



CEPPS Philippines Election Observation Program
Strengthening the Electoral Process
IFES Final Report

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Authors:

Peter Erben

Beverly Hagerdon Thakur

Craig Jenness

Ian Smith

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1. Executive Summary

The Philippine Commission on Elections (COMELEC) is a constitutional body with broad powers designed to make it independent from other government bodies. Statutorily, COMELEC could be one of the most powerful electoral management bodies in the world. COMELEC suffers from a number of serious institutional deficiencies that limit its capacity to administer quality elections. It has limited professional and technical capacity; a weak and poorly resourced field structure; organizational problems including a commissioner-in-charge management approach; and an absence of standard operating procedures required to administer such a large organization. Because of its numerous shortcomings, COMELEC has relied extensively on support of other government bodies and civil society to administer elections.

The 2004 election cycle was particularly flawed. COMELEC's plans and programs for the May 10 elections were disrupted by the late release of funds by Congress and the Supreme Court's decisions to stop the automation of polling, counting, and transmission of results from taking place. Given the problems mentioned above, however, it is uncertain that COMELEC would have had the capacity to successfully implement these programs. Transition to a computerized central voter registry was similarly abandoned only days before the election and election officers reverted to using manual voters' lists and voter records. Voter education efforts were uncoordinated and poorly implemented. Often, voters were not informed of new precinct information instructing them where to vote. The training of polling officials was done through parallel training programs developed by the Department of Education, COMELEC, and civil society. Ironically, COMELEC's training was the least effective of the three and the most poorly organized, relying on broadcast lectures to groups of up to 500 and the distribution of a *General Instructions* document on polling in lieu of a proper training curriculum.

Election Day was marred by numerous logistical, procedural, and organizational problems. Many voters did not know where to vote, precincts and polling stations were poorly organized, and voters' lists were inaccurate. A poorly designed ballot and crowded polling locations in urban areas made voting difficult and did not protect the secrecy of the vote. Numerous procedures were not understood or were ignored due to poor training and weak supervision. The counting process was painfully slow due to complicated ballots and unnecessary procedures. Still, voter turnout was respectable at approximately 74%, based on valid votes cast. Boards of Election Inspectors (BEI) did their best to find creative solutions to problems.

The tabulation process, known as canvassing, is complex. Despite numerous safeguards, it suffers from the perception of fraud. Congress tabulates presidential and vice-presidential votes. This leaves excessive room for delay and politicization, as was vividly demonstrated in this election.

The complaints and adjudication process contains substantial due process safeguards. However, it is complex, extremely slow, and plagued by frivolous complaints.

While Election Day was considered to be relatively peaceful, election-related violence and intimidation still have a negative impact on the overall quality of the electoral process, in particular during the campaign period and especially in relation to local level races.

Alleged cheating and fraud is a common feature of Philippine elections. Some of these allegations are misperceptions of a distrustful public or face saving by losing candidates. At the same time, there is little doubt that some fraud, particularly vote buying and selling, was committed in the 2004 elections and may have influenced some lower level races. To guard against this in the future, electoral reform should be high on the political agenda of the newly elected president and Congress.

Key Recommendations

What appears below is an overview of the 100+ recommendations that appear in this report. It is intended to acquaint readers with the focus and substance of those key recommendations. IFES would advise stakeholders interested in electoral reform in the Philippines to thoroughly review the detailed

findings, conclusions, and recommendations presented in this report to ensure accurate and complete comprehension. It is hoped that these recommendations will contribute to the dialogue among Philippine stakeholders and to the hard and detailed work of reaching consensus on necessary legal, administrative, and institutional reforms prior to the next national election in 2007.

1. Pass draft laws to strengthen political parties, amend the Party List Law, implement sectoral representation at local levels, and ban “permits to campaign” as soon as possible.
2. Consolidate all relevant electoral laws, other than constitutional provisions, in a new Omnibus Election Code.
3. Open the system of presidential appointment of election commissioners to allow for a nomination system and input from other stakeholders.
4. Conduct an independent review of the structure and professional capacity of COMELEC in order to develop a professionalization program and standard operating procedures.
5. Proceed with implementation of the three-phase modernization program, including voter registration, automation of the count, and canvass and electronic transmission of results. A comprehensive review of the modernization plan would be advisable before moving forward¹.
6. Empower COMELEC to remove names from the voter registry provided that voters are duly notified and given the option to appeal.
7. Strengthen rule of law, by holding political parties responsible for acts of violence directed at rival parties and prosecuting all election-related crime through a speedier adjudication process.
8. Revise polling procedures to ensure the secrecy of the vote, thereby minimizing the effectiveness of vote buying and intimidation of voters.
9. Develop a clear official voter education program and leverage resources by forming strategic partnerships between COMELEC and other state entities (Department of Education, Philippine National Police), civil society organizations (NAMFREL and PPCRV), and local government (Barangay captains).
10. Modernize the COMELEC training program for BEIs and Boards of Canvassers (BOC) by applying adult education techniques, developing training manuals and materials, and planning an effective cascade-training program.
11. Ensure transparency of the election results by publicly posting a copy of the precinct election return outside of the precinct door and on the Internet.
12. If Congress is to continue to canvass presidential results, create a standing set of rules for its canvassing responsibilities. The rules should reflect the ministerial and non-partisan nature of the canvass.
13. In the event of a review of the current Constitution, consider terminating the practice of canvassing by Congress. The count and tabulation process should be the sole responsibility of the election administration and should eventually be fully automated.
14. Support parallel vote tabulation by a third party, regardless of whether or not automation is introduced, as it is essential for electoral credibility in the Philippines.
15. Streamline and consolidate the jurisdiction for dispute resolution. At minimum, COMELEC should be relieved of initial (trial) jurisdiction. Local or regional courts could take on a greater share of electoral cases. The idea of a specific “electoral court” could be considered.

16. Introduce measures to penalize or discourage frivolous complainants, including placing on the claimant the burden of demonstrating that there is some cogent evidence to support the claim and that proof of his/her case will materially effect the outcome.
17. Develop a greater range of sanctions to ensure tribunals apply penalties that are proportional to the offence. This could include fines, loss of media access, campaign restrictions, and public apologies.

2. Introduction

Project History

In response to an invitation issued by the president of the Republic of the Philippines, IFES and its CEPPS partners deployed a team of representatives in early March to the Philippines to assess the political situation leading up to the May 10 presidential and legislative elections. Funded by the United States Agency for International Development (USAID), the assessment aimed to determine how the respective organizations could contribute to the 10 May elections.

Subsequently, IFES agreed to participate in another joint CEPPS mission to implement the assessment's short-term recommendations and a program description was submitted.

The goals of the project were:

- To observe the pre-election, election, and post-election periods and provide technical suggestions to COMELEC and other key players.
- To host or participate in a post-election roundtable and briefings with CEPPS partners to evaluate the elections and make recommendations for longer-term election strengthening.
- To support the U.S. Embassy and its observation training event.
- To provide support to CEPPS partners' regarding media monitoring work.

Methodology

An experienced team of experts gathered the information for this report over a period of three months encompassing the pre-election, polling and counting, canvassing, and post-proclamation periods.

Team members conducted well over one hundred interviews with COMELEC officials, civil society organizations, the Department of Education, media representatives, local election experts, security officials, and senior politicians. While much of the work was done in Manila, many interviews and field visits were also conducted in a number of regions. A list of contacts is annexed. (See attached Annex III: IFES Contact List)

Facilitating the working groups and the roundtable event brought together all stakeholders for an informed and constructive discussion of the key changes needed in the Philippine electoral system. It is hoped the production and distribution of this final report, which presents the findings, analysis, conclusions, and recommendations of the program, will further the electoral reform agenda.

Content and Target Audience

This report is not a description of the May 10, 2004 elections. Rather, it is a thematic analysis of selected aspects of the Philippine electoral process. It does not attempt to deal with the many complexities in their entirety, but instead focuses on those areas where problems, real or perceived, are most prevalent.

Sections on political parties, civil society, and the media have not been included in this document, as it is expected these topics will be examined at length in the reports of the other CEPPS partners.

The target audience is any stakeholder who has an interest in electoral reform in the Philippines. The reader is assumed therefore to have a basic knowledge of the Philippines and its political and electoral systems.

The report deals with the existing electoral system. The final section of the report includes suggestions for electoral reform under a scenario where constitutional change becomes a reality. The report's conclusions and recommendations are not intended to be exhaustive, or definitive, but are intended to contribute to the ongoing debate on electoral reform in the Philippines.

3. Legal Framework

The legal framework for elections exists largely (in descending order of authority) in the Constitution, the Omnibus Election Code and subsequent laws, resolutions and rules of procedure of COMELEC.

Constitution

The Constitution was passed in 1987, after the fall of the Marcos regime. It sets forth the electoral framework and enshrines basic principles of freedom of expression, association, suffrage, and secrecy and sanctity of the ballot. It defines structures of government, terms of office, and sets election dates².

The Constitution mandates a strong Commission on Elections (COMELEC), which is independent from other branches of government. COMELEC is composed of seven members, appointed by the president, with the consent of the Congressional Commission on Appointments. Commissioners sit for a term of seven years without possibility of reappointment, and can be removed only through impeachment. COMELEC's mandate is to administer all elections, plebiscites, and referendums, and to inquire into and resolve electoral disputes or controversies. It has very broad executive and judicial authority. Among other things, it can deputize law enforcement agencies and other arms of the government, including the Armed Forces; act as prosecutor in election related criminal cases; and act as a first instance and appellate court in deciding electoral disputes.

As a constitutional body, COMELEC is less accountable to the other branches of government and the public. Nonetheless, there are some checks and balances:

- COMELEC decisions can be overturned by the Supreme Court, but only for jurisdictional excesses and grave breaches of authority.
- Although Congress cannot limit COMELEC's constitutional authority, it can pass laws that direct the overall conduct of elections and thus regulate what COMELEC does in practice.
- Congressional commissions may examine the work of COMELEC, although they cannot directly sanction COMELEC or its members.
- The Audit Commission may exercise financial oversight over all government bodies, including COMELEC.
- Commissioners may be removed by impeachment.

The underlying theory of the constitutional framers seems to have been to create a body able to completely shield the electoral process from political interference. Its authority, if realized, could make COMELEC one of the world's strongest and most independent election commissions.

Basic Laws

The basic election law is the *Omnibus Election Code* enacted December 3, 1985. It has been substantially amended by the 1987 Constitution, and at least seven major laws.

- *The Electoral Reforms Law of 1987* (RA 6646) – 1987
- *Synchronized Elections Law* (RA 7166) – 1992
- *The Party List Law* (RA 7941) - 1995
- “*Mindanao Automation*” (RA 8046) – 1995
- *Voter’s Registration Act of 1996* (RA 8189) – 1996
- *Electoral Modernization Act* (RA 8436) – 1997
- *Fair Election Act* (RA 9006) – 2001
- *Act Providing for Synchronized Barangay and SK Elections* (RA 9164) – 2002
- *Overseas Voting Act* (RA 9189) – 2003

(For more detail, see Annex V: Main Electoral Laws)

COMELEC Resolutions

COMELEC issues “resolutions” to exercise its administrative functions and implement the election laws. Resolutions are not just administrative edicts; they have the same force as laws made in Congress³. Breach of a COMELEC resolution can carry criminal sanctions, with a minimum penalty of one year in jail.

COMELEC’s practice is to issue resolutions on an *ad hoc* basis; a completely new set of resolutions is issued for each election. In principle, election laws and COMELEC resolutions are widely available. They are extensively debated in the media and other public fora, and amendments must be published in newspapers of general circulation before they become effective. Laws and resolutions are in English, a language understood by the majority (but not all) Filipinos. In practice, however, the plethora of laws, lack of consolidation, and an *ad hoc* approach to COMELEC resolutions is confusing, even for election practitioners, giving rise to an extraordinarily high number of electoral lawyers in the Philippines.

Not all COMELEC resolutions are issued in a timely fashion. For example, Resolution no. 7213, the main resolution on electoral contributions and expenditures, was passed on 31 May 2004, three weeks after the elections were held.

Pending or Proposed Laws

The Omnibus Election Code and subsequent laws provide a comprehensive framework that is largely in line with international standards. Nonetheless, there are serious problems and gaps in certain areas, which should be addressed as part of an electoral reform agenda for the newly convened 13th Congress.

Law to Strengthen the Political Party System^{*}

Most reformers consider this to be the most essential pending law. The intent is to encourage the development of parties based on platforms and programs, rather than on individuals and influence. Its most salient provisions include:

* Draft considered by 12th Congress.

- Regulation of conduct of political parties, including selection of leaders by party congress.
- Minimum funding by the state to duly registered national parties.
- Regulation of campaign financing and spending, including restricting individual campaign contributions.
- Banning so called “turncoatism” (the rampant practice of switching political affiliation, which weakens party structures, confuses voters, and undermines the concept of a viable opposition).

*Amendments to the Party List Law**

The Constitution requires that up to 20% of the members of the House of Representatives be “elected through a party-list system of registered national, regional, and sectoral parties and organizations”. The Supreme Court has determined that the current Party List Law is flawed in two major ways: The existing 2% threshold is prohibitive such that congressional seats remain vacant; and the law does not clearly define eligibility criteria to run under the party-list system.

The proposed amendments would clarify eligibility, and lower the threshold from 2.0 to 1.8 %. The law would increase the maximum number of seats per party from three to six.

*Implementing Law On Local Sectoral Representation**

This law is designed to ensure greater representation of marginalized or underrepresented groups at the local level, by initiating mandatory set aside seats for sectoral representation in local legislatures.

Law Banning “Permits to Campaign”

In some areas, particularly those under lesser control of the central authorities, it has become practice for local strongmen or armed groups to ask money from candidates for the right to campaign in the area. The draft law would specifically outlaw this practice.

Political Dynasties

The Constitution bans “political dynasties,” i.e., monopolies of political power by a limited number of families. Although the Constitution has been in force since 1987, members of Congress, many of whom come from long lines of political families, have failed to enact the laws necessary to implement the ban.

Other

The 2002 National Electoral Reform Summit, which brought together stakeholders from COMELEC, government, and NGOs, recommended passage of a law to broaden the knowledge of citizens and eligible voters of the electoral process, and a law mandating structural reforms in COMELEC.

Recommendations

Passage of Priority Laws

- Draft laws to strengthen political parties, amend the Party List Law, implement sectoral representation at local levels, and ban “permits to campaign” should be passed as soon as

* Draft considered by 12th Congress.

possible. It is well past time that Congress met its constitutional obligation to ban political dynasties, despite the obvious difficulty of the political debate.

- The Consortium on Electoral Reforms (CER) is planning a summit in September 2004 to follow up on the successful 2002 Electoral Reform Summit. Lawmakers, administrators, and activists should take advantage of this and similar opportunities to help define the electoral reform agenda for the new Congress.

Consolidation of Electoral Laws

- All relevant electoral laws, other than constitutional provisions, should be consolidated in a new Omnibus Election Code. If this is not politically possible, then at the least an official, user-friendly compilation of current laws and COMELEC resolutions should be produced and widely disseminated. COMELEC or the government should develop user-friendly and accessible public information packages on important elements of the electoral system.

Greater Uniformity and Consistency in COMELEC Resolutions

- It is imperative that the administrative and procedural framework laid down in COMELEC resolutions be flexible and responsive to changing circumstances. However, the current practice of re-doing the framework each election cycle creates uncertainty, and hinders efficiency and transparency. COMELEC resolutions should be a standing body of law, updated and amended as circumstances require. Resolutions should be passed well before elections.
- Congress should reconsider whether it is proper or desirable that an electoral body, even one with such broad constitutionally mandated powers, should have authority to issue *de facto* criminal laws.

4. COMELEC

The quality and credibility of the Filipino election process depends on a number of factors, one of the most important being COMELEC's performance. Numerous stakeholders across Filipino society and even staff of COMELEC itself were highly critical of the performance of COMELEC in the May 10 elections. While the performance of an election commission can and should be measured objectively, the subjective perceptions are equally as important when it comes to acceptance of election results. When examining how COMELEC could perform better as an institution, it is necessary to look at both improving the actual operational capacity of the organization as well as addressing factors contributing to its poor public perception.

COMELEC's Operational Capacity

COMELEC's chief responsibility is to deliver an effective electoral operation. The May 10, 2004 election was widely and justifiably criticized for its technical flaws. The principal cause was the failure to implement the three phases of modernization, namely: 1) full implementation of the biometric capturing system / re-establishing a functional voters' list; 2) automation of count and canvass; and 3) implementation of the VSAT results transmission system / COMELEC quick count. Serious flaws in the voters' list potentially disenfranchised numerous voters, and the absence of an automated count and canvass meant a repeat of the controversial and convoluted manual counting process.

These technical flaws are symptoms of a wider problem, namely, COMELEC has not evolved to meet emerging needs and is entrenched in an organizationally antiquated state. The drive to modernize COMELEC has been recognized, but has narrowly focused on implementation of some discrete technologies. The push for "modernization" has overlooked the need to modernize management and operations as well.

Management Structure

COMELEC staff members acknowledge the management structure at the top of the organization is seriously flawed. Originally, the Commission was designed to be the "board" of the organization providing policy direction through its resolutions. The implementation of these policies and the daily running of the operation were to be done by civil servants headed by the executive director. This approach, which is technically sound, has been eroded by the evolution of the Commissioner in Charge (CIC) system. Commissioners have divided all areas of responsibility among them. These responsibilities could include a specific subject, such as ballot printing, a headquarters, department, or even the field operations of a region. As a result, different regions have fallen under different commissioners with little coordination on operational issues. COMELEC effectively has seven department directors with each commissioner taking operational control over his/her area and managing them directly. The executive director position has lost authority and central control over the operation. The commissioners have widened their influence, expanded their staff, and increased spheres of control and power. (See Annex IV: Organizational Structure of COMELEC)

The CIC system has proven to be inefficient and ineffective. Operational management duties belong with the executive director and his/her staff, not the Commission. If commissioners were further removed from management responsibilities, they would be better able to focus on providing sorely needed oversight and policy guidance.

With commissioners being replaced periodically and long term civil servants having lost managerial control, COMELEC has little continuity in its handling of the organization. The fundamental problems in top management manifest themselves throughout the organization. As a result, COMELEC is limited when it comes to planning, coordinating, and implementing its activities in an effective manner.

Staffing

COMELEC has 2,000 permanent headquarters staff and 3,000 permanent field staff in more than 1,600 municipal, provincial, and regional election offices, placing it among the largest election management bodies in the world. Despite this large body of professional election administrators, COMELEC routinely has difficulty organizing basic activities such as training of polling officials, printing of ballots, updating of the voters' list, and the dissemination of voter education materials.

Recruitment appears to be based on civil service qualifications without defined job descriptions. Standard operating procedures do not exist and there is no staff development program in COMELEC. The director of personnel said there was no time for professional development training although he agreed, "many staff would benefit from office management training." Staff training is conducted when necessary and not as a matter of policy. The lack of clear job responsibilities and poor management is evident to anyone visiting COMELEC offices, which are either quite busy with tasks of questionable priority, or completely idle.

The need to professionalize COMELEC staff was consistently cited by stakeholders, COMELEC staff, and commissioners as a priority for improving the administration of elections in the Philippines. Professional development programs for COMELEC staff could be developed as a part of a broader reform package that addresses the overall structure, operation, and funding of COMELEC. Specific areas to be targeted for reform could include staffing (recruitment, training, and performance evaluations), organizational structure, and operations.

Field Structure

For the 2004 elections it was generally observed that COMELEC field staff played an important role in rescuing a poorly conceived and implemented operation by COMELEC headquarters, especially concerning the voters' list. Successes were achieved, despite the fact that COMELEC field offices are critically under-resourced and in need of improved administrative capacity and infrastructure.

Another capacity problem is the absence of reliable communication inside headquarters and with the field in general. There are visibly few computers in the organization and no on-line capacity. E-mail is rarely available and few field offices have facsimile capability. Supplies are often so scarce that offices sometimes cease to function. For example, an absence of ink and paper resulted in no voters' lists printed and displayed in many areas. In the absence of support from headquarters, field offices resorted to seeking support from the elected officials, an obvious and serious conflict of interest. One field station visited had become dependent on a car and printer made available by the incumbent mayor.

There is a weak relationship between the field election offices and both provincial offices and the headquarters of COMELEC. Election officers do not have confidence in the ability of provincial and headquarters staff to support them; instead they fear they will be reprimanded for asking for assistance. Conversely, election officers do not have the opportunity to give input into planning and program development. Election operational processes can only be strengthened when field personnel are integrated into the planning process. Team building between the differing areas within COMELEC is non-existent, though it would greatly improve the relationship between field and HQ. Creating opportunities through which election officers can share experiences and provide mutual support would improve communication and strengthen professional capacities.

Budget

COMELEC had no budget allocated from state funds for elections in 2004, as the general rule for disbursements in a given year is based on activities the previous year (there were no elections in 2003). COMELEC therefore had to request 4.7 billion Philippine pesos for elections from the incumbent president to be released from her special allowance. It is not an optimal situation to be "dependent" on a sitting president or competing candidate for an election budget. At the time of the election only a fraction of the budget had been released. The late release of funds had a debilitating effect on COMELEC's operations. The dependency on the current government negatively impacted the public's perception of their impartiality.

COMELEC's Credibility

Impartiality

To be effective, an election administration must be politically neutral, both in practice and in perception. Participants in the electoral process question COMELEC's impartiality. While it is difficult to evaluate the real nature of this alleged bias, negative perceptions are nearly as damaging to its credibility as proven bias.

When the impartiality of COMELEC is questioned, the focus is mostly on the commissioners themselves, who are believed to hold political allegiances, particularly to the presidency. It has been alleged that the presidential appointment of commissioners is actively used by the incumbent to influence the electoral process⁴. President Arroyo appointed five of the current seven commissioners. This includes the current COMELEC chairman, who was previously a politician and allegedly intends to run for office again. Accused by some of being a politician and not an impartial administrator, the chairman is widely considered to be uninterested in management of COMELEC and is continually under attack from other stakeholders and the media. In a recent public survey, the chairman received a very low approval rating, while COMELEC as an organization fared better.

There is also a perception among election stakeholders that incumbent commissioners have used their station for personal and political positioning by using the electoral appeals mechanism for political leverage.

With two impending retirements, the possibility of the Committee on Appointments rejecting the two recent commissioner reappointments and the possibility of Chairman Abalos resigning, the president has a unique opportunity to replace 5 out of 7 members of the Commission by 2005. It is difficult to see the credibility of the COMELEC improving without a drastic change in its current composition.

It is both advisable and possible to lessen the politicization of the Commission by initiating a procedure for nomination of commissioners. There are many options within the current constitutional framework. One suggestion, modeled on the judicial appointment system, would see the president select from a short list of qualified and broadly acceptable candidates. Candidate lists would be developed in consultations with civil society and other stakeholders, including perhaps through public hearings.

Public Relations

COMELEC's ability to perform not only depends on its internal capacity; it also depends on the ability and willingness of all electoral actors to support COMELEC to implement its mandate. COMELEC must also be willing to cooperate with other election stakeholders and share information in order to facilitate their activities. Civil society actors have been critical of COMELEC's lack of transparency and poor management decisions. In the past, civil society organizations were included in COMELEC decision-making processes. With the current Commission, there is less willingness to work with civil society and less openness with the media. This lack of transparency negatively impacts COMELEC's public image.

COMELEC has poor relations with the media. The media is highly critical of COMELEC and the organization is constantly coming across as being on the defensive. The problem goes as far as senior staff writing critical articles about COMELEC in the newspapers. There seems to be neither plan nor budget for any coordinated effort to improve public relations. In addition, the COMELEC spokesperson duties are assigned to the director of the Education and Information Department (EID). Voter education and public information are both full-time positions; each gets short-changed when combined in one position.

The inter-agency coordination seen between COMELEC and other election stakeholders at the regional, provincial, municipal, and city levels sets a good example for COMELEC headquarters in how developing relations with partner organizations, including the media, can facilitate a smooth functioning of election activities throughout the election period.

Recommendations

- Recognize that strengthening COMELEC begins with a comprehensive "modernization", not only by introducing new "hardware" but also by truly reforming the organization itself.
- Establish an electoral reform committee.
- Conduct a comprehensive audit of COMELEC management and operations with the aim of bringing professionalism to the Commission.
- Establish a commission and initiate a new procedure for nomination of candidates as COMELEC commissioners. Consider nominating candidates with a management background.
- Eliminate the CIC structure and restore management powers to the office of the executive director, including participation in *en banc* sessions. Involving the executive director and/or relevant senior staff in *en banc* sessions of the Commission to provide technical advice would help ensure that policy is effectively translated into practice.
- Consider an amendment to the Constitution to restructure COMELEC by separating management/policy oversight powers from quasi-judiciary functions into two institutions. Removing judicial responsibilities from COMELEC would increase their credibility, reduce political pressure, and allow them to focus on the administration of elections.
- Conduct a detailed and systematic assessment of COMELEC's training and professional development needs within the context of a broader structural review. This needs assessment should include a review of job descriptions and staffing tables both within COMELEC HQ and in

the regional and provincial offices. An external agency experienced in elections management should be considered for this task.

- Address deficiencies in staff capacities by designing and immediately implementing an ongoing professional development program for COMELEC rank and file, especially field personnel. There should be a special focus on election law for election officers.
- Support the Personnel Department, the Alliance of COMELEC Employees in Service, Inc., and the Education and Information Department in order to build their capacity to design relevant training programs.
- Strengthen the Education and Information Department (EID) of COMELEC as a priority. Consider separating the duties of the voter education section of this department from the public information responsibilities.
- Hire a professional public relations expert to design a long-term media and public relations strategy.
- Clarify and streamline departmental functions, consolidating some department functions to reduce overlap and allow more effective use of limited resources.
- Design and implement standard operating procedures manuals for all COMELEC departments, including field structures.
- Set up interview panels of senior staff using standard job descriptions written by the Personnel Department as standard procedure for all future recruitment. The hiring process would thus be more transparent and would ensure a close match between the qualifications of applicants and the requirements of the job.
- Institute regular performance evaluations for all staff, including senior managers and directors, and assign professional development training consistent with the needs of their particular job description.⁵
- Reduce the size of COMELEC staff at headquarters.
- Conduct internal (COMELEC) post-election reviews and evaluations at both HQ and field office level and synthesize this feedback in order to continually improve procedures for future elections.⁶
- Introduce basic organizational management tools such as staffing tables, organizational diagrams, job descriptions, and effective performance review processes as standard operating procedures within COMELEC.
- Introduce new office technology in order to improve communication with field offices.
- Include field personnel in project planning activities.
- Develop and implement voter education programs, especially vis-à-vis the modernization program, as an immediate priority of COMELEC and partner stakeholders.
- Revise the Omnibus Election Code to include specific minimum standard training requirements for all election officials, including election officers. Election officials at all levels must be provided with professional development training in management, logistics, planning, information dissemination, targeting information needs, presentation skills, and working with the media. This will be critical in all of the upcoming elections, especially if modernization continues.

5. Pre-election Issues

Automation of the Count and Canvass

On December 22, 1997, Congress enacted Republic Act No. 8436 authorizing COMELEC to use an automated election system for the process of voting, counting votes, and canvassing results of the national and local elections. After failed previous attempts to implement automation, COMELEC was ready to push through with automated processes in the last elections. However, the Supreme Court upheld a petition challenging COMELEC's award of the contract for the purchase of counting machines and equipment to a private consortium that allegedly did not participate in the public bidding. The Court castigated COMELEC for grave abuse of discretion and nullified the contract for purchase of machines supposed to be used in the recently held elections. Since the South Korean vendor has already rejected the request to buy back the counting machines, COMELEC appears to be stuck with the current technology they have acquired, which although not the best, is adequate for their needs.

The last minute failure of the automated count and canvassing program had an enormous impact on planning for Election Day. It affected the implementation of activities ranging from voter education to Board of Election Inspectors (BEI) training and preparation of voters' lists to printing and delivery of sensitive materials. While the Supreme Court ruled this was unavoidable due to technical reasons, it is hoped these issues can be clarified early enough to facilitate planning for the next election cycle.

Assuming these legal issues can be resolved, it is hoped the modernization program can move forward. As there have been numerous questions raised regarding the design of the various programs and their implementation, it would be advisable to first conduct a comprehensive review of the program to ensure it can be successfully carried without further waste of time and resources.

The focus on automation as the solution to all problems has deflected attention from other problems such as management deficiencies in COMELEC and the lack of voter education. Regardless of the voting method used, ballot design and ballot marking are technical issues and have educational ramifications for the public and other election stakeholders. For the public, automation will require a comprehensive voter education program, which was not a strong point of COMELEC this past election (see the chapter on Voter Education). For election stakeholders, an automated system will require internal training and familiarization with the new technology, including COMELEC employees, civil society organizations, BEI and Board of Canvassers (BOC) members, political party observers, and the media. This effort will require a new approach by COMELEC to providing educational and information services, while other organizations will need to be more vigilant to ensure they are updated on the new system and what their role will be in ensuring it is successfully implemented, be it training, monitoring, or reporting.

Recommendations

- COMELEC should proceed with the implementation of automation of the count and canvass using existing resources as soon as possible.
- COMELEC should develop new voting procedures, materials, and training programs based on the technical requirements of an automated voting process.
- COMELEC should develop an extensive voter education program to inform voters of anticipated changes to voting procedures and registration requirements.

Electronic Transmission of Results

The Supreme Court ruled that COMELEC could not proceed with electronic transmission of results due to a technicality (COMELEC had not notified the parties). It is believed that the real reason for blocking the project was enormous resistance to allowing COMELEC to have advance results for the presidential and vice presidential contests. In any event, it is likely that the Supreme Court came to COMELEC's rescue by

canceling Phases 2 and 3 because COMELEC was not prepared to implement either. COMELEC must now begin the implementation of these technologies in preparation for the next election cycle.

The last minute ruling against the implementation of this system, coming only days before the polls opened, resulted in chaos at all levels of COMELEC. As part of the preparation for implementing the electronic transmission of results, training on Very Small Aperture Terminal (VSAT) equipment was conducted for election officers just one week prior to Election Day. This poor planning resulted in election officers being taken away from their field offices during the most critical time of the election period. In the end, it was a misuse of time and resources, as the electronic transmission of results project was scrapped.

Recommendations

- COMELEC should proceed with implementation of the electronic transmission results project using existing resources as soon as possible.
- COMELEC should develop new training materials and programs based on the technical requirements of an electronic transmission of results program. Training programs should be planned well in advance of the implementation period.
- COMELEC should develop an extensive voter education program to inform voters about the purpose of the electronic transmission of results program.

Voter Registration

Until recently, voter registers were compiled manually at the city and municipal level. While the voters' list became computerized at this local level, it was still decentralized. In August 2003, COMELEC started implementation of Phase I of the automation process, referred to as the Voters Validation System (VVS). Under VVS, the validation process was based on the collection of biometric data, the production of a centralized voters' list, and the issuance of identification cards. To add to this complex program, COMELEC also decided to renumber the precincts⁷.

Both the validation and precinct re-organization programs were poorly designed and implemented. COMELEC did not compile a complete, functional, and centralized voters' list. The gathering and merging of numerous sets of data and changes failed. COMELEC was only able to validate a fraction of the actual electorate through the new system, while the remaining voters stayed in the old decentralized system. This resulted in the failure to centrally produce a voters' list in time for the claims and appeals period, thereby foregoing this fundamental legal requirement. The absence of a claims and appeals period not only denied voters the right to challenge names on the list, it also meant that voters in most regions of the country did not know where to vote.

The goal behind validation and centralization of the voter registry was to identify duplicate entries. This failed for three reasons: 1) only a fraction of the electorate was included; 2) it wasn't mandatory for people to validate their information; and 3) the system did not have the capacity to process all the voters or check duplicates. In addition, COMELEC did not even have the legal authority to remove duplicates when found. Under the current system, the onus for these administrative changes lies with the voter and, as a result, COMELEC field staff cannot easily remove double registrants or deceased voters. COMELEC must have the authority to remove voters from the list. To prevent disenfranchisement, voters should have the right to appeal these changes to the voters' list. In order to be sustainable, it is important that the appeal process is simple and swift.

COMELEC headquarters was expected to produce and distribute voters' lists for each and every precinct in the country. Shortly before the elections, it became clear that this would not happen. The voters' lists that were produced were so flawed that they were completely unusable to control voters on Election Day. Recognizing this, COMELEC asked the election officers to salvage the situation by reverting to their decentralized lists and records. These records had become outdated, as they did not include the many new voters who registered or changed their address under the new validation system.

The deeply flawed voters' list, with missing names, incorrect precinct allocations, etc. resulted in numerous voters being disenfranchised on Election Day. In many polling locations throughout the country, there was confusion among voters in finding their proper precinct. Many of the voters could not find their names on the lists for administrative reasons (changed precincts, the poor distribution of voter information sheets, the absence of a display period, etc.). Others had been removed from the voters' list because they had not voted in the two previous elections. While it is recognized that some voters had been genuinely disenfranchised,⁸ in some cases the responsibility does fall back on voters who have not voted in the past two elections or had not registered their move with the local Election Office⁹.

Fixing the voter registry in the Philippines is essential for the conduct of future elections. It does, however, seem there are two fundamentally different approaches that need to be evaluated: 1) implement the modernized Phase I registration methodology, including the issuance of mandatory Voter ID cards (requiring a monumental investment of time and resources); or 2) revert back to the decentralized voter registration system without biometric data capturing. We believe, that for a meaningful evolution of the Philippine election system to take place, the first option is the answer. We also recognize that COMELEC at present lacks the capacity to implement this solution and that the significant resources needed might not be made available.

Recommendations

- COMELEC should proceed with the modernization of the voter registry, including the production of mandatory voter ID cards, upon a careful review of all aspects of the program.
- COMELEC should have the authority to remove names from the voter registry provided that voters are duly notified and provided with the option to appeal in person at their local election office.
- COMELEC should develop new training materials and programs based on the technical requirements of this voter registration program.
- COMELEC should develop an extensive voter education program to inform voters of their responsibilities under this voter registration system.

Voter Education

COMELEC did not implement an effective voter education campaign. Civil society organizations such as PPCRV tried to step in to inform voters on how to register and how to vote, but their efforts were often frustrated by the lack of guidance or materials from COMELEC. Barangay captains also played an important role in providing voter information to the public regarding their precinct. Other voter education efforts by civil society actors focused on general messages of participation in the political process.

Not only is COMELEC bound by law to perform voter education activities, it will benefit from making sure that voters know exactly how to cast their vote and what will happen to their vote. COMELEC needs to regain the confidence of the public; one important tool could be a simple, sustained, and strong voter education program.

During field visits it was difficult to find evidence of a voter education or voter information program in action. In some areas, the election officer was able to distribute practice ballots or "Voter Information Sheets," which allowed voters to readily identify the precinct to which they had been assigned for voting. Candidate forums were organized with some success, but in some areas election officers funded these events partly from their own resources due to the absence of COMELEC funding. Prior to the actual election process and during the voter registration update, some election officers were unable to publicize the necessity for voters to check their names on the voters' list as a means of ensuring that their registration was correct and thereby ascertaining the correct precinct at which to vote on Election Day. This was again due mainly to the lack of COMELEC funding.

COMELEC voter education planning was *ad hoc* and often activities were started and left unimplemented. Materials were developed very late or not at all and even when developed on time, little was done to effectively disseminate the voter education materials. For example a *Calendar of Activities*, a *Primer on the Electoral System*, and *Educational System FAQs* were produced but not distributed. Poor design and limited distribution rendered most of these materials useless. Mass media (newspapers, radio, and television) were only used for “panel interviews” and no public service announcements (PSA) were produced¹⁰. The Omnibus Election Code Resolution No. 6667 clearly states that the Education and Information Department of COMELEC shall publish the *General Instructions* in two daily newspapers on or before March 22, 2004, but this too was not done due to the lack of organizational capacity of COMELEC.

Election officers and senior COMELEC staff did attempt some voter education through open forums at the Barangay level, which were effective in some cases. Typical voter questions focused on ID requirements on Election Day. The director of the Education and Information Department of COMELEC herself attended some of these Barangay meetings or gave addresses at schools and colleges in the weeks prior to the election; this had little impact nationally and was not an effective use of her time.

COMELEC’s inability to inform voters will be made even more apparent should there be any major changes to the electoral system, such as the introduction of electronic voting machines.

Many stakeholders have emphasized the importance of ongoing, broad-based voter education to increase voters’ knowledge and understanding of the election process. Voter education can also address the lack of public confidence in the electoral system and increase accountability of election administrators and elected officials. For this reason, many teachers, COMELEC officials, Philippine National Police (PNP) officials, and representatives from civil society have strongly urged that civics be introduced in school curricula.

Recommendations

Voter education efforts need to begin well in advance of elections and different stakeholders have an important role to play in informing and educating voters. The following are suggested approaches for conducting voter education in the Philippines:

- COMELEC should conduct a **voter information** campaign to inform voters of basic information enabling qualified citizens to vote, including the date, time, and place of voting; the type of election; identification necessary to establish eligibility, registration requirements, and mechanisms for voting. COMELEC should plan and budget for a combination of printed materials and radio and television PSAs to be disseminated and broadcast through a variety of sources.
- The Department of Education (DepEd) should introduce **civic education** to the elementary and secondary curricula to address broader concepts underpinning a democratic society such as the respective roles and responsibilities of citizens, government, political and special interests, the mass media, and the business and non-profit sectors as well as the significance of periodic and competitive elections. Curriculum would emphasize not only citizen awareness but also citizen participation in all aspects of democratic society. Age appropriate materials and activities could easily be developed by teachers up to and including helping students to organize their own school elections at the secondary level.¹¹
- Civil society organizations such as NAMFREL and PPCRV should conduct **voter education** to motivate and prepare voters to participate fully in elections. Messages should focus on more complex concepts related to voting and the electoral process such as the link between basic human rights and voting rights; the role, responsibilities, and rights of voters; the relationship between elections and democracy and the conditions necessary for democratic elections; secrecy of the ballot; why each vote is important and its impact on public accountability; and how votes translate into seats. Voter education requires more lead time for implementation than voter

information and, ideally, should be undertaken on an on-going basis. Barangay captains could play a role as a partner for assisting with local dissemination of informative materials.

- COMELEC should leverage resources by seeking alliances with organizations experienced in developing voter education programs. In this way, COMELEC can reduce its share of the financial burden to conduct effective voter education. COMELEC should consider forming strategic partnerships with other state entities (DepEd, PNP), civil society organizations (NAMFREL and PPCRV), and local government (Barangay captains).¹²
- COMELEC should decouple the “education” and “information” functions and create two separate departments for each task: a voter education department and a public spokesperson’s office.
- The “media monitoring” carried out by the Department of Education and Information should be contracted out to a professional firm. Having untrained COMELEC staff spot check television news programs amid their many other tasks is a weak attempt at controlling use of broadcast media for campaign purposes.
- There are many elements of society involved in an effective voter education campaign. Results of a recent regional roundtable in southern Luzon indicate that there is the potential to coordinate efforts to better inform voters for future elections. Such coordination efforts should be facilitated and supported by civil society groups willing to take the lead in such issues.¹³

Voter education initiatives will only become more critical as COMELEC moves to implement its automation program before the next election cycle.

Training of BEIs and BOCs

The scale of projects designed to train and meet the professional development needs of electoral staff in the Philippines is enormous. Over 216,000 electoral precincts required an excess of 600,000 Boards of Election Inspectors to be trained, of which 475,000 were teachers. Thousands of Boards of Canvassers, which included school superintendents and principals, also had to be trained. COMELEC itself has a permanent staff of almost 5,000, including 1,615 election officers.

The initial planning and resourcing for this program began in early 2003, but was severely disrupted by two external factors: 1) the decisions of the Supreme Court in January 2004 to cancel a contract for the purchase of 1,700 vote counting machines and to block the use of VSAT technology to transmit precinct results to COMELEC HQ; and 2) the lack of sufficient budgeted resources for the training program. These challenges were exacerbated by the lack of operational capacity of COMELEC to organize and conduct training in an effective manner.

These structural and financial limitations prompted other groups such as DepEd, PPCRV, and NAMFREL to develop their own training programs to compensate for COMELEC’s weaknesses. These initiatives, although admirable, led to duplication and waste of state and private resources, conflicting training programs, and further weakening of COMELEC’s authority as the electoral management body of the Philippines.

The Department of Education, as mandated by the Omnibus Election Code, was required by COMELEC to enlist all physically able teachers, principals, and superintendents to fulfill their duties as BEIs and BOCs. This arrangement has existed in previous elections and it is generally taken for granted by COMELEC that it will continue in future elections, despite assertions by senior DepEd officials that they plan to lobby Congress to release teachers from their legal obligations as BEIs.

DepEd recognized the limited capacity of COMELEC to develop curricula and train BEIs and decided, for the first time, to directly train their teachers in COMELEC procedures. This training was not required of DepEd, but was done in order to “support its constituents in performing their duties well and in protecting them from any form of intimidation and harassment.”¹⁴ Past experience had shown that teachers would

be subject to intimidation, lawsuits, and even violence while fulfilling their BEI and BOC duties.¹⁵ What was conceived as supplemental training to better prepare the teachers became the *de facto* training program for BEIs, as COMELEC's own training program was delayed and badly under-resourced.

DepEd, with its superior organizational capacity, effectively took over many of COMELEC's operational responsibilities related to training BEIs. DepEd trained almost 3,000 school superintendents, principals, and vice-principals as trainers; recruited and trained 475,000 teachers as BEIs; provided legal services to protect BEIs from unjust legal prosecution; conducted voter education; issued COMELEC updates directly to BEIs; paid *per diems* to BEIs prior to the election; established an Election Task Force staffed with 178 DepEd HQ staff and 4,400 regional and local staff to provide technical support to teachers' concerns prior to, during, and after Election Day; and printed its own procedures manual. Meanwhile, the Election and Information Department of COMELEC continued to develop its own training program with no consultation or attempt to coordinate efforts with the DepEd.¹⁶ The result was two completely separate but overlapping training programs with different messages and means of delivery. This dual training wasted state resources, created confusion among teachers, and resulted in many basic procedures not being followed on Election Day.

Department of Education BEI Training Program

DepEd used a cascade-training program, in which a two-day train-the-trainers (ToT) program was conducted over six weeks in February/March by the Development Academy of the Philippines (DAP). In total, just seventeen (17) ToT sessions were conducted: one for each region, without regard to class size. As a result, ToT sessions included 100 to 300 participants each and a total of 3,000 school superintendents, principals, and vice-principals were trained as trainers. These trainers then "echoed" a modified version of the DAP training to 475,000 teachers during the month of April.

The ToT curriculum consisted of almost a full day of "capacity building," which included over 400 Power Point slides on the political, economic, legal, and moral background to conducting elections in the Philippines. The remainder of the ToT consisted of a general overview of procedures. Since the *General Instructions* were not completed by COMELEC until April, all of the DAP procedures training for DepEd trainers was conducted based on the *General Instructions* issued for the 1998 elections. Many parts of this portion of the training were skipped over with trainers receiving subsequent updates in piecemeal fashion. As a result, many of the DepEd trainers were confused about the procedures and this greatly impacted the quality of echo training of BEIs.

COMELEC BEI Training Program

COMELEC's training program was also a crude form of cascade training based on the *General Instructions* (GIs). Five senior trainers from COMELEC, each paired with a senior COMELEC official,¹⁷ trained 1,615 election officers over a three-week period from the last week of March until mid-April.¹⁸ The "training" for the most part consisted of COMELEC trainers and senior staff reading the still incomplete GIs or displaying them by a Power Point presentation of 175 slides. This training was then echoed to 600,000 BEIs in one week at the end of April. With the election officers busy with other preparations, "training" was often done in single cohorts of up to 500 BEIs per municipality. There was no standardized approach to training of BEIs, however, and some EOs¹⁹ scheduled follow-up meetings to discuss procedural updates.

Often, teachers were not receptive to the training as they "were confident that they already knew all procedures" having previously received better training from DepEd. The worst trained BEIs were the 125,000 non-teacher BEIs (many working as BEIs for the first time) who received only COMELEC training and not the DepEd training.

Results of Training of BEIs

The BEI training programs of both COMELEC and DepEd were quite inadequate. Poor results were guaranteed by the fact that COMELEC and DepEd did not share resources or information and developed

their programs independently. Poor training meant that most new BEIs learned about their duties from “experienced” BEI members who passed on the benefits of their previous election experience, some of which was contrary to the Omnibus Election Code. As a result, numerous procedural errors were documented on Election Day.

Neither COMELEC nor DepEd produced a functional manual. Instead, they printed two versions of the same legal document. While DepEd tried to introduce participatory methods, these were undermined by the very large numbers of participants in their training sessions. There was no evaluation conducted of the training by participants nor was there any input or feedback between COMELEC and DepEd on their respective materials and programs during or after the training.

Despite the lack of adequate training materials, Election Day proceeded more smoothly than expected, as the teachers were able to improvise local solutions to compensate for procedures that were inadequate or poorly understood. It is unlikely, however, that such an uncoordinated and ineffective approach to training could effectively communicate any significant changes to the electoral system, such as computerization of polling or significant changes to the counting and canvassing procedures. The problem is even more pressing in light of DepEd’s determination to amend the Omnibus Election Code to release teachers from their legal obligations as default BEIs and BOCs.

Use of Teachers as BEIs and BOCs

While recognizing that teachers have been instrumental to the successful organization of elections in the Philippines, it is illogical and unfair that their participation is mandatory. Participating in elections is a civic privilege and right and should not be enforced by law. With proper training, any educated and responsible adult could work as an election official. One way to encourage participation as an electoral official would be to ensure that there are no criminal consequences for making mistakes on the job.

Conclusion

While sub-par for the purposes of a manual election process, the ineffectiveness of the current approach to training will become even more apparent when automated voting is implemented. These changes would be far better communicated through simplified, modern training materials and smaller groups trained by experienced and prepared trainers.

Recommendations

- COMELEC should take the lead in developing curriculum and training of BEIs. It is untenable that two government bodies conduct parallel training programs on procedural matters.
- DepEd’s legal obligation to second teachers as BEIs should be phased out. Experienced teachers should be encouraged to continue to work as BEIs on a voluntary basis.
- Curriculum and program development should be the primary task of adult educators and not COMELEC commissioners, senior staff, or lawyers.
- Curriculum development and improvement should be an on-going process, with the content of materials finalized at least 2 months prior to the election.
- The basic elements required of the training program provided to BEIs should include:
 - Training manual written by educators for all participants;
 - Checklist in placemat format provided to each BEI outlining their respective duties and procedures, such as issuing of ballots;

- Presenters' guide for trainers with modules on all aspects of the training including participatory activities and role-plays;
 - Training kit for trainers consisting of actual examples or accurate low-cost mock-ups of all Election Day materials, including ballots, ballot boxes, and election returns; and
 - Extensive hands-on practice with any machines or IT equipment that will be used.
- Greater emphasis should be given to role-plays, reacting to scenarios, completing paperwork, servicing voters, and respecting basic concepts like the secrecy of the vote and universal suffrage.
 - Sufficient numbers of trainers should be recruited and trained so that training of BEIs is done within a period of three weeks in the month prior to elections in groups not exceeding 35. This requires better-organized cascade training and more trainers at regional and municipal levels.
 - Trainers should be able to train up to 10 groups of BEIs, rather than just training one group, as was done for these elections. Repeated training of the same curriculum would greatly improve the quality of the presentation and be more cost-effective.
 - COMELEC needs to develop a standard operating procedure to evaluate all training sessions conducted. The necessary mechanisms to process participant evaluations and direct feedback to further improve materials and programs will also need to be developed.
 - BEIs and BOCs should be tested upon the completion of their training to measure the effectiveness of the training, gather feedback on the trainer and the training program, and assess knowledge levels of the participant.
 - BOCs should have a separate training program with specific training manuals, material samples, and programs developed by COMELEC. Training should consist of discussions of procedures, practical exercises, role-plays, and practice forms to fill out. This training will look much different if the automation of canvassing is implemented in the next election.

6. Election Day Issues

Preparation

When visiting election offices during the election preparation period it was readily apparent that the premises from which the election was managed were manifestly inadequate for the task at hand. EOs experienced a shortage of election forms and equipment prior to Election Day. In the absence of the timely release of COMELEC funds, EOs used their own limited funds for official election activities in an attempt to ensure that election activities were at least partially completed prior to set deadlines. There are currently no standard procedures used to prepare precincts for polling.

Delivery of Non-sensitive and Sensitive Materials

COMELEC's delay in finalizing the precinct list seriously affected much of the preparation for Election Day as the recruitment of BEIs, procurement, production and distribution of materials, and other logistical concerns depended on this information.

The handover of sensitive materials to election officials the day prior to and the morning of Election Day was inconsistent. In some areas, the process was well organized and election officials were processed quickly and smoothly in an organized manner. In others, chaos and lack of security was observed, with long queues of frustrated election officials waiting to pick-up their materials, resulting in delayed opening

of their precincts. In some cases, polling was delayed until the following day due to non-delivery of materials.

The role of the City Treasury Office in the storage, distribution, and collection of sensitive materials is a critical one at both the beginning and end of polling and counting activities. When properly coordinated with the election officer, and provided there was oversight by a COMELEC official, this process did appear to be efficient. There were cases, however, when the City Treasury and local COMELEC offices did not enjoy good cooperation. In these cases, the election officer and the success of Election Day were at the mercy of a local government official. Even when operating smoothly, it remains inappropriate that the office of an elected official, who is running for re-election, handles sensitive election materials without any oversight whatsoever from the COMELEC office.

Polling Station Management²⁰

Voter Information on Precinct Assignments

Prior to Election Day, there had been much discussion on the state of the voters' list. Mass confusion was expected on Election Day as voters either would be unable to find the precinct to which they were assigned or would find that their names were missing from the voters' list altogether. Although poorly designed and ineffectively distributed, Voter Information Sheets (VIS) played a critical role in polling station management by providing information on the voter's precinct and the list of candidates running for each office. This facilitated the direction of voters to the correct precinct and a quicker flow of voters, while shortening the amount of time spent completing the ballot. In areas where VIS were distributed, voters experienced fewer problems trying to locate their precinct. Where not distributed, there was a marked increase in the incidents of voters not being able to cast their ballots due to confusion over where to go.

Layout of Polling Station

Some measures were taken to try to avoid problems in the flow of voters upon arrival to the polling station. In many areas, PPCRV set up tables with voters' lists in a centrally located area of a polling station, serving several precincts. Blackboards or large notice boards featuring the layout of the polling station and identifying individual precincts were also used to help voters find their precincts.

Even so, the layout of polling stations in urban areas where several precincts were set up in the same room was unmanageable; in one case there were 17 precincts in a single room. It was extremely difficult to direct people to the correct place. PPCRV played a crucial role by helping to direct people to their proper precinct, but this was more effective in polling stations where each precinct was contained in its own room. After voting, voters were allowed to loiter in and around the precinct for too long. Overall, the secrecy of the vote was compromised due to poor management of the flow of voters and design of the polling station itself.

Accessibility for Voters with Disabilities

Most of the polling stations were located in public schools and other public buildings that were not equipped with handicap-access ramps. Observers did not report seeing any voters in wheelchairs attempting to access a polling station. There do not seem to be any specific requirements for physical access under the law.

Polling Procedures

Preparing the Precinct

While BEI members were diligent in arriving one hour ahead of opening time, their use of this preparation time could have been more productive. With the amount of experience held by most BEI chairpersons, a

careful examination of their precinct set-up and other procedures may have resulted in some improvements to the layout before opening.

There were insufficient copies of the COMELEC *General Instructions* in use. This document, although not a structured and detailed procedural manual, outlined the polling process and should have been available to all election staff.

Controlling Queue and Flow

In rural areas, overcrowding of precincts was less of an issue than in urban precincts. In urban precincts, the lack of queue control and poor set-up led to chaos. In this atmosphere, it became quite easy to lose control over other aspects of the polling procedure, such as proper checking of ID, ensuring secrecy of the vote, and following the additional checking measures and security mechanisms in such a way as to make them effective.

Checking Voter Identification and Use of Voters' List

Due to the failure of Phase I of the automation program, multiple voter registers were in use on Election Day. Election officers printed out locally produced voters' lists, while relying on hard copy voter registration files as a back up. In effect, if voters could not find their name on the printed voters' list, but there was a hard copy of their registration document on file, they were allowed to vote. While a bit unorthodox, this creative solution saved the elections in terms of franchising voters.

Issuing the Ballot Paper

In some precincts polling staff removed the staples from the book of ballots to enable easy distribution of ballots. The staff did not subsequently remove the top serial number from each ballot paper prior to giving the ballot paper to a voter. The same serial number is recorded against the voter's name as a record of voting. By not removing the top serial number it is very easy to ascertain how each voter voted, thus putting the secrecy of the vote in jeopardy.

Polling staff were observed cutting off both top and bottom ballot paper serial numbers prior to voters voting. This erased the checking mechanism as to the number of ballots in the ballot box, and also did away with the security measure that was supposed to ensure that the voter was voting with the ballot paper he or she was issued.

Ballot Design and Marking the Ballot

The ballot design was problematic, as it required the voter to handwrite the names of 30 candidates onto the ballot paper. If the current time-consuming voting is replaced by an electronic count of ballots, COMELEC will then be able to supply fully printed ballots to voters on which to mark their choices, greatly improving the flow of voters through the precinct.

Secrecy of the Vote

In many precincts secrecy of the vote was lacking. This was caused either by the incorrect use of the secrecy folder supplied to precincts to ensure that voters could vote in secrecy and/or the uncontrolled entry of persons into the precinct. If used again, the security folders should be thumb tacked upright onto the desk and not just placed flat on the desk; alternatively a simple cardboard tabletop voting screen can be used. As part of developing a comprehensive procedures manual for polling, the proper set-up and flow control of voters into and out of the precinct must be pre-planned in detail. Voters waiting to vote should be queued at the entrance to the precinct and only allowed in when it is their turn to vote. Tables and chairs currently used in the voting process must be positioned so that those waiting to vote are not able to observe the ballot paper of those already voting. This control would greatly improve the secrecy of the ballot.

Assisted Voting

The Omnibus Election Code states that an illiterate person or one physically unable to mark the ballot by himself may be assisted in the preparation of his ballot by a relative by affinity and consanguinity within the fourth civil degree. If he has none, then any person of his confidence who belongs to the same household may assist. In their absence, any member of the Board of Election Inspectors may assist.

Illiterate voters and those with poor eyesight had even less opportunity to cast a secret ballot than their unassisted counterparts. The process of providing assistance to these voters meant that the helper needed to ask the voter to tell them what names to fill in on the ballot. There was no space designated in the precinct that provided the amount of privacy that would have been necessary for this process to take place in secrecy. Some voters did bring a copy of a sample ballot into the precinct with them; in these cases the helper could simply fill in the voter's ballot by copying the names off of the sample. The same secrecy issues faced by regular voters still applied. In fact, some voters who had helpers filling out their ballot for them tended to wander around the precinct area talking to other voters while they were in the process of voting.

Inking

The finger inking procedure used to ensure that voters vote only once on Election Day should be reviewed. Currently a small drop of ink is placed on the voters' nail, while a cloth is immediately provided for voters to wipe away any 'excess' ink. This process led to a difficulty in identifying whether some fingers had been inked or not. This was especially important in larger cities where polling staff was unfamiliar with the voters voting in their precinct. Sufficient ink of adequate quality should be applied on voters' fingers so that it is obvious at first glance that the voter has already voted. Voters should be instructed to wait 60 seconds or until the ink has sufficiently dried before taking their ballot.

Thumb Printing

The materials provided for this procedure were less than optimal. A piece of loose carbon-like paper was put on the desk for the voter to press his or her thumb onto before placing it on the voters' list, and then later the ballot receipt. The process was awkward, slow and, in the end was largely a symbolic exercise since it did not allow thumb printing of high enough quality to be identified later if necessary.

Depositing Ballot into Ballot Box

This procedure requires the BEI to handle the ballot twice after it has been marked, once to tear off the bottom receipt and again to deposit the ballot into the ballot box. Ideally the voters would cast their ballots into the ballot box themselves.

Counting

The current manual processes are painfully slow. During vote counting, an average of 20 votes were counted per hour, with each precinct counting approximately 200 ballots. This was an exhausting process for the staff and made them more susceptible to election fraud. Within some precincts, poll watchers assisted polling staff with counting by unfolding ballots and completing tally sheets. Although not objected to by other poll watchers at the time, this assistance should be refused so as to ensure the integrity of the election. It should also be noted that as the hours wore on, fewer poll watchers had the energy or interest to closely watch the ongoing count thus making election fraud more possible. If one assumes that automation of the counting process will proceed, these manual count issues will become mostly irrelevant. New challenges will emerge as election officials and the voting public become familiar with the new system.

Performance of BEIs and BOCs

The performance of BEIs and BOCs was inconsistent due to a poor training program, and their late recruitment also negatively impacted the quality of training they were able to receive. (See section: Training of BEIs and BOCs)

Performance of Watchers

PPCRV, while providing a great service in assisting voters to find their precincts, did not play an active role in observing polling activities. Neither domestic nor party observers, sitting apart from the BEI staff, provided sufficient oversight of the BEI's functions, though obvious mistakes occurred.

NAMFREL provided domestic observers to follow the counting and canvassing process. The sheer numbers of NAMFREL observers was quite impressive. The dropout rate increased, however, as the canvassing wore on from days to weeks.

Party watchers served in their capacity during the counting process, but did not carry out any other observer functions, such as monitoring the BEI's knowledge of procedures during the counting. Their sole interest was in gathering the data and reporting back to their headquarters. Thus, political party watchers cannot be relied upon to carry out diverse observation functions without an intensive effort at education and training.

Return of Sensitive Materials

As with the uncontrolled entry of voters into precincts during polling, the return of sensitive election material to election offices from precincts following the completion of the count was chaotic. EOs did not have a documented process for the check-in of election material. An uncontrolled check-in process presents opportunities for election fraud. The role of the City Treasury Office in the storage and handover of sensitive materials, without oversight by the election officer or representative from the local COMELEC office, raised some questions regarding the security of documents and integrity of the vote.

Inter-agency Coordination

Had it not been for local solutions applied by local election stakeholders, the 2004 Philippine Elections would have been highly problematic. The role of the election officers, the city treasurer, Barangay captains and local civil society actors was critical in averting situations whereby voters could not find their precincts or names on the voters' list. In many communities, alliances were formed among the election stakeholders in order to prevent violence. These included media, the PNP and the Armed Forces of the Philippines (AFP), as well as the other actors listed above.

Evaluation

Election officers are placed under heavy pressure on Election Day both by the systems used by COMELEC and by a lack of support, sufficiently documented procedures, or a structured training program. COMELEC did not conduct a thorough debriefing following the completion of the election process, missing an opportunity to identify failures and recognize best practices. Some senior field staff did independently organize their own debriefings, but this is a project that COMELEC needs to implement on a systematic and nationwide basis.

Conclusions

The procedures related to Election Day, counting, and canvassing were less than optimal. Inefficient procedures extended polling and counting well beyond 24 hours. This affected the ability of officials and observers to carry out their duties and to be vigilant against fraud. COMELEC would benefit from a close examination of these voting procedures in the likelihood that automation plans move forward, in order to avoid making similar mistakes in future elections. Special care needs to be taken in regard to the procedures and implementation of safeguards. If they are ineffective, they will lose their usefulness and undermine the credibility of the entire process.

Recommendations

- Detailed but user-friendly procedural manuals are needed during all phases of polling and counting. (See section: Training of BEIs and BOCs).
- Voters must have an opportunity to check that they are on the voters' list prior to the election. This could be done by ensuring that Voter Information Sheets are distributed uniformly and by prominently displaying alphabetical listings of voters outside their designated precinct.
- Transparency of the election results must be ensured by public display of one copy of the election return outside the precinct door and on the Internet to make the results of voting immediately available to local residents, candidates, and the media. This would provide an additional means of checking the validity of reported results.
- Election officials must be given a realistic amount of travel and preparation time to arrange the difficult logistics involved in transporting materials.
- The current process for counting votes, after polling closes at 15:00 hours on Election Day, should be replaced before the next election. The replacement of this process goes hand in hand with the replacement of the vote canvassing process that follows vote counting.
- COMELEC should continue to move to an electronic count of ballots, and amalgamation of precinct totals, so that the above issues are no longer relevant. Thus, results of the election would be declared within days of the close of polling. This can only assist with stability within the country during this time of volatility and uncertainty.
- Extensive voter education of the public and other stakeholders involved in the election process must be undertaken prior to the introduction of an electronic counting system so that confidence in the system is established prior to its use at election time.
- A system should be implemented which allows precinct election staff returning with sensitive material to be served in the order in which they arrived at the check-in center, while all others wait in a designated area until it is their turn. A numbering system could be used for this process.
- Observers, both domestic and party, need to be better trained by their respective organizations to observe procedural duties of BEIs and BOCs in order to properly serve as a check against mistakes committed by election staff.

7. Post-election Issues

Canvassing

There are significant electoral safeguards built into the current canvassing process. It is heavily observed by substantial numbers of party, candidate, and NGO "watchers". As many as seven official copies of each Certificate of Canvass (CoC) are produced, and widely distributed. There is a parallel tabulation, historically conducted by NAMFREL. Further safeguards would be unlikely to add value.

Despite these safeguards, the process suffers from a perception of vulnerability to fraud.

Recommendations

- The process is administratively complex, and suffers from a perception of vulnerability to fraud. Automation, which would help cure these problems, should therefore be implemented as a priority.

- In the event that the process is not automated -
 - It could be streamlined, and simplified. Votes for national level races, for example, need not be canvassed at the municipal level.
 - Training should be improved.
 - The administration must develop capacity to manage the count and tabulation, without having to mandate the participation of teachers and others.
 - Rules limiting the presence of security personnel at the canvass should be more evenly enforced.

The Congressional Canvass

Congress, sitting jointly, is mandated by the Constitution to canvass the votes for president and vice-president. In 2004, it took over three weeks to tabulate approximately 180 certificates of canvass. The discussion was highly politicized, rancorous, and partisan.

Throughout the canvass, discussions focused on two points:

- The minority accused the majority of covering up massive fraud by refusing to allow the canvassing committee to “pierce the veil” of the CoCs and scrutinize precinct and municipal level returns.
- The minority accused the majority of using the “tyranny of the majority” to “railroad” the canvass.

According to Philippine law, a canvassing body is generally restricted to examining the documents in front of it. Unless there is evidence of tampering, the CoCs should be taken as valid. The minority argument, as far as it was consistent, was not that CoCs were manifestly flawed. Instead, they sought to look behind CoCs as a general procedure to “root out the truth.” The minority was thus not on solid legal ground. In fact, accession to their demand might have risked a reprimand from the Supreme Court.

Formally, it cannot be denied that the opposition had the opportunity to make their case. They were allotted 1/3 of the seats on the joint canvassing committee, despite having less than 1/5 of the total joint congressional seats; the debates in the committee were so lengthy and protracted that they frustrated the entire country. A canvass that could have taken hours took more than three weeks. However, the right to be heard is not purely about form. In the end, the canvass was so highly politicized that neither side appeared to be listening to the other.

Recommendations

- Congress must pay much greater attention to the ministerial nature of their canvassing duties. Although elected representatives cannot be expected to act completely without political color, the highly partisan discussions that characterized this electoral cycle risked betraying the public trust. Neither was the country well served by the needlessly protracted length of the canvass.
- Congress should create a standing set of rules for its canvassing responsibilities. The rules should reflect the ministerial and non-partisan nature of the canvass. The rules should be passed well before the next election cycle. This will help ensure a less partisan approach, and will leave sufficient time for any court challenges.
- In the event that aspects of the congressional canvass are again delegated to a committee, membership should be broadened to include representatives elected under the party list system.

- In the event of a review of the current Constitution, consideration should be given to terminating the practice of canvassing by Congress. The count and tabulation process should be the sole responsibility of the election administration and should, for reasons noted above, eventually be fully automated. Congress could retain the right of proclamation.

Preliminary Election Results

The failure of Phase 3 of the modernization program resulted in a lack of a reliable and fast way to conduct an internal audit of the vote count. With the breakdown of the NAMFREL parallel vote count²¹ and the slow, manual canvassing process, a COMELEC internal quick count could have played a significant role in providing transparency and building trust among the public during the weeks of uncertainty and allegations after the elections. COMELEC should be supported in future efforts to fully implement this program, regardless of the existence of third party parallel vote tabulation programs.

Both COMELEC and NAMFREL have a responsibility to build capacity for transparency in the counting process and releasing of results. Philippines should adopt international practice and allow for preliminary results to be released by COMELEC, provided that it does not replace third party validation. By acting as a check on COMELEC, third party validation increases transparency and confidence in the results by both candidates and voters. It is increased transparency, and not automation, that will restore credibility to the election results.

Full implementation of automation would provide the opportunity to transfer precinct level results to COMELEC for data entry through the canvassing chain. Even without direct transmission, results could still be transferred effectively as CDs to the COMELEC HQ. Precinct results could then be made public on the COMELEC website, thus ensuring a full and public disclosure of precinct level results. Automation without third party validation or posting of precinct level results would create a system that is less transparent and more susceptible to organized fraud.

Recommendations

- Increase transparency in the release of preliminary results in both COMELEC's and NAMFREL's processes.
- Support parallel vote tabulation by a third party, regardless of whether or not automation is introduced, as it is essential for electoral credibility in Philippines.
- NAMFREL should review and strengthen its methodology in order to provide more effective parallel vote tabulation for future elections.
- COMELEC must increase transparency by publicly releasing preliminary results down to the precinct level as soon as they are transmitted.

Complaints, Adjudication, and Sanctions

There are three broad categories of so called "election cases": Pre-proclamation complaints, which deal largely with complaints during canvassing; election contests, which deal with challenges to the proclaimed result; and election offenses, which are violations of the Omnibus Election Code, subsequent laws, and COMELEC resolutions. In the Philippines, election offenses are at the same time criminal offenses.

Pre-proclamation Cases

Pre-proclamation cases arise, as the name suggests, prior to proclamation during the "canvass", or count and tabulation phases. All complaints are under COMELEC jurisdiction. Most cases are decided summarily by BEIs and canvassing boards. Once proclamation takes place, all outstanding cases or appeals are automatically dismissed. The complainant's recourse is to file an election protest. Pre-

proclamation cases cannot be filed concerning the canvassing, at any level, of returns for House, Senate, VP, and presidential races.²²

There is logic behind the efforts to limit the scope of pre-proclamation protests. There is clear public interest in ensuring the count and tabulation is expeditious and non-litigious. Claims of fraud are best heard in front of tribunals, not canvassing bodies.

Election Contests

Election contests are cases brought after proclamation. There are two types: election protests, which challenge the results, and “*quo warranto*” cases, which challenge the winner’s eligibility or qualifications to take up office.

The process is complex and multi-layered. Disputes concerning Barangay and municipal offices are heard by municipal²³ and regional²⁴ trial courts. Appeals may be brought to COMELEC. Disputes concerning regional, provincial, and city offices are heard by COMELEC. Disputes concerning elections for the House of Representatives and the Senate are heard by special tribunals set up for this purpose: The House of Representatives Election Tribunal (HRET) and the Senate Electoral Tribunal (SET). The Supreme Court, sitting *en banc*, hears disputes concerning the presidential or vice presidential races. Decisions made by COMELEC or the House and Senate Election Tribunals may be appealed to the Supreme Court, but only on *certiorari*.²⁵ The Supreme Court’s decision concerning presidential or vice-presidential races is final.

Case resolution is notoriously slow. A recent case is illustrative. On 11 June 2004, Noel Carino was sworn in as a congressman, following conclusion of his protest of 2001 election results. His term in office, not including any duties related to canvassing, was less than one day. Although accurate data was difficult to obtain from COMELEC, it seems it was unable to resolve one-third²⁶ of its 2001 election protests before holding subsequent elections in 2004.

There are many factors that contribute to delays:

- There is great mistrust in the electoral system, which leads to excessive litigation. There is insufficient value placed on political competition, and too much value on winning at all costs. Many complaints are insincere and are intended to save face, or as a campaigning tactic for the next elections.
- There are very high numbers of complaints; for example, in both the 1998 and 2001 elections, protests were filed for more than 20% of the total seats in the House of Representatives. Complaints and adjudication bodies are overwhelmed by heavy caseloads.
- Procedures are generally oriented more toward protecting due process than bringing finality to an election cycle.
- There are few if any mechanisms to prevent the filing of frivolous claims. For example, a complainant does not have to adduce evidence of malfeasance to initiate a claim; nor does s/he have to show that the alleged problems materially affected the outcome.
- A recount of the ballots, the most tedious and time consuming of the procedures, does not require prior evidence that the claim is meritorious.²⁷
- Legislative deadlines are often ignored.
- Parties often deliberately delay proceedings, by such tactics as rescheduling hearings or filing numerous motions. Sometimes the delaying party is the incumbent, but just as often it is a challenger who is not so much contesting the outcome as “campaigning” for the next elections.

- COMELEC is burdened with original and appellate jurisdiction. This means it must conduct full trials in addition to ruling on important points of law and disposing of appeals. This is costly and time consuming.
- The Philippine court system is already overburdened and under-resourced, particularly in some rural areas. Courts are not directed to prioritize elections cases.

Election Offenses

Election offense cases deal with violations of the electoral laws and COMELEC resolutions. There are hundreds of offenses, covering all aspects of the process. More obscure examples include holding a cockfight on Election Day, illegally releasing prisoners immediately before and after the election, deliberate blurring of fingerprints during registration, and failure to clear the canvassing table of unnecessary writing paraphernalia.

Every election offense is at the same time a criminal offense. Penalties are strict; any person found guilty will be imprisoned for not less than one year and not more than six years. Probation is prohibited. Any offender, regardless of the nature of the offense, is disqualified from holding public office, and deprived of the right to vote. Parties are subject to mandatory fines of between 100,000 and 500,000 pesos.

The intertwining of criminal and electoral laws can create complicated issues of procedure and jurisdiction that delay case resolution or create confusion among election participants.

Enforcement Issues

There is a general perception that electoral laws are not enforced and that violators go unpunished. It is extremely difficult to test this hypothesis, as accurate baseline data is not readily available. It seems likely that very many violations are not prosecuted. Some argue that this creates an atmosphere of impunity. Others, including representatives of teachers and other mandatory participants, argue that the law is too strict and exposes honest mistakes to criminal sanctions.

There is no doubt that fines and penalties are harsh as compared to other jurisdictions. There are obvious questions as to whether such penalties are proportionate, and whether in certain circumstances they may inhibit, rather than encourage, prosecution. For example, many would be reluctant to send a poll worker to jail for failing to post the voters' list in the correct location, or to disqualify a senator for wrongly placing a poster.

Recommendations

General

- COMELEC, the courts, and election tribunals should keep accurate centralized records concerning election cases, and ensure that they are publicly accessible, preferably on the Internet. At a minimum, details should include the number of cases filed, pending, and resolved, as well as publication of all decisions. This will increase public confidence and accountability, and allow lawmakers and administrators to assess the system based on fact, rather than anecdotes. The HRET "Accomplishment Report 1998-2001" and a recent report of the SET are commendable in this regard.
- Measures should be taken to ensure that all adjudicative bodies, especially those with initial trial jurisdiction, will prioritize election cases, and have sufficient resources to do so. Legal provisions mandating courts to undertake a preferential disposition of election cases should be more strictly enforced.

- Automation of the results and tabulation phases will drastically reduce the number of protests. Consideration should be given, particularly in the context of automation, to completely doing away with pre-proclamation protests.
- Ways should be examined to streamline and consolidate jurisdiction for dispute resolution. At minimum, COMELEC should be relieved of initial (trial) jurisdiction. Local or regional courts could take on a greater share of electoral cases. The idea of a specific “electoral court” could be considered. The HRET and SET should be comprised of independent commissioners appointed for a fixed term. Some of these proposals would require constitutional change.
- Civic education programs should emphasize the importance in a democracy of fair political competition and acceptance of election results.

Election Protests

The manifest failure of the Philippine system to resolve election protests in a timely fashion undermines its credibility. It also allows ample scope for attacks on its impartiality and effectiveness, based on the premise that “justice delayed is justice denied”. This serious problem must be addressed with resolve in the context of the electoral reform agenda. Some suggestions for discussion include:

- Overall streamlining to ensure more summary proceedings and less stringent procedural rules.
- Measures to penalize or discourage frivolous complainants, including placing on the claimant the burden of demonstrating that there is some cogent evidence to support his claim and that proof of his/her case will materially effect the outcome; and greater use of penalties or costs against complainants and lawyers who delay unnecessarily or bring frivolous cases.
- Stricter adherence to deadlines.

Election Offenses

- A greater range of sanctions should be developed to ensure tribunals apply penalties that are proportional to the offense. This could include fines, loss of media access, campaign restrictions, and public apologies.
- De-link, as far as possible, electoral and criminal law. Electoral offenses should carry electoral penalties, and be decided summarily according to non-criminal standards of proof. Criminal acts may occur in the context of elections, but should be dealt with exclusively by the criminal justice system. COMELEC should limit its direct involvement in criminal prosecutions and rely more heavily on the Department of Justice.
- Although the law may grant the president partial or full immunity from criminal process, immunity from application of the electoral law should not be allowed in any circumstances. Any precedent to this effect, even if theoretical, must be specifically amended or overruled.

Election-related Violence

The security situation in the Philippines is a complex one, comprising so-called “terrorist” organizations²⁸, a long-standing communist insurgency, private armies,²⁹ and deep-rooted local clan conflicts. The communist insurgency group known as the New People’s Army (NPA) operates throughout the Philippines and was especially active during the election period. The NPA requires “permits to campaign,” or PTCs, for candidates who wish to campaign in their areas of operation. Refusals to pay for these documents have resulted in violent retributions. In addition, there is concern in some quarters that portions of the military would choose to intervene in the electoral process, as in 2003 when they mounted an attempted coup.

Conducting an election in such an environment holds many challenges for the security forces, COMELEC officials, political parties and candidates, civil society organizations, and the media.

COMELEC's Role

The Constitution explicitly empowers COMELEC to “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 purpose of ensuring free, orderly, honest, peaceful and credible elections.” In order to maintain security, COMELEC worked closely with the PNP and AFP to identify “hotspots.”³⁰ Criteria for a hotspot include the presence of the NPA, intense political rivalry, and a history of violence. In these areas, COMELEC has the power to take control over the police and military and in extreme cases implement “martial law”-style supervision.

There is some concern about COMELEC’s ability to effectively carry out the extensive security responsibilities with which it is charged. At the same time, COMELEC has been accused of abusing its authority to place areas under COMELEC control, or conversely to lift COMELEC control at the last minute, in order to allow cheating to occur³¹. This general mistrust of COMELEC contributes to local tensions, thus creating an atmosphere that is more conducive to election-related intimidation and violence. Observers refer to both incompetence and fear on the part of the election officer as a contributing factor in cases where insecurity exists at the local level.

Violence-related Issues

Electoral violence and intimidation can influence the perception of the fairness of elections. While election violence can be quantifiable in terms of the number of election-related deaths or incidents, the effects of less tangible means of coercion, intimidation, and harassment can be more difficult to measure.

In comparison to the 2001 elections, there were fewer overall instances of election-related violence. There were, however, more casualties in 2004, including a higher number of candidates. More hotspots were declared this year than in 2001, with more areas coming under COMELEC control than in the past. One possible conclusion could be that acts of election-related violence have become more targeted and less random.

Differences in national, regional, and local conditions must also be taken into consideration when discussing election-related violence in the Philippines.³² Much of the violence that took place during this year’s election period occurred in relation to local level races. The PNP has announced publicly that it is in favor of desynchronizing local and national elections, arguing that they would be able to provide better protection for all the candidates running for office and their supporters.

The pre-election period saw much more violence than Election Day and the post-election period. Election Day was considered to be relatively calm and peaceful and cited as a major success by both the PNP and COMELEC. In some precincts, however, it is regularly alleged that actual polling does not take place at all, while local leaders simply fill out ballots on behalf of the area’s residents. The security situation in other precincts prevented polling from taking place, both on Election Day and on later dates when delayed elections were rescheduled. At the same time, it is generally acknowledged that election-related intimidation occurs in isolated Barangays, where Barangay captains exercise control over the population³³.

In some areas, election stakeholders worked together in order to mitigate election-related violence. In Albay Province for example, COMELEC, NAMFREL, PPCRV, PNP, DepEd, local government, and the media established an inter-agency coordination group. Regular meetings throughout the pre-election period built trust and confidence among the various agencies. On Election Day, these organizations were able to effectively assist each other in ensuring a problem-free implementation of the elections. In areas where the PNP did not have coverage, representatives of civil society or the media were able to communicate potential problems, giving the PNP more time to react in order to avoid a violent incident.

Similar coordination occurred in Taguig municipality in the NCR, where - just prior to Election Day - issues were raised concerning the impartiality of the election officer vis-à-vis selection of BEI and BOC members. DepEd worked in coordination with COMELEC, the PNP, and other agencies in order to fix this problem, preventing an explosive situation on Election Day. This type of inter-agency coordination has proven to be a simple, yet effective means of mitigating violence during the election period and should be held up as a best practice for other areas still struggling with election-related security issues.³⁴

Recommendations

- Commission an independent review of the roles of the COMELEC, PNP, and AFP in providing security for election-related activities to ensure transparency and build confidence in these organizations.
- Hold political parties responsible for acts of violence directed at rival parties and candidates.
- Aggressively prosecute all electoral-related crime through a speedier adjudication process.
- Support the passage of the Anti-Dynasty Law.
- Support local interagency task forces that work to ensure violence-free implementation of election activities in their area.
- Civil society should support alternative dispute resolution mechanisms to prevent violence.
- Civil society should design voter education programs to raise awareness about the value of each individual vote to decrease instances of vote buying and other forms of coercion.
- COMELEC should revise polling procedures in order to better ensure the secrecy of the vote, thereby minimizing the effectiveness of vote buying and intimidation on voter choice.

Cheating: Perception and Reality

The Philippine elections are marred by allegations of cheating and fraud. This fundamentally undermines not only the credibility of election administration, but also the legitimacy of the elected institutions of the state. This report has touched upon alleged cheating throughout. This section will specifically focus on the phenomenon, recognizing that cheating, or the perception of it, has taken on a life of its own and is a grave threat to Philippine democracy.

The electoral laws and subsequent COMELEC resolutions contain a plethora of safeguards against cheating. In fact, Philippine elections are among the most closely guarded in the world. Despite this, cheating does take place. The challenge is to accurately assess the real scope of the problem, by sorting out actual malfeasance from rumor and allegation.

The first challenge is definitional. The terms “fraud” and “cheating” are incorrectly used to describe anything from honest mistakes to deliberate fraud. The terms are liberally applied to election irregularities, election fraud, and election offenses. It is therefore useful to examine specific categories in greater detail, and safeguards employed against them.

Categories of Alleged Fraud and Safeguards

Misuse of Public Funds

It is accepted electoral practice that candidates cannot use state resources to further their electoral ambitions. A number of challenges were brought to COMELEC in 2004 alleging that incumbent

President Arroyo used state resources for her campaign.³⁵ (See attached Annex VI: Misuse of State Resources and Abuse of Office on the Part of the President)

General safeguards, aimed at uncovering violations after the fact, include campaign finance rules, spending limits, and mandatory audits. In the Philippines, the Ombudsman is entrusted with prosecution of anti-graft laws. This type of fraud is difficult to guard against. Effective campaign finance laws are not in place, and the legal lines between acts of governance and acts designed solely to win votes are blurry. *The system's vulnerability to fraud of this type is assessed to be high. The threat of non-localized occurrence is also assessed as high.*

Incomplete Reporting of Campaign Finances

It is generally acknowledged that parties and candidates do not submit complete information with their campaign finance reports. Even if the information was accurately reported, there is no efficient mechanism for making it transparent to the public. A campaign finance expert should more closely scrutinize this topic in order to recommend more effective means of controlling financial contributions and expenditures of political parties and candidates during the election period in the Philippines. *The system's vulnerability to fraud of this type is assessed to be high. The threat of non-localized occurrence is also assessed as high.*

Vote Buying

Vote buying is alleged to be widespread, and can take many forms. Votes can be purchased either directly from individuals or from entire groups, by offering cash and/or other direct incentives. An interesting variant is "reverse-vote-buying" where politicians pay voters, known to be supporters of their opponents, for not voting. In some cases, this is alleged to include inking the voter's finger the evening prior to Election Day to prevent legal voting. Some allege that paying of "watchers" can be a sophisticated form of vote buying.

No technical safeguard can be put in place to prevent vote buying. Current Philippine law criminalizes any kind of financial compensation in exchange for a vote. It is more difficult to detect and stop in economically depressed areas. *The system's vulnerability to fraud of this type is assessed to be high. The threat of non-localized occurrence is assessed as high.*

Voters' List Inflation

Allegations persist that voters' lists are artificially inflated by double registration and registration of non-existent or deceased voters. There are even allegations of entire ghost precincts. List inflation allows the casting of votes by ineligible or multiple voters that impersonate those whose names have been added.

Technical safeguards include:

- Inking of voters to prevent multiple voting.
- Display and distribution of the voters' list prior to elections for complaints and challenges.³⁶
- The newly introduced validation system where biometric data is captured to identify double registrants and the distribution of Voter ID cards to ease identification when polling.³⁷
- The presence of a COMELEC civil servant who knows the community and, if trustworthy, should be able to identify major discrepancies.

Multiple-registration is not in itself a fatal error. Virtually every voters' list in the world has multiple and deceased registrants. The issue is whether this is exploited to conduct multiple voting. Therefore if measures to prevent multiple voting (e.g. inking, thumb printing, watchers) are enforced, the threat posed by multiple registration is limited. *The system's vulnerability to multiple registration is assessed to be*

high. The threat of double voting as a result of multiple registration is assessed to be moderate. The probability of non-localized occurrence is assessed as low.

Stuffing of Ballot Boxes with Extra or Manipulated Ballots

Safeguards include:

- Controlled distribution of ballots.
- Security ballot with features difficult to counterfeit.
- Reconciliation of the number of ballots, prior to the start of the vote count, with the voters' list.
- Comprehensive observation of polling by watchers.

With such an array of safeguards, actual ballot stuffing would be easy to detect. It would likely require collusion among the electoral bodies, participants, and political party/NGO watchers. This could occur in certain rural areas, or areas where clan mentality is strong, but is highly unlikely on a wide scale. *The system's vulnerability to ballot stuffing is assessed to be low. The probability of non-localized occurrence is assessed as low.*

"Dag-dag Bawas"

IFES heard allegations that "shaving and padding" of the results takes place at all levels of count and tabulation from the precinct through the municipal, provincial, and national canvasses.

Safeguards include:

- Controls in the selection of BEIs and BOCs.
- Presence of party and civil society "watchers" at all levels.
- Stringent execution requirements for Certificates of Canvass.
- Widely disseminated copies of CoCs and returns.
- Reasonably effective dispute resolution mechanisms.
- Parallel tabulation.

Thus at every level counting and tabulation happens in a transparent manner observed closely by watchers from civil society and political entities; at every level copies of result and tabulation documentation are shared with parties and civil society providing an audit trail for the key stakeholders. Changes or alterations on the SOVs or CoCs should be easily detected by comparing with other official copies. Unofficial results that can be compared with official tallies are widely known, at least to participants, very quickly after the election. A parallel vote tabulation acts as an "audit" on the official results.

Note that COMELEC's main strategy against this (real or alleged) phenomenon is automated counting and canvassing which would prevent human intervention and still leave a comprehensive written audit trail behind. The Supreme Court barred automation from implementation in 2004 due to tendering irregularities. *The system's vulnerability to dag-dag bawas is assessed to be low. The probability of non-localized occurrence is assessed as low.*

Replacement of the Formal Results and Canvass Documentation by Counterfeit Material

This allegation refers to results forms switched somewhere in the chain of custody and replaced by counterfeit forms.

Safeguards include:

- See “dag-dag bawas” above; in particular, validity can be verified by comparison with other official copies and records of watchers.
- Controlled distribution of, and some security features in, the Certificate of Canvass.

COMELEC's main strategy against this (real or alleged) problem is electronic results transmission. Precinct results would be sent directly to COMELEC immediately after counting, enabling COMELEC to identify any irregularities or fraud in tabulated Certificates of Canvass. The Supreme Court barred automation from implementation in 2004 due to tendering irregularities. *The system's vulnerability to fraudulent replacement of results and canvass documentation is assessed to be low. The probability of non-localized occurrence is assessed as low.*

Collusion

Following the 2004 elections, the opposition accused the incumbent of organizing massive orchestrated fraud in all phases, including during balloting, the count, tabulation, and canvassing. It is clear from the above analysis that such large-scale fraud would require widespread collusion, including of COMELEC, NAMFREL, and even the watchers. If one assesses such orchestrated collusion as unlikely, then one must also conclude that many of the post election fraud claims were also unlikely.

Past Elections

One of the few objective measures in adjudicating fraud is the success rate of cases brought to electoral tribunals. The question is how many elections were overturned after the ballots were recounted? In the HRET, 50 protests were filed in 1998, and 43 in 2001. In the majority of the cases, although by no means all, the claimant protested the result on the basis of cheating and fraud. Only two proclamations were overturned.

Real vs. Perceived Fraud

Regardless of the actual level, the perception of fraud is unacceptably high. Some reasons include:

- Candidates and supporters use any means available to pursue victory or, even if they lose a race, the perception of victory. Some will even plant the seeds during the campaign in order to protest the result should it go against them. "Losing face" and admitting defeat is, in most cases, not considered a viable option.
- The value of a loyal and constructive opposition is not ingrained in the political culture.
- These allegations are readily communicated, without much critical journalism, by the media leaving the impression that the electoral system is incapable of producing a credible process and result.
- There is lack of transparency in the electoral process and absence of an effective third party validation of results.

COMELEC is the institution responsible for delivering credible elections, and thus bears the brunt of accusations. COMELEC is clearly disadvantaged by the "I-was-cheated" phenomenon. However,

COMELEC is not without responsibility for the difficulties it has maintaining a trustworthy image in the public. The reasons for this are discussed in Chapter 4.

It is impossible to measure the degree of actual fraud in the 2004 elections. It is our belief that fraud, particularly vote buying and selling, was indeed committed and may have influenced some lower level races (such as mayoral races) where the contest was fierce and the number of votes needed to swing the result was limited and isolated.

The cheating phenomenon has become a devastating hindrance for elections in the Philippines. The credibility of an election depends on the public's trust in the process. If voters believe and are constantly told everyone "cheats" they will doubt the integrity of the event. The Philippine example proves the thesis that perception of fraud can damage an electoral process as much as actual fraud.

Recommendations

- One efficient way to prevent fraud is minimizing human intervention in the process with the use of automated counting and tabulation. All three modernization projects initiated by COMELEC were meant to provide such safeguards. Validation and capturing of bio data for the voter registry should prevent double registration. Automated counting and tabulation should have addressed fraud in the counting and canvassing process. Last but not least, electronic transmission of the result directly from the count should give COMELEC a better basis to audit canvassing.

Constitutional Amendment

There is considerable discussion about changing the Constitution³⁸ in the forthcoming congressional term. The president is on record as supporting such an initiative. Constitutional change would provide the opportunity to introduce a number of broad electoral reforms. These might include:

- De-synchronize elections. Holding the national level elections at a time different from provincial and local elections would decrease the burden on the election administration and reduce violence. It would, however, mean increased expenses for an already hard-pressed national budget.
- Do away with the requirement that Congress canvass presidential and vice presidential votes. Count and tabulation should be the responsibility of the election administration.
- Rationalize and simplify the duties and responsibilities of COMELEC. Election administration should be its primary task. Judicial functions should be devolved to the judicial branch and executive functions that are not central to election administration should be devolved to the executive branch. Consideration should be given to creation of a Special Electoral Tribunal.
- Reform the appointment process for COMELEC commissioners to ensure there is broader consultation on - and closer scrutiny of - prospective candidates. The process should be aimed at maximizing competence and integrity while minimizing the perception or reality of political bias.
- Restructure the composition of the HRET and SET. Having members of Congress judge their political opponents and allies exposes the process to real or perceived bias. Members of the two bodies should be judges or other qualified experts. They must either be full time appointees or at least be able to devote sufficient time to ensure cases are resolved expeditiously. Consideration could be given to merging the tribunals, possibly with a Special Electoral Tribunal.
- Ensure that any initiative to change the Constitution is transparent and above suspicion. It should maximize national consensus on substance and public trust in the process. Therefore, it may not be desirable for Congress alone to propose amendments. A constitutional convention, which

would maximize consultation among all stakeholders, is preferable, up to and including a public plebiscite.

- Provide COMELEC with sufficient resources in a timely fashion to ensure an open, transparent and efficiently managed vote in the event of a public plebiscite.

Of course, reformers must be judicious, especially concerning COMELEC. The intent of the framers of the current Constitution was to completely shield the electoral process from political interference. In doing so, they may have inadvertently placed an unmanageable burden on COMELEC, and placed it beyond reasonable oversight. A constitutional review is an opportunity to correct imbalances. There is a thin line, however, between accountability and control. Care must be taken to ensure reforms are not at the cost of independence and impartiality. There is no “right” answer. Rather the Philippines must find the balance that best fits its needs at this moment in its history.

8. Summary Conclusion

The 2004 Philippine elections were characterized by serious administrative shortcomings brought about by failed automation plans, fiscal restraints, and poor management by the Election Commission. It was also characterized by significant violence and allegations of wide scale fraud. As in past elections, losing candidates refused to accept defeat gracefully, and the complex adjudication system will again be overburdened by complaints. At the same time, the process and the overwhelming majority of its participants showed resiliency and a commitment to democracy. There was substantial voter interest and turnout, significant mobilization of civil society and the public, and dedicated efforts by election officials in the field to deliver the franchise to a high turnout of voters.

The assessment must be placed in proper context. An ethnically and linguistically diverse archipelago, with economic challenges and a recent history of street revolution is not an easy place to deliver an election that meets the highest international standards. Nonetheless, the lesson of this poll is clear. Electoral reform is a necessary condition for further democratic development in the Philippines.

Annex I: List of Acronyms

AFP	Armed Forces of the Philippines
ARMM	Autonomous Region of Muslim Mindanao
AS	Abu Sayaff
BEI	Board of Election Inspectors
BOC	Board of Canvassers
CA	Court of Appeals
CEPPS	Consortium for Elections and Political Process Strengthening
CER	Consortium for Electoral Reform
CIC	Commissioner-in-Charge
COMELEC	Philippine Commission on Elections
CSER	Committee on Suffrage and Electoral Reforms
DepEd	Department of Education
EDP	Electronic Data Processing
EO	Election Officer
FPJ	Fernando Poe, Jr.
GI	COMELEC's <i>General Instructions</i>
GMA	Gloria Macapagal Arroyo
HOR	House of Representatives
HRET	House of Representatives Electoral Tribunal
IPER	Institute for Political and Electoral Reform
IRI	International Republican Institute
JI	Jemaah Islamiyah
K4	Koalisyon ng Katapatan at Karanasan sa Kinabukasan (Coalition of Faithfulness, Fidelity, Loyalty and Experience for the Future)
KBP	Philippine Broadcasters Association
KNP	Koalisyon ng Nagkakaisang Pilipino (Coalition of Uniting Filipinos)

Lakas CMD	Lakas (Strength/Power) Christian-Muslim Democrats
MILF	Moro Islamic Liberation Front
NAMFREL	National Citizens' Movement for Free Elections
NBC	National Board of Canvassers
NCR	National Capital Region
NDI	National Democratic Institute
NGO	Non-Governmental Organization
NPA	National People's Army
PES	Provincial Election Supervisor
PET	Presidential Electoral Tribunal
PIA	Philippine Information Agency
PLIS	Philippines Laws Information System
PNP	Philippine National Police
PPCR/V	Parish Pastoral Center for Responsible Voting
RED	Regional Election Director
SC	Supreme Court
SET	Senate Electoral Tribunal
SWS	Social Weather Station
ToT	Training of Trainers
USAID	United States Agency for International Development
VSAT	Very Small Aperture Terminal
VVS	Voter Validation System

Annex II: Biographies

Peter Erben is a Senior Advisor at the IFES. Since the mid-nineties he has worked as an international consultant specializing in the management of complex electoral processes, primarily within emerging and transitional democracies. Mr. Erben has been engaged as the Senior Advisor on the electoral process in the Philippines and the Palestinian Territories. He was recently the Chief Electoral Officer in charge of the Kosovo election administration and has also participated in the management of elections in Bosnia and Herzegovina. Mr. Erben has worked in senior roles on electoral missions to a number of countries including East Timor, Afghanistan, Pakistan and Nepal.

Beverly Hagerdon Thakur is a consultant with a versatile background in election administration, civil society development, and project management. Ms. Hagerdon Thakur spent six years working in Bosnia and Herzegovina, first as an election expert with the Organization for Security and Cooperation in Europe (OSCE) and later as Chief of Party for IFES. Her main achievement was the establishment of the Association of Election Officials in Bosnia and Herzegovina (AEOBiH), a self-sustainable NGO working to promote democratic elections while raising the level of professionalism of election administrators. Most recently, she was involved in developing and implementing the IFES poll-worker training program for the 2003 elections in Azerbaijan. Ms. Hagerdon Thakur holds a Master of Arts degree from the Elliott School of International Affairs at the George Washington University, and a Bachelor of Arts degree in Government from Dartmouth College.

Craig Jenness is a Canadian lawyer with extensive international experience in preventative diplomacy, elections management, and human rights. His appointments include Director of Human Rights, OSCE Mission to Bosnia and Herzegovina (BiH); Deputy Head of the OSCE Mission in Kosovo; and Head of the OSCE Mission to Skopje. His elections experience includes appointments as deputy chairman of the BiH and Kosovo Election Commissions, and head of the BiH National Election Results Implementation Committee. He recently headed the OSCE/ODIHR Election Observation Mission to Georgia.

Ian Smith is a Canadian elections consultant specializing in reviewing and developing training and capacity building programs for electoral management bodies of post-conflict and transitional democracies. Mr. Smith holds degrees in International Development, Refugee Studies and Education. Prior to the Philippines, Mr. Smith was employed as an election expert to the OSCE Mission to Georgia. He was recently the Head of Training and Capacity Building for the OSCE Mission in Kosovo and has worked in support of the management of the first post-conflict elections organized in East Timor, Mozambique, and Bosnia and Herzegovina.

Annex III: List of IFES Contacts

ORGANIZATION/ AFFILIATION	NAME	POSITION
PHILIPPINE COMMISSION ON ELECTIONS (COMELEC)	Resurreccion Borra	Commissioner
	Manuel A. Barcelona, Jr.	Commissioner
	Rufino S.B. Javier	Commissioner
	Mehol K. Sadain	Commissioner
	Florentino A. Tuason Jr.	Commissioner
	Mehol Sadain	Commissioner
	Virgilio Garcellano	Commissioner
	Mamasapunod M. Aguam	Executive Director
	Pio Jose S. Joson	Deputy Executive Director for Operations
	Atty. Esmeralda Ladra	Director for NCR
	Atty. Jonalyn Sebastian	Pasay City Dist. 1 Election Officer
	Armado Mallorca	Pasay City Dist. 2 Election Officer
	Dr. Rosalinda Tongco	Pasay City School Superintendent
	Atty. Malou Ugalino	Makati City Dist. 1 Election Officer (EO)
	Dulce Cruz	Acting Makati City Treasurer
	Tata Morales	Makati City Treasury Liaison Officer
	Atty. Urbano Arlando	Palawan Provincial Director
		Puerto Princesa City COMELEC staff
	Editha Trinidad	Election Officer of Calapan, Oriental Mindoro
	Juanito O. Icaro	Regional Director for Region IV
Ronald Renitz V. Ilas	Batangas Provincial Election Supervisor	
Ricky Juan B. Reyes	Election Officer of Lipa City, Batangas	

PHILIPPINE COMMISSION ON ELECTIONS (COMELEC) (CONTD.)	Walter B. Bautista	Election Officer, Municipality of Bauan
	Juan B. Aguila Jr.	Election Officer, Batangas City
	Gloria G. Ramos	Executive Assistant IV, COMELEC Ibaan, Batangas
	Atty. Zacarias C. Zaragoza, Jr.	Regional Director for Region V
	Ma. Sonia Fernandez-Mabelin	Acting Provincial Election Supervisor, Province of Albay
		Provincial Election Supervisor, Province of Masbate
		Election Officer, Legazpi City
	Ms. Luallah Elisa Pama	Chair, Alliance of Concerned Employees of COMELEC
ELECTION MONITORING GROUPS	Jose Concepcion Jr.	NAMFREL National Chair
	Guillermo Luz	NAMFREL Executive Secretary
	Wilfredo L. Bleza	NAMFREL Regional Coordinator for Southern Luzon
	Teresa "Tess" Cantillo-Briam	NAMFREL Provincial Chair, Palawan
	Cynthia Castaneda	NAMFREL Volunteer (Partner in CPA firm), Palawan
	Caryl Montales	NAMFREL Coordinator for Oriental Mindoro
	Fr. Jose Victor (Jovic) Lobrigo	Co-Chair, NAMFREL Albay
	Fr. J. Rodem Ramos	NAMFREL Batangas Provincial Co-Chair & PPCRV Provincial Coordinator
	Danilo V. Marquez	Batangas Provincial Coordinator , Parish Pastoral Council for Responsible Voting (PPCRV)
	Antonio delos Reyes	Director, Coalition for Honest, Orderly & Peaceful Elections (H.O.P.E.)
	Roberto Verzola	Statistician, Coalition for H.O.P.E.
ADVOCACY GROUPS/NGOS	Luie Tito F. Guia	Executive Committee Member, Consortium for Electoral Reforms (CER)

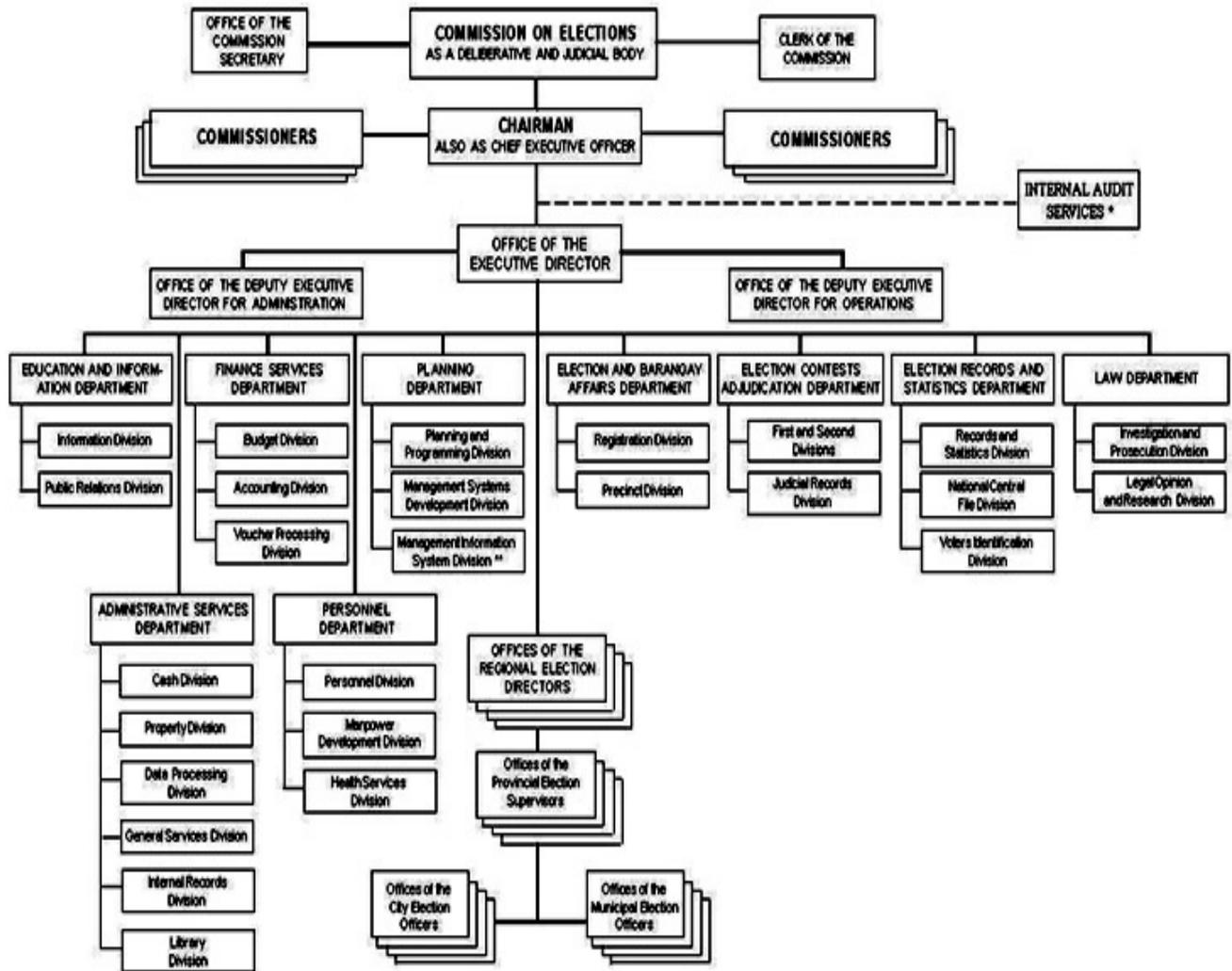
	Ramon Casiple	Chair, CER / Executive Director, Institute for Political and Electoral Reforms (IPER)
	Rebecca L. Malay	Director, Advocacy & Development Cooperation Office, Philippine Rural Reconstruction Movement (PRRM)
	Rev. Fr. Savino L. Bernardi, cs	Executive Secretary, Episcopal Commission for the Pastoral Care of Migrants & Itinerant People (ECPCMP)
OTHER PHILIPPINE GOVERNMENT AGENCIES	Chito Gascon	Department of Education (DepEd) Undersecretary for Legal Affairs & Head, DepEd Election Task Force
	Lambert Ramirez	DepEd Consultant of the Undersecretary for Legal Affairs
	Menita L. Magsino	Member, Board of Election Inspectors
	Dr. Florencia Domingo	Schools Superintendent, Mandaluyong City Division, Department of Education
	Alma Divina	Education Supervisor, Mandaluyong City Division, Department of Education
	Rita Riddle	Administrative Officer, Mandaluyong City Division, Department of Education
	SFA Delia Albert	Secretary, Department of Foreign Affairs (DFA)
	Catherine Paredes Maceda	DFA Vice-Chair, Overseas Absentee Voting (OAV) Secretariat
	Julia C. Heidemann	DFA Spokesperson
	Amb. Norberto R. Basilio	DFA Asst. Sec. of Foreign Affairs for Middle East and Africa
	Pat Rodolfo	DFA OAV Secretariat
	Ferdinand B. Cui Jr.	Presidential Management Staff Director (PMS), Macro economy & Political Affairs Office
	Ms. Magdalena "Dedeng" Mendoza	Director of Center for Governance, Development Academy of the Philippines
	Ms. Bing Pasaporte	Project Manager, Election Training of Center for Governance, Development Academy of the Philippines

OTHER PHILIPPINE GOVERNMENT AGENCIES (CONTD.)	Atty. Ritche R. Regala	Legal Officer, Local Governance & Computer Security, Legal Department, Department of the Interior and Local Government (DILG), Region V
US GOVERNMENT	Lt. Col. Greg Sawyer	Army Attaché
	Andrew Mclearn	Political Officer
	Steven D. Edminster	USAID Economic Dev. & Governance, Governance Officer
	William E. Lucas	Political Counselor
	Paul C. O'Friel	First Secretary
	Ruth Urry	Media Officer
	Dr. Emmanuel Buendia	UNDP Portfolio Manager for Governance (Electoral Reforms)
	Dr. Steven Rood	Asia Foundation Representative / (Chief of Party)
PHILIPPINE CONGRESS	Sen. Edgardo J. Angara	Chair, Senate Committee on Suffrage & Electoral Reform / KNP Chair
	Cong. Jesli Lapus	Chair, House Committee on Suffrage & Electoral Reforms
	Debbie Garcia	Committee Secretary, Committee on Suffrage and Electoral Reforms, House of Representatives
	Carla Guia	Staff, House of Representatives Electoral Tribunal (HRET)
PHILIPPINE JUDICIARY	J. Jose Vitug	Chair, House Electoral Tribunal, Associate Justice of the Supreme Court
	CA J. Teresita Flores	CA Justice / former Election Commissioner

POLITICAL PARTIES/ CANDIDATES	Mike Romero	KNP Official
	Edward Hagedorn	Mayor, Puerto Princesa City
	Cecil Bayron	Vice Mayor, Puerto Princesa City
	Rebecca Labit	Councilor, Puerto Princesa City
		Councilor, Puerto Princesa City
		Provincial Administrator for Palawan
	Atty. Agustin Rocamora	City Administrator, Puerto Princesa City
	Adam Armada	Campaign Staff, Palawan gubernatorial candidate Cong. Sandoval
	Atty. Carlo Gomez	Campaign Manager, Palawan Vice-governor Dave Ponce de Leon
	Maj. Dionido (Ret.)	Campaign Manager, Palawan Vice-governor Dave Ponce de Leon
	Erin Mara Villa	Candidate for Mayor, San Teodoro, Oriental Mindoro
		Newly-elected vice-governor of Albay Province
	Ma. Lourdes A. Arcenas	Kagabya ni Glo, Davao City (Helping Hand of Gloria women's organization)
	Raul Montealto	Secretary General, Association of Barangay Councils (ABC), Lipa City
	Danilo D.G. Tobias	District IV Campaign Manager, LAKAS-CMD Batangas
Bong Dipasupil	Executive Assistant of gubernatorial candidate Apacible, Koalisyon ng Nagkakaisang Pilipino (KNP) Batangas	

PHILIPPINE NATIONAL POLICE	Chief Supt. Joel R. Goltiao	Director, PNP Public Information Office, PNP / Spokesperson
	P/S Supt. Rodolfo Y. Magtibay	Provincial Director, PNP Batangas
	P/Supt. Cedrick G. Train	Deputy Provincial Director, PNP Batangas / Chief, Operations and Plans Branch / Commander, Task Force Sta. Clara / Chief, Provincial Special Reaction Unit / Chief, Port Security Office
	Arnold Albis	P/Supt., PNP Albay Provincial PNP Office / Inter-Agency Task Force for Elections
		Deputy, Puerto Princesa City PNP
	Col. Voltaire Calzaro	Provincial Coordinator, Oriental Mindoro
MEDIA	Rouel Caralipio	Station Manager, DYPR - AM (Palawan Broadcasting Corp.)
		Publisher, The Island Sentinel Calapan, Oriental Mindoro
	Jonald Rayos	President, Batangas Press Club

Annex IV: Organizational Structure Of COMELEC



Annex V: Main Electoral Laws

The Omnibus Election Code (BP 881) – 1985 is the basic law on elections. It has been amended by the 1987 Constitution and the following laws:

The Electoral Reforms Law of 1987 (RA 6646) – 1987. This law was passed to govern the first elections under the 1987 Constitution. *Inter alia* it introduces reforms in canvassing, candidate eligibility, disqualification, election propaganda including common poster areas, watchers, election offenses including vote buying and vote selling.

Synchronized Elections Law (RA 7166) – 1992. This law synchronized the holding of national and local elections. Every three (3) years, elections are held for all seats in the House of Representatives, half of the twenty-four Senate seats, and all other levels of government except Barangays. The president and vice president are elected every 6 years, in accordance with the Constitution.

The Party List Law (RA 7941) - 1995. This law creates the legal framework for the 20% Proportional Representation Party List system mandated by Constitution. It sets a two percent (2%) threshold for each seat, and limits the number of available seats for each party, organization or coalition to three.

“Mindanao Automation” (RA 8046) – 1995. This law created the framework for the automation of elections in the Autonomous Region of Muslim Mindanao.

Voter’s Registration Act of 1996 (RA 8189) – 1996. This law provides for a general registration of voters, adopts a system of continuing registration, and establishes a permanent list of voters per precinct.

Electoral Modernization Act (RA 8436) – 1997. This law authorizes the use of automated systems in the May 11, 1998 national and local elections. It has not been implemented.

Fair Election Act (RA 9006) – 2001. This law was passed after the removal from office of President Joseph Estrada in 2001. It deals extensively with media conduct and access, and the use of public information by parties and candidates.

Act Providing for Synchronized Barangay and SK Elections (RA 9164) – 2002. This law foresees synchronization of Barangay elections with other municipal and local elections. It has not been implemented.

Overseas Voting Act (RA 9189) – 2003. This law was passed to implement the constitutional duty to ensure the rights of Filipinos living abroad to vote.

Annex VI: Misuse of State Resources and Abuse of Office of the President

The General Law

Although the campaign finance laws are admittedly wanting, there are a significant number of laws that outlaw misuse of state resources and abuse of office.

The Constitution

- provides that public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives. (Art XI s.1)
- creates an office of the Ombudsman that has sweeping powers to investigate and prosecute public officials who misappropriate public funds and/or abuse their office.

The Penal Code states that:

- ...any public officer, who by reason of the duties of his office is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially is guilty of the crime of misappropriation, or malversation. (Art. 217).

Other relevant acts include the Anti-Graft and Corrupt Practices Law (R.A. 3019), and the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. 6713)

The Electoral Code

Misuse of state resources and abuse of office are also election offenses. The Omnibus Election Code provides:

Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense:

- Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. Any person who uses under any guise whatsoever, directly or indirectly;
- Public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies;
- Any printing press, radio, or television station or audio-visual equipment operated by the government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or
- Any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity.

Breach of this and related provisions is grounds for disqualification of a candidate. Like all election offenses, it is also a crime, which carries a sentence of 1-6 years upon conviction.

Cases Alleging Misuse of State Resources

Prior to these elections, opponents filed a number of petitions to disqualify incumbent President Arroyo. Some alleged that she used resources from her office to bolster her candidacy.

- *Santiago vs. Arroyo* concerned the national roads program, commonly known as “Our street; our responsibility” program. The petitioner argued that the program, with pictures of the president on billboards and on street workers T-shirts, was electioneering and a misuse of state funds.
- *Gatmaytan and Coo vs. Arroyo* alleged that a presidential message ordered to be read at high school graduations was primarily designed to solicit votes and was thus an abuse of authority. It argues that only students who might be of voting age were targeted, and that the president had not sent an address in non-election years. The president claimed she was only responding to the numerous requests for personal addresses and appearances. She argued that the message was to be read at graduation or incorporated into yearbooks. She claimed similar messages were sent to primary schools.
- *Baybay III vs. Arroyo* questioned an executive order extending medical access, the program with the much commented-upon health cards bearing the president’s photograph. The petitioner argued that the program was purely for the purposes of furthering Mrs. Arroyo’s electoral aspirations. Ms. Arroyo responded that it was a long part of her administration’s social security platform.

These cases were all dismissed by COMELEC in her favor, applying identical or similar reasoning:

A distinction must be drawn between acts of governance, which might incidentally benefit the chances for re-election, and campaigning, which is done intentionally or principally for the purpose of soliciting votes.

Not every act of beneficence from a candidate may be considered campaigning. The term campaigning should not be made to apply to every act which may influence a person to vote for a candidate...the Commission is convinced that only those acts which are primarily designed to solicit votes will be covered by the definition.

COMELEC held that, although the acts may well have enhanced the image of the president, the programs were part of the president’s responsibility to govern. There was no proof that they were conducted for the purpose of soliciting votes.

Violation of the election laws is a crime, carrying a penalty of 1-6 years. Therefore before being found “guilty”, there would have to be a full hearing, with sufficient due process safeguards.

The Constitution expressly grants the president immunity from criminal process. She can only be removed by impeachment as stipulated in the Constitution. Therefore she cannot be found guilty of an election offense and, by implication, cannot be disqualified due to alleged commission of such an offense.

Analysis

“Not every act of beneficence from a candidate may be considered campaigning”.

It is good law, and good sense, to distinguish between acts of governance, which incidentally enhance popularity, and acts designed solely to win votes. Otherwise, a country could not be governed before an election. Of course, politics being what it is, the lines will often be blurred. All incumbents benefit from, and take advantage of, last minute spending. The question is when it crosses the line into patronage or misuse of resources.

The Filipino law and practice seems to be more flexible than other jurisdictions, with billboards and smiling faces of politicians accompanying virtually every public works project. Congressmen allegedly have specific “pork-barrel” funds. The president’s photo even adorns rapid transit tickets. Given the paucity of well-enforced laws on campaign financing, and the concern that access to office is more difficult for the less wealthy, this flexibility may not be ideal.

Presidential Immunity

COMELEC’s conclusion is, in essence, that the president’s immunity from criminal prosecution makes her immune from application of the electoral law, or at least its enforcement against her. This is obviously a dangerous conclusion. It would give an incumbent president carte blanche to campaign as he or she sees fit, regardless of the rules that others must adhere to.

COMELEC would no doubt have been aware of this. They may have felt constrained by Supreme Court rulings on immunity, and comforted by the uniqueness of this case, as the presidents are not normally afforded a second term.

Although this circumstance of Mrs. Arroyo may be an anomaly, the decision sets a worrying precedent. There are other officials who enjoy at least partial immunity from criminal prosecution while in office, who are eligible for re-election. They should not have the impression that they could campaign without fear of penalty for violation of electoral laws.

It can be cogently argued that COMELEC went too far in its ruling. Electoral penalties can be applied for electoral offenses without ruling on criminal liability. The Supreme Court, in considering another disqualification case for vote buying, said exactly that:

- Vote buying has its criminal and electoral elements. Its criminal aspect to determine the guilt or innocence of the accused cannot be subject of a summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character.

Based on this decision, a candidate that violates the election law could invoke his or her immunity to protect against criminal sanctions, but could NOT invoke immunity from process and sanctions that are purely electoral in nature.

This case demonstrates a larger problem: the uneasy coexistence of Philippine electoral and criminal law.

Recommendations

- Congress should consider more stringent provisions about how incumbents may “advertise their beneficence”. Although such signage probably cannot be completely forbidden, it would not be unusual to moderate the personalization of it. A sign saying “paid by the office of the governor” would seem to affect a level electoral playing field less than a huge smiling photo of the incumbent.
- Although the law may grant partial or full immunity from criminal process, immunity from application of the electoral law should not be allowed in any circumstances. Any precedent to this effect, even if theoretical, must be specifically amended or overruled.
- The significant intermingling of the criminal and electoral law should be re-considered as part of the electoral reform agenda.

Annex VII: Social Context

Social characteristics can be found at the root of many of the challenges facing the Philippine electoral process. Oftentimes, such descriptions are based on stereotyping and as such lack the appropriate level of nuance. The main problematic characteristics shared with us can be described according to the following categories:

- The patron-client relationship

This phenomenon is locally referred to as "otang na loob". Repayment of debts to a benefactor overrides most other principles including legal considerations and, in some cases, moral values. Consequently, people tend to be very conscious of authority, especially in relation to the senior members of the local family/dynasty and to their patrons in general. This strong loyalty seldom extends to central institutions, such as the government, which are often seen by people as being the cause of a multitude of problems in their lives, as opposed to their solution.

- Losing face

Social status is closely linked to being seen as a success and therefore failure, or "losing face", is a traumatic event to be avoided at any cost. Some actors are willing to employ extreme measures, including the use of violent means to remove competition. If eventually defeated, the loser goes into denial as a default mode. The typical example given is that politicians never lose an election; rather they always claim to have been cheated. This position dictates that the losing politician will challenge the result by every avenue available, including the court system.

- Poverty and self-enrichment

In the Philippines a small social group owns a significant share of the country's resources, while the majority of the population is left with very limited means. The actions of the poor are often driven by their immediate needs of survival. As a result of their dire situation they have limited respect for a government unable to resolve their problems. For many, selling their vote is more logical than participating in a democratic process. The significant disparity in economic status fuels the search for positions, such as public office, from which one has access to significant resources.

- Financial and political corruption

The pursuit of social advantage and self-enrichment has resulted in a serious corruption problem that is recognized throughout society. Political as well as financial corruption has become a dominant factor in many decision-making processes. Striving for elected office is therefore not always a genuine intent to "perform public duty" and "serve the people", but often to obtain a position in order to personally gain undue means and influence. On the flip side, losing an election has serious consequences beyond a simple loss of influence, since serious retaliation by winners against losers is commonplace.

These social underpinnings are inter-linked in a way that contributes to an environment where electoral actors often behave in whatever manner will benefit their self-interest without any regard for whether their actions will have a damaging impact on the credibility of the electoral process. These social characteristics are an important part of the context in which the electoral process unfolds and must be understood in order to address the widely recognized shortcomings of Filipino democracy.

These social factors are not only affecting the electoral process, but the functioning of society at large. Stakeholders recognize that these problems must be addressed, while acknowledging that it could take generations to change course. One important tool that could help achieve a turnaround is public education. In the broadest sense, this would include revising the school curriculum to address issues of values and mores. Supplementing positive intervention with negative intervention is also needed through the strengthening of existing laws and their implementation.

Endnotes

¹ One of CER's recommendations regarding the implementation of electoral modernization is to get the help of the international community. There is a sentiment that there is no need to reinvent the wheel, as other countries already have successful automation and modernization in place. They are particularly interested in Brazil and India, where a large area and population did not become a problem in the implementation.

² This applies to all levels of government except Barangays, which are regulated under local government law.

³ *Untalan vs. COMELEC*, 15 SCRA 465.

⁴ Joseph Estrada appointed four of the seven commissioners during his presidency. COMELEC staff and other stakeholders often mention how these four ran the institution during that period. Only two of these appointees remain today.

⁵ There is a new union of election officials that is aiming to lobby for better conditions for its members, including the right to regularly upgrade their skills.

⁶ The Region V election director brings together his election officers for an internal evaluation in the post-election period. This appears to be an isolated initiative not coordinated through the central COMELEC system.

⁷ Precinct renumbering under the VVS is not to be confused with the Precinct Mapping project of the discredited Commissioner Tancangco that was started in 1999 and suspended in 2000 by Chairman Benipayo. The election officers who finished their precinct mapping used this system for the 2001 elections, but the majority who did not reverted to the old system. This project was eventually scrapped and for the 2004 elections the old system was used.

⁸ Disenfranchised voter estimates range from 1-2 million voters, however it is unclear whether these figures distinguish between voters who were genuinely disenfranchised vs. voters who simply did not take responsibility for re-registering after becoming de-activated or moving.

⁹ The national voter turnout, based on valid votes counted, is placed at 74% of approximately 43.5 million registered voters.

¹⁰ DepEd did produce a short PSA on voting procedures meant to inform the teachers and assist them in their roles as BEIs. The spot was aired on government television 10 days prior to the election and would have been a useful tool for informing voters had it been aired more extensively on commercial television channels.

¹¹ Some observers have met individual teachers who have taken the initiative to hold mock elections in school as a civic education exercise.

¹² There has already been a national summit on voter education co-convened by CER, the two Congress committees on electoral reforms, COMELEC, Department of Education and the Commission on Higher Education in May 2003. This decided on a core content of a standard or basic citizen-voter education module and on a resolution to undertake citizen-voter education for the next 5-10 years. As a follow-up, CER sponsored four regional citizen-voter education conferences and one civil society-media consultative conference in the last half of 2003. CER has undertaken two national trainings of trainers in the first part of 2004 and is scheduled to do similar trainings in the regions in the last half of 2004. 2005 will see the

nationwide implementation of the voter education program, possibly to include the formal educational system.

¹³ Unfortunately, political parties are notorious for not being interested and/or capable in assisting with such voter education initiatives.

¹⁴ Statement from Undersecretary of the Department of Education and Chair of the DepEd Elections Task Force.

¹⁵ There are legal cases against teachers still pending from the 1998 elections. Teachers charged with an election offense are unable to work or earn a living until the charges are cleared.

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¹⁷ This was a poor use of their time during the busy election period.

¹⁸ Some BEI trainings were still being implemented in early May.

¹⁹ The election officer in Legaspi, for example.

²⁰ Polling station refers to a cluster of precincts. Oftentimes the polling station would be located in an elementary school with precincts set up in each classroom. Other times, the polling station would be one large room where several precincts would share the same space.

²¹ There is a misconception in Philippine society about what a quick count is. The definition of a “quick count” needs to be made explicit, vis-à-vis similar terms such as “Parallel Vote Count”, which is in fact what the NAMFREL exercise is.

²² However the canvassing body may correct “manifest errors” that are brought to its attention in the course of the canvassing.

²³ Also known as trial courts of limited jurisdiction.

²⁴ Also known as trial courts of general jurisdiction.

²⁵ Meaning lack or excess of jurisdiction and/or grave abuse of discretion.

²⁶ 22 out of 65.

²⁷ Miguel vs. COMELEC, Supreme Court, 2000. Note however that in the HRET a claimant must show after initial revision of 25% of the ballots, chosen from precincts selected by the claimant, that his/her case has a chance of succeeding.

²⁸ The Philippines has a number of internal security threats that affect the conduct of the elections. The Abu Ssayaf group, a Muslim separatist group in the south, engages in kidnappings and murders of innocent civilians and foreigners. In addition, the Moro Islamic Liberation Front (MILF) has conducted terrorist activities from its camps in the Autonomous Region of Muslim Mindanao (ARMM). Although a ceasefire has been negotiated and a peace process is ongoing, acts of violence continue.

²⁹ There are 114 private armies identified in the Philippines, with 78 of these being in the ARMM.

³⁰ There were over 600 hotspots identified during the 2004 election period.

³¹ Governor Grace Padaca made this accusation during the Electoral Violence Working Group held by the CEPPS program, while other election stakeholders cited their own examples.

³² Regions V (Masbate Province), IX, II and the ARMM were considered to be the most problematic regions in the Philippines in terms of incidents of election-related violence reported to the PNP. NCR was the least problematic.

³³ The same circumstances exist in isolated areas where AFP battalion commanders have the capability of exerting influence over the population.

³⁴ CER organized a Compact for Peaceful Elections among national parties and presidential candidates in February 2004. This was a successful event attended by the major coalitions/parties and presidential candidates or their official representatives. The Compact was extended to some local areas of electoral conflicts later. It also organized an international observer mission, which centered their monitoring on electoral violence.

³⁵ See Annex on "Misuse of State Resources and Abuse of Office on the Part of the President".

³⁶ This key measure failed in 2004, as the lists were not ready in time. See Section 5 for more information.

³⁷ This key measure had only limited implementation and was therefore not effective in 2004. See Section 5.3 for more information.

³⁸ The Constitution can be amended -

- By a vote of $\frac{3}{4}$ of members of Congress;
- By constitutional convention, called by $\frac{2}{3}$ of members of Congress;
- By public initiative according to a formula set out in the Constitution.

In each case the amendment(s) must be ratified by majority vote in a public plebiscite. The plebiscite is under COMELEC authority. Constitutional amendment(s) cannot take place more than once every five years.