MAIN CONCLUSION

The findings of the EU-CenPEG Project 3030 report show that the Comelec's claim of "resounding success" for the first nationwide automated elections is flawed. It is as flawed as the overall conduct and process of the May 10, 2010 elections using the automated election system. The claim of success was based on the "quick results" of the elections – which itself is disputable. The claim suffers from the fatal mistake of glossing over the whole exercise's being derailed by a high incidence of technical glitches, strenuous delays in voting resulting in voters' disenfranchisement, widespread vote buying, and other forms of fraud. Perception – which Comelec tried to use by equating "speed" of the results with "success" for the whole electoral exercise – should be tested by scientific study and assessment not only of the results but the entire process of implementing the automated election system (AES) of which the Comelec had command responsibility.

Defective system

The high incidence of technical hitches, blunders, voting procedural errors, and other operational failures throughout the country during the May 10, 2010 automated elections can be attributed to the defective automated election system adopted by the Comelec. Among others, the AES was defective because it was not properly tested, its software programs were proven to contain many bugs and other deficiencies, and the infrastructures for a successful automated election (from transmission to road networks and power systems) were not ready. Moreover, it was aggravated by the lack of safeguards, security and reliability measures, as well as timely and effective continuity/contingency measures. All these proved to be damaging to the accuracy, security, and reliability of election returns.

Absent these vital mechanisms, the automated election system (AES) that was harnessed for the May 10 polls was not only vulnerable to various glitches and management failures but also favorable for electronic cheating including possible pre-loading of election results. There has been persistent clamor for Comelec to disclose all election documents not only as a public information to which all citizens have the right to access but also in order to test and validate its claim of election "success" and debunk allegations of electronic fraud.

Meanwhile, the incident reports cited in the EU-CenPEG Project 3030 report have been confirmed by similar disturbing findings that occurred nationwide and were validated again in congressional hearings, investigations, and Project 3030 post-May 10 case studies. Among these findings are: Mismatched time and date stamps on all PCOS machines; transmission failures; erroneous COCs in at least 57 provinces and cities; ballots and CF cards delivered manually for canvassing; discovery of the console port in all machines making the PCOS vulnerable to tampering; erroneous entries of total number of voters and votes cast in the national canvassing center and Congress; near anarchy at the clustered precincts; and, not to forget, the pre-election incidence of defective CF cards.

Based on the technical analysis of this report, the inadequacies and flaws attending the preparations for the May 10 automated election (ranging from an independent source code review, lack of digital signature, to voter verifiability) as implemented by Comelec with its foreign partner, Smartmatic, were contributory to the glitches and other irregularities that took place on election day and thereafter. The deficient and flawed election preparations, as CenPEG and other citizens groups had warned, became vulnerable not only to technical glitches and other irregularities but also to automated fraud, based on several election protests some of which were studied by CenPEG as well as voters disenfranchisement.

All of these have tainted the integrity, credibility, and accuracy of the PCOS machines and the election system.

Definitely, aside from these weaknesses, the Comelec's claim of "success" should be rectified because AES could do nothing against the widespread vote buying, irregular voters' lists, and election-related violence not to mention allegations of corruption that – in many respects - also affected the conduct of the election including in the local races. Needless to say, the defects, short-cuts, and other lapses attending the preparations for the automated polls showed Comelec's poor compliance with the AES law, RA 9369, and other election-related laws.

Coming from the voices and testimonies of local Comelec personnel, poll inspectors, IT technicians, and even poll watchers and voters themselves, the various case studies conducted post-mortem revealed in vivid details and statistics the ground realities that contradicted Comelec's claim of success in the May 10 elections. Among others, they also showed the lack of competent preparations, training and education, poor coordination between the national and local offices of Comelec, and sheer helplessness in preventing violence, vote buying, and other forms of cheating that proved beyond doubt that automation is powerless in deterring the traditional norms of electoral process. There were also clear indications that electronic fraud was committed in many places.

Random Manual Audit

After much controversy, Comelec tried to comply with the random manual audit (RMA) requirement of the AES, as provided by law. To supervise the RMA, the Comelec commissioned the PPCRV - whose expertise and independence in post-election audit was challenged – and the auditing itself took at least three months to complete. The delays in the RMA – many activities of which were not transparent – became vulnerable to possible manipulation. In the end, the prescribed 99.995% accuracy rate of election results was not met. (See Felix Muga analysis in the report.)

In its Request for Proposal (RFP/ToR), the Comelec specified that, "10. The system shall count the voter's vote as marked on the ballot with an accuracy rating of at least 99.995 %." or an error rate of 0.005% (1 mark out of 20,000). On July 20, 2010, however, the Random Manual Audit Team reported a finding of 99.6% accuracy or an error rate of 0.4% (4 errors out of 1,000). The RMA design, an analysis made by Dr. Felix Muga II showed, was flawed and was vulnerable to arbitrariness. If the RMA was conducted to determine whether the "PCOS count is reliable," then the RMA should have examined all the positions in the last election.

Critical management failures

Other issues in the 2010 automated elections pointed 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, lack of security and accuracy safeguards and, most of all, lack of accountability measures. The Comelec, as the country's prime election manager according to the Philippine Constitution, exhibited a poor example in management practices.

These issues, as the analysis on management shows, also covered choosing a technology where the country and its people were expected to adjust to the technology instead of the other way around; implementing the AES as technology-centered and not voter-centered; lack of technological knowhow among the Comelec officials resulting in heavy reliance on the recommendations of Smartmatic-TIM; failure to tap the Filipino ICT sector.

As "speed" was prioritized over the more fundamental imperatives of accuracy, security, transparency, and reliability, Comelec more and more allowed the intervention of the "expertise" and untested technology of the system provider. This seeming fixation for "speed" ran the risks of removing vital mechanisms, short-cutting procedures, glossing over voter's rights and the principle of "secret voting, public counting" and, inevitably, bypassing strict constitutional and legal requirements. This is the reason why, with many of its officials more and more dependent on Smartmatic, Comelec practically abdicated its role as the principal Election Manager and allowed the foreign provider to call the shots almost every step of the way.

Comelec's partnership with the International Foundation for Electoral Systems (IFES) and SysTest Labs, both U.S. groups, and Smartmatic, a Venezuelan company with U.S. connections, raises questions with regard the poll body's engaging the services of foreign agencies to the disregard of IT expertise and technology that is either available or can be developed at home. 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, to say the least, restrictive and discriminatory. Not a few sectors – from the Supreme Court to election watchdogs and lawyers – have raised constitutional issues in connection with this partnership particularly with respect to outsourcing a sovereign political exercise to a foreign company.

To conclude at this point, the Comelec was driven by implementing the AES law at all costs and at the risk of disregarding vital components and objectives of the election law as well as the rigorous scientific requirements needed to implement it fairly and substantively. Was the Comelec leadership – composed of lawyers with no IT competence – under pressure by Congress to push through the election automation and out of political expediency amid threats of "no election" scenarios? The fact of the matter is that there were dissenting voices within the Comelec organization counseling against premature implementation due to poor preparations and infrastructural inadequacies. The fact of the matter is that there were also voices pressing for minimum safety nets and industry standards yet these concerns were in the main ignored.

Other problematic Comelec claims

Likewise, a few issues need to be clarified at this point:

Was the May 10 automated election fast? A typical voter took several hours to vote in the automated election compared to the previous manual system. Mr. Benigno S. Aquino III was proclaimed as President on June 9, 2010 – 30 days after the May 10 automated election; Mr. Joseph E. Estrada was proclaimed on May 30, 1998 – only 19 days after the May 11, 1998 manual election. Special elections had to be held for several months after the May 10 automated polls.

Was there "less human intervention" in the AES? Adding up the following who were involved in the preparation, manufacturing, deployment, installation of systems, and other operations - poll inspectors, technicians, security forces, poll watchers, trainers, printers, computer operators, testers, auditors, Telcos providers and their employees, forwarders and logistics personnel (including drivers and haulers of all sorts), safe keepers, youth volunteers, priests and nuns, media as well as paramilitary and PAGs, cheaters and their instruments – millions of people were involved, in one way or the other. More human intervention was needed, particularly by thousands of teachers and other poll inspectors, in order to save the whole system from an automated disaster.

There were also nine nationalities from nine different countries involved in the preparation and implementation of the automated elections: Filipino, Venezuelan, American, Barbados, Chinese, Taiwanese, Malaysian, Canadian, and Dutch.

Did it "modernize democracy"? How modern can you get with millions of voters waiting in line for 3-9 hours to vote, some fainting from exhaustion and a few others dying? Traditional forms of cheating still "terrorized" voters. Did it allow the expression of the people's sovereign will?

The "dream poll"? You be the one to answer.

Voter's rights, transparency, integrity, and Filipino IT

The overarching issues that need to be stressed are the following:

Promoting voter's rights: The Comelec-Smartmatic AES failed to promote the democratic principle of "secret voting, public counting". Voting turnout – at the conservative estimate of 75% is the lowest since 1986; disenfranchisement incidence was evidently high; PCOS was not voter-friendly;

official voter education was inadequate and created the illusion that everything will be fine if you "trust the machine"

Transparency: Comelec tried to comply but more in form and not in substance. The poll body's lack of transparency and general refusal to disclose public information left numerous questions unanswered particularly with regard to contracts, source code, transmission data, and other vital documents. It left the voter unaware of the implications of the system on his/her rights. Instead of promoting the automated election as a public and participative exercise, AES promoted a "culture of expertism" and election as a "profit-making industry." Or is automated election already for sale?

Integrity of the Vote: The constitutional sanctity of the vote was violated based on the lack of safeguards, security, and accuracy.

Harnessing Filipino IT and other sectors: Since the beginning of AES, Comelec did not tap the expertise and indigenous technology of the Filipino IT sector despite the Constitutional principles of developing and using Filipino science and technology for the country's national affairs. "Actual conditions" are better known by Filipinos themselves and "appropriate technology" for the election, as the law requires, is available or can be developed.

The conditions that Comelec and Smartmatic created for the AES made the system vulnerable to technical and management glitches and favorable for electronic cheating like pre-loading and pre-programming. Comelec erred by its inability to ensure the installation and enabling of various security, accuracy, transparency, and security mechanisms and safeguards thereby making the system's implementation become inconsistent with constitutional and legal requirements. The magnitude of the mishaps, glitches, and flaws that we have seen taint the credibility and accuracy of the election results.

Accountability and policy of exclusion

Under the circumstances, Comelec should be made accountable for making decisions that are inconsistent with the RA 9369 requirements involving "the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people." The poll body also failed to adopt "the most suitable technology of demonstrated capability taking into account the situation prevailing in the area and the funds available for the purpose."

The procurement law and RA 9369 should be upheld to test Comelec's accountability with regard to the still-questionable contract with the foreign consortium Smartmatic; on the real ownership of the vital source code, programs, and systems; the absence of public bidding and other requirements in other transactions (logistics, voter education, secrecy folders, UV scanners, etc.). Comelec should explain why it chose to outsource the election automation when the Constitution and RA 9369 explicitly provide for the use of Filipino science and technology and the adoption of a technology appropriate for the country's "actual conditions." Was the country's sovereignty compromised when Comelec virtually abdicated its responsibility as election manager in favor of a foreign company? Were the voters' sovereign will expressed freely in the absence of features that guarantee secret voting and public counting, verifiability, and auditability – not to mention the fact that election results may have been tainted by the absence of accuracy and security safeguards?

Moreover, the right to public information suffered with Comelec's lack of transparency. The poll body failed – and continues to fail – to meet the transparency requirements of the election system by its intransigent and unexplained refusal to deny citizens' groups access to vital election documents. Its lack of transparency left majority of the electorate misinformed and uninformed, duped by the illusion about automated election modernizing democracy and weeding out fraud.

To quote the president of TI-Philippines, Judge Dolores Espanol, until CenPEG and AES Watch publicized their appraisal of what happened on election day the truth about the automated election system dysfunction was hidden by Comelec from the public. "The Comelec has been the most un-transparent in the whole election exercise by not disclosing vital election documents," she said. Some observers have described this lack of transparency as a "criminal act."

Aggravating this lack of transparency is a policy of exclusion maintained against critics from all walks of life including ITs, academics, poll watchdogs, and people's organizations. Such policy of exclusion only exposed Comelec's closed-door policy against public engagement that is contrary to the very Constitution the poll body promised to uphold – that governance is a partnership between the state and "civil society", of all stakeholders.

Nevertheless, the battle for the election source code scored a victory when, on Sept. 21, the Supreme Court (SC) in its ruling on CenPEG's petition for mandamus directed the Comelec to release the source code for independent review by the petitioner and other independent parties. David A. Wagner, the principal investigator of the source code review for California and computer science professor at the University of California-Berkeley, congratulated CenPEG for the victory but asserted, as the SC decision says, that its release should be "unrestricted."

The SC's favorable ruling on the source code review is a breakthrough - the first for a country in the whole world. On this case, the high court's action on CenPEG's request for mandamus is a distinct service to the Filipino people's quest for a democratic and credible election.

And if there is anything positive about the whole exercise it is that it forced millions of people, including teachers, voters, citizens groups, and poll watchers to intervene and push through with the election.

What summons all Filipinos now – especially the Filipino IT community – is to demand for the full disclosure of all election information. This is to complete the citizens' unfinished task of conducting their own appraisal of the first automated election and for the whole country to become better prepared for the next election. *EU-CenPEG Project 3030*