

THE 2010 AUTOMATED ELECTIONS – AN ASSESSMENT

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I am honored by the invitation of the Jaime V. Ongpin Foundation to make an assessment of the 2010 elections, which also happens to be the first automated elections in our country. Thank you, especially to Maribel, who is a comrade on electoral reform from way back when we were young. My talk today will consist of four parts:

- The elections – predicted and actual. The people have spoken and it is a step forward for our democracy.
- But legitimate questions need answers, particularly the auditability of the system.
- Beyond reforming the voting system, are the serious governance issues which call for urgent attention and reforms.
- **And the most important question – Where do we go from here?**

The Elections - Prediction

Before May 10, 2010, this was how I viewed the coming elections: ¹

1. The scenario of a vast and elaborate conspiracy to make the elections fail so that President Arroyo can stay forever did not make sense. In the first place, the Comelec would not agree to be a part of it (nor for that matter to a plan to manipulate the results); neither would the military, the Senate or the Supreme Court. Secondly, it defied logic for President Arroyo to take on such a high risk proposition to the stability of the country and to herself when she had already protected herself by the appointment of her people in high places and her being in the Congress;
2. The people wanted the elections to take place, the automation to work and the peaceful transfer of power to happen on June 30, 2010. And when the call of the people is strong and clear, statesmanship or self-interest, enlightened or otherwise, inform the behavior of our leaders, and the many decent people in government;
3. Despite the lack of transparency of the Comelec, there was basis for assuming that the source code and PCOS machines were clean and therefore a good chance that the elections would be sufficiently successful with most of the results credible provided

¹ Speeches to Ateneo School of Government 5/3/10; Philippine Computer Society 4/22/10; Makati Business Club/Management Association of the Philippines 4/20/10; Inquirer Briefing 4/14/10.

that the 30 compensatory controls recommended by the Technical Advisory Committee were installed and implemented with the following additional safeguards:

- a. a random test of the PCOS machine using an extraction key to generate the hash code for comparison with that deposited in the Central Bank,
 - b. the printing of the first eight copies of the ER before the PCOS modem is plugged in;
 - c. on line posting of the results on the Comelec website and
 - d. an enhanced and efficient implementation of the random manual audit;
4. Even without automated fraud, the elections would be attended by many problems. But a massive failure of technology or of logistics or of non-acceptability of the results was unlikely;
 5. The elections was not about President Arroyo, it was about us and our country's ability to carry out this project, despite the odds.

Elections – Actual

We all know how the elections turned out. It was a step forward for our democracy and a cause of celebration for the country.. There was no failure of elections, no catastrophic failure of technology or logistics, no outrage over its conduct or results. President Aquino won by the largest margin in history which was accurately tracked by the surveys and exit polls. As accurately tracked were the vice-presidential and senatorial elections. And there was a peaceful transfer of power on June 30, 2010.

I do not think anybody seriously disagrees with the results of the six SWS surveys from February to late June 2010 on the favorable sentiments of most voters about automation -the believability of the results, the ease of ballot shading, the speed of the counting, the early proclamation of winners. The sentiment is even more sanguine among poll workers. The shock and awe approach of the Comelec paid off and caught the cheaters off balance.

A book entitled Philippine Democracy Assessment (a joint project of the British Council, Fredrich-Ebert-Stiftung, Philippine Democracy Audit and Transparency and Accountability Network) tells us that it is more meaningful to go beyond measuring the “success” of a democracy to a measurement of its quality depending not on “expert common sense”, which is usually critical of and cynical of democracies, but more on “people common sense”, which is more optimistic and supportive of democracy. It suggests that changing the everyday practices and assumptions of citizens may have greater impact on the institutional edifices of the Philippine government and state than more formal means, such as charter change.

I agree with the “people common sense” approach because it is more important to listen to what the citizens themselves are saying about our democracy, or what James Surowiecki aptly describes in his book as the unerring “wisdom of crowds”, because it articulates the

fundamental principle of a democracy that “the many are smarter than the few”. And why our collective will, such as the one expressed in free and fair elections, is what ultimately makes democracy work. But we also know that the other side of the coin is that we get the government we deserve.

So, shall we leave the elections at that, thank the heavens and the wisdom of crowds for the quality of the exercise and look forward contentedly to another date with history in 2013 with Smartmatic and its PCOS machines and with the same kind of Comelec governance as in May 2010.? I think not.

Beyond the Experience of Voters

We need to go beyond the personal experiences of the voters and the poll workers. What they witnessed was real. They shaded the ballot, inserted it into a machine, watched the numbers come out of it, watched the teacher press the transmission buttons and monitored the totals on television and the steady and speedy proclamation of winners from the ground up.

The favorable comments are consistent with the trust we put in the modern amenities we take for granted every day – the accuracy of the bank teller machine, the cel phone, live and on-the-spot television and so on and so forth. But we must not forget that before those became everyday amenities there were experts who made it their business to question self-serving promotions and applied their expertise to make sure the technology was safe, cost-effective and suitable to the consumers before it was mass-produced. Our automation was mass-produced in one step, was not really pilot-tested satisfactorily, and was provided by a supplier who had no extensive experience in the technology and seemed to be also learning while it was being implemented.

That is probably why the voters in the surveys also expressed concern about what they did not see, which are left for the experts to answer – 34% of the voters thought that there was cheating in some levels, 43% before the elections and 28% after the elections thought that the machines were used to sabotage the results and only 50% thought the machine results were definitely accurate although an additional 34% thought it was “somewhat accurate” whatever that nuance means. Moreover, as SWS notes “pre-elections and post-elections reports about other types of elections irregularities were also not markedly less in 2010 than in previous manual elections”.

OMR (Optical Mark Reading) is simple technology. But there are many things that must accompany the machine to make it work properly – the safeguards against rigging and hacking, the specific configuration that meets the legal and technical environment of its use, an attention to the details of implementation, possible vulnerabilities which take their toll sooner or later., and if ignored in the exuberance of the moment, can have catastrophic consequences. We have seen too many delayed-reaction airplane accidents to allow that to happen to our electoral system.

The net trust rating of the Abalos Commission about the time of the 2004 elections was very high, as high as that of the Melo Commission during the 2010 elections. By the end of 2005, as we learned more about what really happened in the elections, that net trust rating had plunged to the lowest of any Commission in history. What if we had given the Abalos Commission an award for outstanding performance? That is why we need to hear from the IT community when it comes to the technology and the implications of its performance or non-performance. There is more to it than meets the eye.

I am reminded of that paraprodikian: "I would like to die peacefully in my sleep like my father, not screaming and yelling like the passengers in his car." Our electoral system is that vehicle and the driver is the Comelec. And I am glad that the IT community is screaming and yelling now rather than later.

The Opinions of Experts and Election Practitioners

Here are some excerpts from their assessments as well as those from others who were deeply involved in the elections:

"At the national level, our assessment is of a mixed success. Automation showed no substantial advantage. On the local level, our assessment is profound unease"... "Automated elections..is the least transparent kind of elections. ..."Before the next automated elections, all the loopholes in the PCOS and the automated election process should be firmly plugged". ... "If not, a reversion to manual elections with heightened vigilance by organizations like the PPCRV and NAMFREL would probably yield more credible and accurate results." (Rep. Teddy Locsin, House Committee Chair on Electoral Reform)

"...the Commission on Elections' claim of a "successful" automated election (is) a sham.... the defective automated election system ...was not only vulnerable to various glitches and management failures but also favorable for electronic cheating including possible pre-loading of election results." (Cenpeg)

"Notwithstanding the results of the May 2010 elections with respect to the National Elections ... not all of the local electoral results could be relied upon to the same extent.... the automated election system is in serious need of review and remedial measures." (Namfrel)

"The new technology greatly facilitated the counting and canvassing.. However, peaceful and expedient elections did not translate to an honest and credible elections. Although the automated system has seemingly eliminated the practice of wholesale cheating...election offenses like threats, intimidation, unlawful electioneering and most especially vote-buying were proven to be most prevalent." (Lente)

“While most people were celebrating the perceived success of the automated elections, many were finding reasons to discredit the AES. These detractors included losing candidates, self-proclaimed IT experts, and election operators that were put out of business....They could not substantiate any claim of electoral fraud committed by the AES.”(Comelec Advisory Council)

The **Comelec Advisory Council** also said: *“It was not a perfectly executed exercise by any stretch of the imagination. The preparation time was too short...Smartmatic-TIM committed numerous mistakes....some of which nearly derailed the entire exercise. The Comelec also made several questionable decisions that placed the integrity of the AES in jeopardy....However, after the new President was proclaimed and many of fears surrounding the election automation were put to rest.....despite all the mistakes, the AES ultimately did work....The Comelec is better off not exercising the option to purchase the PCOS machines, so it can look for an even better solution for the 2013 elections.”*

“As the wise book says, ..’ all things shall come to pass’, the TWG-RMA with relief and thankfulness says, ‘just as in the AES that happened in the 2010 elections, and happened well, so, too with God’s grace, the RMA did happen, and happened considerably well.’ “(PPCRV)

“Automated elections have been conducted in Mindanao since 1997. ..(and) has brought significant improvements in the speed of counting the votes..... Unfortunately, these improvements were not sufficient to break the established system of command vote, in which political leaders dictate people’s choices,.. Automated election is not the solution. We need to broaden our scope to solve the electoral problems.” (CARE – Mindanao)

We might conclude that the assessments are poles apart, because of a few illogical remarks and personal attacks which have no place in a debate among professionals.

In fact, there are many areas of agreement. There was general acceptance of the results, especially for the national elections. There was agreement that the elections was attended both by perennial problems and by problems associated with automation and there was agreement that there was a need for a thorough review of the system and for corrective measures if the AES is going to be used again. Finally, there was agreement that the PCOS machines should not be purchased. Thus, if the Comelec decides to purchase the machines, it might be a good idea to insist that all those involved in the transaction be subjected to a lie detector test and asked the question: how much is the commission on this deal?

The main disagreement is in the process, its efficacy, its security and even its accuracy at certain levels. But the problem is that the Comelec has made it difficult to find out in any objective manner the answers to the questions raised.

The Comelec was advised before the elections SysTest that (1) total transparency is the key to promoting confidence and integrity in the electoral system and (2) it must remain in control of the entire election process and never permit it to become vendor-driven. And how “vital it is for the Comelec to share factual information about the automation and testing processes to accurately inform the public, including groups most critical of the automation project, and to de-bunk misinformation and rumors.”

Unfortunately, the Comelec, and Smartmatic did not heed the advise.

The Transparency Issue

I am convinced that the Comelec did not start off to be non-transparent in implementing automation. Its good faith is not in question here. But the Comelec under Chairman Jose Melo was single-minded about automation, which was its greatest strength in making automation happen but it was also its greatest weakness. It soon found itself on a slippery slope as it gave up more and more decision-making powers to Smartmatic for lack of organic technical expertise. (The Comelec Advisory Council cites at least four violations of Smartmatic that should be penalized i.e. CF Card mistake, UV safeguard, time stamps, transmission underperformance.) Moreover, speed and not accuracy became the overriding consideration, even if it meant ignoring legal provisions, such as Sec. 197 of the Election Code on the right of voter to a second and third ballot, disabling the feature of a voter verified paper audit trail and dispensing with certain grounds for pre-proclamation proceedings. When the automation schedule seriously faltered, it then waived, ignored or rendered inutile certain legislated safeguards and contractual requirements and de-prioritized other electoral reforms necessary to improve the system itself. When the Comelec ran out of explanations and the questions and criticisms persisted, the Comelec simply shut down communications and thereby heightened the mutual distrust. Frustrated IT professionals and experienced election watchdogs (except PPCRV) interpreted the Comelec approach as, at the least, high-risk that put the elections in jeopardy. Or at the worst a conspiracy to make it fail or to allow cheating to take place.

As already mentioned, I believed then, and hindsight tells us now, that the scenario of vast and elaborate conspiracy did not make sense. But the Comelec did commit many mistakes and lapses of judgment, as did Smartmatic, to the point of a potential disaster, as exemplified by the CF Cards fiasco during the FTS (field testing and sealing) 4 days before the elections.. We now know that if the re-programming of the CF Cards was just one day delayed, there would have been many precinct failures on election day.

In short, the Comelec was incredibly incompetent but it was also incredibly lucky. But the cheaters will not be in shock and awe next time and they will be more prepared. And the margins may be small enough to change.

The Auditability Issue

The Comelec has not yet issued its Report on the 2010 Elections. The Congressional investigation in aid of legislation has not even start and the clock is running. When I asked the career people in the Committee on Suffrage if there were any instructions or framework for assessing the automated elections, I got this response: “Kayo naman sir, napaka taas ng hinihingi ninyo. Parang pinapakain ninyo ng lobster ang bagong baby.” (*Translation: “Sir, you are asking too much, it’s like feeding a new born baby with lobster.”*)

Whenever the possibility of fraud was raised before and after elections, Smartmatic’s ultimate answer was that any fraud or even attempt at it can be detected or found out sooner or later because of the auditability of the system. Let us validate that assurance on four points – the “compensating factors”, the random manual audit, the logs and data from the central server and CF-cards, and the resolution procedures in protest cases.

1. **The compensating factors** - I believe that the source code is clean based on the certification of the AES by the Technical Evaluation Committee (TEC) which is one of the few sources of forthrightness on the side of the government. I also inquired from my sources about SysTest and got a favorable assessment despite its checkered history. But the TEC’s endorsement was conditioned on the adoption and implementation of 30 compensating factors to assure that the AES can securely, accurately and properly be used in the elections, and the additional safeguards mentioned earlier. Unfortunately, the TEC says that there is no feedback or documentation if, in fact, those were all adopted or implemented, except an En Banc Resolution directing the Project Management Office dated March 11, 2010 to do so. Thus, a documentary trail to determine what compensating factors and safeguards worked or did not work is not yet available.
2. **The random manual audit** – At the outset, I must say that, despite my earlier support for a proposal for a parallel manual count, I did not go along with the final appeal because I think that the Comelec had valid reasons for its denial, i.e. the debatable assumption that a manual count is always more accurate than an automated count and the confusion that might result from it and the lateness of the hour to implement it.

But the main argument of the Comelec against the parallel manual count was the random manual audit. And that, I am sorry to say, was a failure. In the first place, the chair of the TWG-RMA is a statistical illiterate like me and should have realized her limitations.

Secondly, she compromised on the use of the RMA for proclamation purposes against her earlier commitment, in the interest of a harmonious relationship with the Comelec. Maybe it is just as well that happened given the poor quality of the RMA and its delayed completion.

Thirdly, there was no real statistician on the project except NSO Administrator Carmelita Erieta. But she was invited to join the committee very late, after the sampling design and

audit procedures had been decided. The NSO vouches for the correctness of the “edited” results (the raw data had to be edited because of the many mistakes by the teams due mainly to lack of training), but the NSO does not vouch for the adequacy of the sampling design nor the reliability of how the audit was carried out in the field (many were not done at the precinct, nor on election day, nor observed by the parties for lack of notice, nor were all the precincts covered of an already small sample). The RMA, released only end-July (2 ½ months after the elections), showed that the 99.9995% accuracy rate commitment of Smartmatic was not met, but it is really useless for its intended purposes except to demonstrate how not to do it the next time around.

3. **The logs and data stored in the PCOS CF Cards and in the Central Server** are supposed to provide a complete documentation of what happened in the elections. These are not yet available to date, which may account for the denial of Cenpeg’s request for information. Moreover, as of last week, 11,021 CF cards were not yet in the custody of Comelec Central.

The Comelec did not start to run the logs until last week with the help of the DOST because, I was told, certain contractual provisions about a one-time use of the Smartmatic servers and software needed to be resolved. Maybe the Comelec can enlighten us more on the issue.

In any case, the data in the Central Server is incomplete because out of 76,347 precincts, only 68,670 ERs were transmitted to the Central Server, 450 ERs are “unaccounted” for (998 until last week), and there are 251 “failures of elections” which have no ERs. The rest, 6,428 ERs were transmitted to the municipal board of canvassers. Incidentally, it still remains to be verified if the 251 “failures”, the 262 precincts with FTS data, the 450 “unaccounted for” precincts, and the vote balances of the lowered thresholds for transmission were included in the presidential and vice-presidential canvassing.

The 90.35% unofficial electronic count and the delayed reconciliation of data sent to the three servers would have been a significant under-performance of transmission and would have been useless had the presidential elections been closer. The PPCRV parallel count was also useless. It only encoded 53,000 ERs equivalent to a 69% accomplishment rate, the lowest in the history of unofficial parallel counts in the country.

It may well be that the audit logs of the central server as validated by the data in the CF cards will ensure the auditability of the automated elections. But to do that, the logs, data and CF cards have to be secured in the first place.

4. **Recount in election protests** – The election is not complete until the rightful winner is proclaimed. Thus, protests represent an opportunity to test the auditability of the results. But to-date the rules on the recount have still to be agreed upon.

I agree with the latest proposed guidelines of the Comelec that the recount should be done on the same basis as the elections, which would include re-running the ballots through the PCOS machine and the use of the ballot image as primary evidence. A reversion to the old manual “revision” of ballot, as proposed by election lawyers, would mean that the criteria for deciding protests would be different from the criteria to determine the other winners in the elections. That would be legally assailable. It is the jurisprudence that should adapt to the new system and not the other way around.

In fact, automation is supposed to be so convincingly accurate that the Comelec thought it would result in a 99% reduction in protests, at least that is what a former Commissioner said in a recent Cebu focused group discussion among judges and lawyers. How explain then that the number of protests at the Comelec and the House Electoral Tribunal are higher in 2010 than in 2007 – 96 vs.73 in the Comelec and 62 vs.49 in the HET. There is also the vice-presidential protest of former Sen. Manuel Roxas which asks for a forensic examination of the whole system before any recount is started.

In view of all the foregoing, our only verdict on the Smartmatic assurance of a complete auditability of the system is a failing mark at this time.

Governance problems

Twenty-four years after democracy was restored in our country, we should be harder on ourselves in determining if our elections are more mature and democratic, with democratic elections defined as “an equal opportunity for every qualified voter to cast a ballot and have that ballot counted.” (*This was the main criteria used by the U.S. Congress in passing the Help America Vote Act of 2002 or HAVA in the wake of the trauma of the 2000 Gore vs. Bush elections*).

There were two types of governance problems in the 2010 elections.

The first are the perennial problems – the late promulgation of rules, regulations and guidelines, disenfranchisement from defective voters’ lists, delays in delivery or non-deliveries of election paraphernalia, inadequate training of teachers and Comelec field personnel, inadequate voter education, irregularities in procedures. Most of these involved procedures. But since elections is a process, procedures partake of the substance of suffrage. These governance problems can all be solved with better management. But the point is that they were more pronounced in 2010. The lack of enough attention to the details of operations may also be due to the pre-occupation of the Comelec with automation.

The second are the special concerns, namely, (a) warlords, private armies, goons with legal arms, (b) disenfranchisement and the low registration rate of overseas workers, (c) the flawed implementation of a flawed party-list system and, of course, (d) corruption. These concerns required longer-term thinking, full staff work and relentless advocacy, which the present Comelec does not appear disposed to do. With the added complication of the many, and

largely unanticipated, problems of automation, these special concerns were left unattended and may remain so, until there is a major changing of the guard at the Comelec.

I would like to share my thoughts on how to address these concerns.

Warlords, private armies, goons with legal arms, “command votes”. It is true that the incidence of violence (ERVI meaning “election-related violent incident”) in 2010 was relatively low compared to earlier elections, but the casualty figure of 55 deaths is a bit misleading because the 57 deaths in the Maguindanao massacre were not included on the ground that the massacre took place before the election period. But the group was on the way for the filing of a certificate of candidacy, does anyone doubt that it was election-related?

“Command votes” while mainly a function of warlordism is also about the use by the powerful in elections of money, a lot of it sourced from government, which, in the context of the poverty and feudalistic conditions in our country, is another form of voter coercion.

The fact is that every opposition denounces warlordism and command votes until it is its turn in power. The vicious cycle must be broken and, according to the military, the solution is simple – don’t issue licenses and permits to the goons of politicians and don’t legitimize them as government para-military forces. It’s the politicians, including those in Malacanang, who request these issuances and designations. And the task of the military is made more difficult when the Secretary of Defense is a former military man. A key recommendation of both the Davide and Feliciano Commissions on de-politicalizing the military is to appoint a civilian as Secretary of Defense. The Aquino administration did not follow that recommendation. In that light, we might ask this administration if it is prepared to finally break the vicious cycle on warlordism, private armies and command votes.

Disenfranchisement and oversees absentee voting. We cannot call our elections truly democratic until all those who are qualified are first registered.

The first source of disenfranchisement is a defective voters’ list. The Comelec solution of incremental registration with biometric registration is correct. Another general registration would be expensive and unproductive. *(The U.S. HAVA mentioned earlier went farther than a computerized voters list. A voter who cannot find his name is not turned away which summarily forecloses his right. Instead, he is allowed to cast a provisional ballot which can be counted after his eligibility is verified.)*

The second source of disenfranchisement in 2010, estimated at 2-3 million during the House Committee on Suffrage hearings, was automation related and involved the voters who were refused a second ballot or did not vote because of the congestion at the polling place. *(Under the HAVA, a voter has the right to correct his/her ballot for mistakes or an overvote (undervote) and the notice to him is a mandatory feature of a voting machine.)*

The third source of disenfranchisement, and the most serious one, is the low registration rate of overseas workers (defined as “persons whose stay overseas is related to job contracts”), numbering about 3.6 million. I do not include the citizens of convenience who have deeper roots in their adopted countries. The number registered in 2010 for Filipinos overseas is 589,830 of which only 153,323 voted. This means that out of at least 3.6 million of qualified voters, the turnout rate is at most 4.2%. This is unacceptable because the problem is solvable. The first step is to require in the passport law that a certificate of voter registration be submitted for the issuance of a passport. In 5 years all OFWs would be registered. The second step is to allow all of them to vote by mail (only about 114,00 were given that right in 2010), which is what other countries do. The arguments about secrecy and vote buying are not valid. The likelihood is that these voters will cast an intelligent vote and will not sell it.

The disenfranchisement arising from these three causes is about 5-6 million, which is totally unacceptable.

The party-list system. The present system is a bastardization of the constitutional provision. Yet, it has been relatively successful as an experiment on proportional representation, as a mechanism for a truly representative House and in improving the quality of debates on legislation, and should not be abolished as some suggest. But the system is getting out of hand because a flawed law, flawed Supreme Court decisions and its flawed implementation by the Comelec. The law must be amended and/or the Supreme Court must revisit its decisions, especially on the issues of “sectoral” and “marginalized” groups and the cap for each party. But even without the changes, the Comelec can make the party-list elections more manageable by being strict against of single issue parties and parties with no distinctive platforms, and against the nominees of convenience that defeat the purpose of giving a voice to marginalized minorities.

Corruption. The use of money, most of it government money diverted for partisan purposes is a big problem in elections. It also fuels warlordism, vote buying and the corruption of election officials. We thought that former President Marcos was the pits in that regard. But it has become worse. It has been democratized through a patronage and pork barrel system, and even from leakages in the IRA down to the barangay. Only a massive and uncompromising campaign, with the Comelec as a key enforces, can stop this practice. If the Aquino administration’s fight against corruption is for real, it should put this reform on top of its agenda. *(NB: the coming publication of the study by the Philippine Center for Investigative Reporting on campaign finance by Malou Mangahas et al is a must reading for everyone.)*

With respect to corruption in the Comelec itself, it was particularly problematic in 2010 because there was a lot of money to spend, and to spend quickly. The total budget was a mouth-watering P16.5 billion. I am told that one corruption technique was to delay decisions until they are too urgent to allow for proper scrutiny. When I asked a high-ranking Comelec official why certain transactions were rushed. He said: “Kung gusto mong mag-magic, kailangang mabilis ang kamay mo.” (*Translation: “If you want to make “magic”, you have to be fast of hand.”*)

A questionable contract, for example, is the packing and forwarding of ballot boxes and official ballots which cost P1.1 billion and which was not bidden out. It was a negotiated contract with Smartmatic which would not have been qualified to bid because it is not in that business and which sub-contracted the work anyway. Comelec itself has years of experience in transporting these items. What is Smartmatic's value-added to this activity?

If it is true (I could not get a verification from Comm. Larrazabal on the figures) that the cost of deploying ballot boxes and official ballots in the barangay elections was only P67 million, then the questions must be asked: Is there a 1800 percent difference in volume and scope between the two? Why should one cost 18 times more than the other?

The most effective solution to corruption is to bring the crooks, without exception, to justice. In the P700 million purchase of ballot folders which Chairman Melo aborted, six officials of the Comelec, including Executive Director Jose Tolentino have been suspended and recommended for prosecution.

Reforms within the Comelec. As you may have surmised from the above discussions, the reform of the electoral system should start with the Comelec itself.

The first reform is the appointment of new commissioners to implement the intent of the Constitution – that three of the commissioners must be non-lawyers because elections is more than about law, it is about management, systems and even behavioral science. Every president has been asked to change the pattern of appointing only lawyers but have ignored the call, except President Estrada who then appointed a particularly unqualified person. **There will be two vacancies in the Commission by February 2011.**

Before the 2010 elections, we urged President Arroyo to appoint at least one information technology expert to the Commission because of the challenge of automation, to no avail. We have also urged the Congress, particularly the Commission on Appointments, to exercise its co-responsibility in the appointment process to improve the quality of appointees, but have found out that every one of them is a false reformer when it comes to a choice between country and self-interest, which usually means getting into the good graces of the Comelec.

With at least one IT expert in the Commission, the Comelec should be able to build a badly needed IT infrastructure in the organization.

The second reform is to stop appointing retired justices to the Comelec. This is not directed at any individual but at the reality that the work of the Commission is too demanding for people who are used to contemplating the law from the isolation of their offices, who are virtually clueless by training and disposition on the technical and non-legal aspects of elections and are too old in their ways to actively manage the process, to go out to understand the problems in the field and to pro-actively campaign for reforms.

The Comelec is a place for young, visionary, energetic and honest people who can rise to the challenge of the changing paradigm of elections and the tasks of the Comelec, and who can interact better with the generation who constitute the great majority of the voters.

Third is the matter of rationalizing the twin constitutional functions of the Comelec – the management function and the quasi-judicial function. In a Lente focus group discussion a year ago which included three former constitutional commissioners – Fr. Joaquin Bernas, former Supreme Court Justice Adolfo Azcuna and myself – it was agreed that a constitutional amendment would be useful but that even without a constitutional amendment it is still possible to rationalize the powers by operationally separating the two functions, with commissioners of appropriate capabilities in charge.

WHERE DO WE GO FROM HERE?

The automation project started after the 1992 elections when I was Comelec Chair. Automation was supposed to address the problem of too much human intervention which made the system vulnerable to human error or fraud. The Comelec decided that the antidote was automation because it assured accuracy (an automated count being more accurate than a manual count), and was faster, which would unburden the people, especially the teachers, from the drudgery of a manualized system. The chosen technology was OMR. In both the manual and the automated elections, the precinct election return (ER) is still considered the best evidence of the vote other than the ballot itself. But the main difference is that the manual process requires that the national canvassing and proclamation be based on provincial and city certificates of canvass (COC). That opened the door to the so-called “wholesale cheating” at the canvassing levels. Automation on the other hand allows the ER to be transmitted directly with the ladderized COCs at the municipal/city/provincial levels) being nominally processed to comply with legal technicalities, thereby bypassing the canvassing cheaters, assuming, of course, there is no internal rigging.

If I remember correctly, the estimated cost of automation in 1992 was estimated at about P1 billion over 5 years. By 2010, that cost had ballooned to P11.3 billion and accounts for 68% of the total cost of P16.5 billion. This cost might increase with the increase in voters and with a possible reduction in the number of precincts clustered, to reduce congestion. And with more IT-savvy cheaters to deal with, the risks and thus the cost of the battle would escalate even more.

From what I have observed about elections since 1992, I am no longer as sure that the biggest problem in elections is wholesale fraud. For one, wholesale fraud is not a nationwide phenomenon, at least not in the scale and brazenness with which it is done at the ARMM, which accounts for only about 5% of the voting population. But at ARMM, more than wholesale fraud, the problem is warlordism, with the complicity of government officials, the military and the PNP. In warlord-dominated areas, they don’t change the results; they simply dictate them, which can happen even with automation.

Thus, **this is a good time to re-examine our agenda on electoral reform.** Even if the automation in 2010 is cleared, after proper independent reviews, as trustworthy and the corrective measures for future elections are do-able, we should ask the questions:

1. As raised by the German Federal Constitutional Court in 2009 – does the use of a computer count and determination of the results that cannot be examined by an ordinary citizen reliably and without specialist knowledge violate the principle of the public nature of elections? The Court said yes. This resulted in the reversion of its elections to a manualized system. We might want to revisit the issue of a “private vote with a public count”.
2. Granting that we determine that automation is not unconstitutional, is automation cost-effective and still worth the expense if we can successfully address the other problems such as warlordism, the use of government money for partisan purposes, the governance problems at the Comelec, the many procedural details that can make or unmake elections?
3. Will solving these other problems make wholesale fraud less of a problem to the extent that we can use less expensive systems with less vulnerabilities in its operation that would still ensure more accuracy while giving the voters the ease of voting and faster results that they obviously prefer? What will the system look like? This obviously calls for a comprehensive cost-benefit analysis of automation.

I don't have the answers to these questions today. I am raising them and asking our experts in the IT community and our election practitioners to please think about them and maybe even make better sense of the issues than I can. Because I do not think the Comelec or the Congress are doing that kind of thinking. And I am challenging our friends in civil society and all those who care about the future of our democratic elections and of our country to work together, as we have done before (or have we forgotten?), to find the answers to the questions, and once again be the vanguards of change.

In the timeless words of the assassinated Archbishop Oscar Romero of El Salvador: “It helps now and then to step back and take the longer view...we plant seeds that one day will grow...we lay foundations that will need further development.... we are workers not master builders, we are ministers, not messiahs, we are prophets of a future not our own.”

Thank you and good day.