Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purposes of ensuring free, orderly, honest, peaceful credible elections.

5. Register, after sufficient publication, political parties, organizations, of coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens arms of the Commission on Elections.

6. File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of elections laws, including acts or omissions constituting election frauds, offenses, and malpractices.

7. Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.

8. Recommend to the President the removal of any officer of employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

9. Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

End Notes

1 The Commission on Elections' Historical Background, <http://www.comelec.gov.ph/aboutus_/bkground.html>, accessed October 28, 2010

2 RA 9369 and "*The Automated Election System 2010 of Comelec: Challenges and Uncertainties. A Preliminary Study of the AES, May-August 2009*" by the Center for People Empowerment in Governance in cooperation with the University of the Philippines College of Law.

3 A research and development institute under the Department of Science and Technology

4 <http://www.opednews.com/articles/EAC-Announces-Intention-to-by-Press-Release-081029-325.html>, accessed October 29, 2010

5 Smartmatic-TIM failed to deploy the first batch of PCOS machines from China on the scheduled date, December 2009.

6 <http://aceproject.org/main/english/em/em20.htm/?searchterm=election%20management%20principles>, accessed October 30, 2010