



Report on the 2004 Philippine Elections

National Democratic Institute for International Affairs

August 2004

For further information, please contact:

Peter Manikas
Senior Associate and Director for Asia Programs
National Democratic Institute for International Affairs
2030 M Street, N.W., Fifth Floor
Washington, DC 20036-3306
Phone: (202) 728-5500
Fax: (202) 728-5564
Email: peterm@ndi.org

Funds for the publication of this report were provided by the United States Agency for International Development

Copyright © National Democratic Institute for International Affairs (NDI), 2004. This work may be reproduced, excerpted and/or translated for noncommercial purposes provided that NDI is acknowledged as the source of the material and is sent a copy of any translation.

Table of Contents

Introduction	1
Political Background	1
Governance and Legal Framework for Elections	2
<i>Governance System</i>	2
<i>Legal Framework</i>	3
<i>The Electoral System</i>	3
<i>Suffrage and Voter Registration</i>	4
<i>Political Party and Campaign Finance Laws</i>	5
<i>Election Administration</i>	6
Pre-Election and Campaign Period	7
<i>COMELEC and Election Preparations</i>	7
<i>Appointment of Interim Commissioners</i>	8
<i>Failure to Automate the Election System</i>	9
<i>Voter Registration and Voter Lists</i>	10
<i>Lack of Training for Election Officials</i>	11
<i>COMELEC's Quick Count</i>	12
<i>Candidates, Political Parties and Campaign Organizations</i>	13
<i>Role of Civil Society in the Pre-Election Period</i>	16
<i>Parish Pastoral Council for Responsible Voting</i>	16
<i>National Citizen's Movement for Free Elections (NAMFREL)</i>	17
<i>Other Civil Society Organizations</i>	18
<i>The Media</i>	19
<i>The Security Forces and the Election</i>	21
Election Day	24
<i>Election Administration</i>	24
<i>Election Day Monitoring</i>	27
Immediate Post-Election Period	27
<i>May 10 Results: Counting and Tallying at the Precinct Level</i>	27
<i>Canvassing at the Municipal and Provincial Levels</i>	28
<i>Canvassing for Legislative and Local Government Positions</i>	28
<i>Congressional Canvassing</i>	29
<i>Grievances and Complaints</i>	30
<i>Legal Framework</i>	30
<i>Opposition Claims of Fraud and Irregularities</i>	31
<i>NAMFREL Quick Count</i>	32
<i>Violence and Intimidation in the Post Election Period</i>	33
Recommendations and Conclusions	34

About the National Democratic Institute 38

Appendices 39

Appendix A: Compilation of Election Results

Appendix B: Statement of the Catholic Bishop's Conference

Appendix C: Pastoral Statement on Elections 2004

Appendix D: Copy of a "Covenant of Hope" pledge form

Appendix E: Urgent Appeal to the People of Abra

Associated Publications

PPCRV Consolidated Election Monitoring Report for the 2004 Local Elections

Citizen's Media Monitor Report on the Campaign and Elections Coverage In
The Philippines 2004

Introduction

After nearly two decades of multi-party democracy, the 2004 national elections reflect both the accomplishments and challenges to democratic development in the Philippines. Since the transition to democracy in 1986, the public's confidence in democratic institutions, including the election commission and political parties, has eroded. This election marked a significant opportunity for the Philippines to help restore confidence in the credibility of the political process.

The 2004 national elections themselves were marked by high voter turnout, poor electoral administration, a lack of cohesive political parties, and election results far closer than most observers had foreseen. The elections also reflected the larger challenges to democratic consolidation in the Philippines, which include the need to reestablish a credible electoral administration, to promote the development of issue-based political parties and a legitimate role for a credible political opposition, to enforce civil and criminal laws related to the conduct of elections, and to ensure that citizens receive sufficient information about the issues at stake in any election.

Representatives of the National Democratic Institute for International Affairs (NDI), in cooperation with Consortium for Elections and Political Processes partners, the International Republican Institute (IRI) and IFES, were present in the Philippines from April 25, 2004 through July 31, 2004 and followed political developments in the country during the pre-election, Election Day and immediate post-election periods. The institutes' representatives were in the Philippines to express an interest in and support for a democratic election process, to assess the electoral conditions and political environment in which the national elections were held, and to offer an accurate and impartial report on the election situation. This report summarizes the observations of NDI during this period as well as observations offered to the Institute's representatives by Filipino political actors. The report also offers recommendations regarding possible areas of electoral reform.

This report is offered in the spirit of international cooperation and in recognition that it is the people of the Philippines who ultimately must determine the credibility of these elections and any need for future reforms.

Political Background

Following the end of nearly four centuries of Spanish rule, the Philippines was established as a democratic republic on June 12, 1898 and the first democratic constitution in Asia, the Malolos Constitution, was adopted a few months later. Since that time, however, two foreign occupations and a twenty-year dictatorship interrupted the development of democratic institutions. Between 1946 and 1965, power was peacefully transferred between the Nacionalista and Liberal parties. In 1965, Nacionalista candidate Ferdinand Marcos was elected president and won reelection in 1969. Citing a communist rebellion and deteriorating civil order, Marcos declared martial law in 1972 and consolidated his authoritarian rule. In 1981, Marcos eased

martial law restrictions and orchestrated his own electoral victory. A lack of independent media sources and the decision of some opposition parties to boycott the election made it relatively easy for Marcos to ensure victory.

Resistance to the Marcos dictatorship grew following the 1983 assassination of opposition leader Senator Benigno Aquino, Jr. In February 1986, popular unrest led Marcos to call snap elections. Though both domestic and international observers exposed widespread fraud, Marcos declared victory over Corazon Aquino, Benigno's widow. Incensed, Filipinos protested in the streets and stormed the presidential palace. Virtually all military forces joined the demonstrators and Marcos fled the country.

The Philippine people's successful rebellion against the widespread corruption and electoral fraud of Marcos through "people power" – EDSA I – ended his 21-year authoritarian rule. Following EDSA I, Corazon Aquino became president and reinstated democratic institutions and processes, including a new constitution that established a presidential system of government and separated governmental powers among executive, legislative and judicial branches. Since the removal of Marcos, there have been two successful electoral presidential transitions – the election of Fidel Ramos in 1992 followed by the election of Joseph Estrada in 1998. In early 2001, accusations of embezzlement of state funds and misuse of power again undermined the stability of the democratic process and sent Filipinos into the streets in an EDSA II rebellion that resulted in Estrada's removal from office. Then Vice President Macapagal-Arroyo was sworn in to serve the remaining term of President Estrada.¹

The fragility of the democratic process and democratic institutions in the Philippines became evident again in July 2003 when 300 Filipino soldiers launched a coup attempt against President Macapagal-Arroyo that was quickly put down.

Governance System and Legal Framework for Elections

In an effort to place the challenges observed in the pre-election and election periods in the proper context, this report first outlines the governance system and legal framework for elections in the Philippines. The report then discusses the particular challenges that arose during the pre-election and election periods and how these were addressed by election officials, political parties and representatives of civil society groups.

Governance System

The Constitution mandates a presidential system of government and governmental powers are divided among the executive, legislative and judicial branches. The president is the head of state and is vested with all executive powers of the government. The president is chief administrator of the bureaucracy with general supervision over local governments, as well as the chief legislator, responsible for the introduction of the

¹ While a constitutional provision exists that prohibits the President from serving more than one term, President Arroyo was able to stand for election in 2004 because she was viewed as completing Estrada's term of office, rather than serving our her own term and she served as President for less than four years.

legislative agenda at the start of each congressional session. As the Commander in Chief of the Armed Forces, the president has the power to suspend the writ of habeas corpus and declare martial law. However, martial law can be revoked by Congress and reviewed by the Supreme Court, and a state of martial law cannot result in the suspension of the constitution.

The Philippines has a bicameral legislative system. The upper body is the 24-member Senate. The lower body is the House of Representatives, which includes representatives from the 212 single member districts as well as representatives elected from party lists.² The tendency of political parties in both houses to form coalitions around the party of the president facilitates general cooperation between the legislative chambers.

The judicial branch is composed of the Supreme Court and lower courts. The president appoints justices to the Supreme Court on the recommendation of the Judicial and Bar Council and with the consent of the Commission on Appointments whose members come from both chambers of Congress. Judges at all levels are tenured until the age of 70 or until they are unable to perform their duties.

Article X of the Constitution defines the territorial and political subdivisions of the Philippines. The country has 78 provinces, 84 cities, and over 1,500 municipalities. Article X also provides for the establishment of autonomous regions in Muslim Mindanao and the Cordilleras. Local government officials are elected to three-year terms, with a limit of three consecutive terms. The *barangay* is the lowest level of government, and there are approximately 42,000 *barangays* in the country. *Barangay* governments have the ability to levy taxes, fees, and charges. *Barangay* officials (chairs and councilpersons) are chosen through direct elections held separately from those for higher levels of government.

Legal Framework for Elections

The legal framework for elections in the Philippines is primarily governed by the Constitution, Omnibus Election Code and subsequent laws, and regulations and rules of the Commission on Elections (COMELEC).

The Electoral System

The Constitution mandates a mixed plurality and limited party list system. The President and Vice-President are elected by direct vote for a term of six years. The President is not eligible for reelection. No person who has succeeded as President and has served for more than four years is eligible to stand for election as President at any future time. The Vice-President is prohibited from serving more than two successive terms. The returns of every election for President and Vice-President must be certified by the board of canvassers of each province or city and must be transmitted to the President of the

² The 13th Congress includes 236 members – 212 members from single member districts and 24 members elected from party lists.

Senate. The Congress shall, under its own promulgated rules, canvass the votes. The candidate with the majority of votes is elected.³

Senators are elected on a national basis in a first past the post system to six-year terms and are prohibited from serving more than two consecutive terms. Half of the Senate seats are contested in mid-term elections held every three years. The majority of representatives to the House of Representatives are directly elected from single-member constituencies. The remaining seats – up to twenty percent of the total number – are elected through a party list system of registered national, regional and sectoral parties or organizations in an effort to allow Filipinos belonging to marginalized and underrepresented sectors to serve in the House. Representatives serve three-year terms and are restricted to serving no more than three consecutive terms.

The electoral process is overseen by COMELEC, one of three commissions established by the Constitution. COMELEC is an independent body, constitutionally separated from the other branches of government, and composed of a Chairman and six commissioners.⁴ Commissioners are appointed by the President with the consent of the Congressional Commission on Appointments⁵ for a term of seven years. Commissioners are not eligible for reappointment and appointments to vacant seats are only for the unexpired term of the predecessor. (A detailed discussion of the powers and functions of COMELEC is included *infra*.)

Suffrage and Voter Registration

Suffrage may be exercised by all citizens of the Philippines who are at least 18 years of age and who have resided in the Philippines for at least one year and in the place where they intend to vote for at least six months immediately preceding the election.⁶ No literacy, property or other substantive requirement is imposed on the exercise of suffrage.

The registration of voters is governed by the *Voter's Registration Act of 1996* which amends the registration procedures as originally outlined in the *Omnibus Election Code*. A voter is registered in the permanent list of voters in a precinct of the city where he/she resides. Registered voters receive a voter identification card and voter registration number.

³ In the case that two or more persons have an equal and highest number of votes, the members of both Houses of Congress shall vote and the person with the majority of votes shall be elected. Article VII Sec. 5.

⁴ Commissioners must be natural born citizens at least 35 years of age and must hold a college degree. No person who has been a candidate for any elected position in the immediately preceding election is eligible for appointment to COMELEC. A majority of the commission, including the Chairman, must be members of the Philippine Bar and have practiced law for a minimum of ten years.

⁵ The Congressional Committee on Appointments is a joint committee comprising members of the Senate and House.

⁶ Persons legally disqualified from voting include: 1) any person who has been sentenced to imprisonment for not less than one year; 2) any person who has been determined by final judgment of a competent court to have committed any crime involving disloyalty to the duly constituted government; and 3) insane or incompetent persons as declared by a competent authority. Omnibus Election Code Article XII, section 118 (a-c).

The Election Registration Boards of each city or municipality must prepare and post certified lists of voters 90 days prior to a regular election. Fifteen days before the start of the campaign, members of the Board of Election Inspectors (BEIs) as well as representatives of registered political parties, must inspect and verify the completeness of the voter registration records for each precinct compiled in the book of voters. After verification and certification by the BEIs and party representatives as to the completeness of the registration records, the Board seals the book of voters in the presence of the BEIs and party representatives at the start of the campaign period and takes custody of the book of voters until distribution to the BEIs on election day.⁷

Philippine citizens who reside overseas at the time of an election are eligible to vote for president, vice-president, senators and party-list representatives. For the May 2004 elections, all applications for overseas absentee registration were required to be filed 280 calendar days before the day of the elections. A Philippine citizen who is recognized as a permanent resident in his/her host country is not eligible to vote unless he/she executes an affidavit declaring that he/she shall resume actual, physical presence in the Philippines not later than three years from approval of his/her registration as an absentee voter.⁸

Political Party and Campaign Finance Laws

There are few requirements for registering as a political party in the Philippines. Any organized group of persons seeking registration as a national or regional party may file with COMELEC a “verified” petition, attaching the party constitution and bylaws, platform and such other relevant information as may be required by COMELEC. COMELEC rules require that a party notify the public of its existence and establish party chapters in a majority of the country’s regions, and within each region, a majority of the provinces, towns, and *barangays*. Religious sects are prohibited from registering as a political party and no political party that espouses violence as a means to achieve its political goals is entitled to accreditation.⁹

To participate in elections, a registered political party must submit a list of its current elected officials, national executive committee members, and local chapter chairs as well as a party platform and party list of candidates to COMELEC. In order to field candidates for the May 10 elections, political parties were required to submit certificates of nomination signed under oath by the party president, chairman, secretary-general and the accepting nominee by January 2, 2004.

Election expenditures and contributions are regulated under the *Omnibus Election Code* and the *Synchronized Elections and Electoral Reforms Law of 1991* as well as implementing resolutions of COMELEC. There is no limit on the amount of contributions to candidates or parties from legal sources. Electoral contributions from public educational institutions, foreign nationals or corporations, public and private

⁷ Continuing Registration Act, Section 30-31.

⁸ Overseas Absentee Voting Act, Section 5. July, 2002.

⁹ Omnibus Election Code, Article VIII Political Parties, Section 61.

financial institutions, public utilities, corporations that hold government contracts and corporations that have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government are prohibited.¹⁰ There is no public funding for elections, though candidates can receive free and equal time for campaign purposes on government owned or operated broadcast outlets.

Candidates for President, Vice-President and the Senate are prohibited from spending more than ten pesos for every registered voter. All other candidates are allowed to spend a maximum of three pesos for every registered voter in the constituency. A political party can spend a maximum of five pesos for every voter currently registered in the constituency where the party is fielding candidates.¹¹ Candidates and treasurers from all political parties are required to submit to COMELEC itemized statements of all campaign contributions and expenditures within thirty days after the day of the election.

The use of public funds or equipment and facilities owned or controlled by the government for an election campaign or any partisan activity is prohibited.¹² The release or expenditure of public funds for public works projects during the 45 days in advance of an election is also tightly controlled by legislation in an effort to prevent an abuse of state resources in support of a particular candidate or party.¹³

Several key pieces of legislation regarding political parties and party finance have been stalled in the legislature. Proposed bills on political party structures and finances have been delayed in part over language prohibiting political “dynasties,” as well as the prospect of restrictions on party financing, and the recognition that the legislation will likely reduce the number of parties.

Election Administration

In a democratic election, political contestants and the electorate must be able to count on the electoral administration to be both impartial and effective. Equally important, the electorate must believe that its choices will be accurately recorded and respected.

COMELEC is responsible for enforcing and administering all laws and regulations relative to the conduct of elections. The body is vested with the authority to determine all questions affecting the elections, except questions regarding the right to vote, including determination of the number and locations of polling places, appointment of election officials and inspectors, and registration of voters. COMELEC is also responsible for monitoring all political party activity during the campaign period and has responsibility for certifying candidates in the election. In the event that COMELEC officials deem it necessary, the Commission is authorized to make use of the nation’s security forces to

¹⁰ *Omnibus Election Code*, Art. XI, sec. 95 (a-h).

¹¹ *Synchronized National and Local Elections Act* (1991), RA No. 7166, sec. 13.

¹² *Omnibus Election Code*. Article XXII, sec. 261 (o).

¹³ *Id.* at sec. 261 (v).

ensure the safety and integrity of the election process.¹⁴ The Commission is further vested with the authority to exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective officials at the regional, provincial, and city level.¹⁵

COMELEC's constitutionally-mandated independence is intended to insulate the body from partisan influence. Its wide-ranging powers – from deputizing the security forces to dismissing candidates to managing voter registration – reflect the belief that only an independent body could adequately defend against fraud and partisan influence in all aspects of an election process. Oversight of COMELEC is provided by the Supreme Court --- which can review and, if necessary, reverse COMELEC decisions --- and the Congress --- which can impeach COMELEC commissioners or hold hearings to investigate COMELEC's actions with respect to specific laws and spending. COMELEC representatives can be subpoenaed to appear before Congress and the body investigated if it appears to have committed “grave breaches of discretion” and jurisdiction.¹⁶ There is no clearly defined authority for an independent administrative review of the body short of a Congressional investigation.

Pre-Election and Campaign Periods

Several issues of concern arose during the pre-election and campaign periods. Many, though not all, of these issues were related to election administration and contributed to a less than favorable public perception of COMELEC.

COMELEC and Election Preparations

For the 2004 elections, COMELEC was responsible for administering national, provincial, and local elections in more than 216,000 precincts. Fifty-five thousand candidates vied for the support of 43 million voters¹⁷ for a total of 17,700 positions.¹⁸ Several issues in the pre-election period related to voter registration, COMELEC's plans for its own “Quick Count”, Commission appointments, and staff preparation and training generated anxiety among voters and candidates by creating opportunities for fraud.

¹⁴ Article IX of the Constitution grants COMELEC the authority to deputize, with the explicit concurrence of the President, law enforcement agencies as well as the armed forces in order to help ensure free, orderly, peaceful and credible elections. Phil. Const. Art. IX, Sec 2 (4) C.

¹⁵ COMELEC has appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Phil. Const. Article IX, Sec. 2 (2).

¹⁶ Phil. Const. Art. IX Sec. 4.

¹⁷ COMELEC reports the official number of registered voters as 43,536,028.

<http://www.COMELEC.gov.ph/stats/2004stats.html>.

¹⁸ The following positions were being filled: president, vice president, 12 senate seats, 265 members of congress, 53 party list representatives, 79 provincial governors, 758 provincial board members, 115 city mayors, 115 vice city mayors, 1,500 municipal mayors, 1,500 vice municipal mayors, 1,288 city councilors, and 12,017 municipal councilors.

COMELEC's handling of these issues contributed to a lack of public confidence in the Commission's ability to conduct an election free from fraud¹⁹.

Appointment of Interim Commissioners

The circumstances surrounding the appointment of two new COMELEC commissioners contributed to COMELEC's credibility problems. In February 2004, President Arroyo appointed Vigilio Garcillano and Manuel Barcelona, Jr. as commissioners to COMELEC to replace retired Commissioners Ralph Lantion and Luzviminda Tancangco. These appointments were made while the Congress was in recess and the Committee on Appointments could not meet to vote on the appointments. Members of the political opposition argued that the Constitution prohibits the appointment of temporary or "acting" commissioners to COMELEC and because Congress was in recess at the time of the appointments and could not vote on them, the appointments were by definition temporary in nature and therefore, unconstitutional.²⁰ The opposition further noted that the constitutional injunction against temporary appointments to COMELEC was designed to protect the body from political pressure because COMELEC commissioners serve staggered terms to prevent any one President from appointing a majority of the commission. With the appointments of Garcillano and Barcelona, President Arroyo had appointed five of the seven COMELEC commissioners.

The government defended its authority to make the appointments and noted that the Constitution grants the President the power to make appointments during the recess of Congress. The government argued that such appointments, while only effective until either rejected by the Committee on Appointments or until the next adjournment of Congress, have been ruled permanent in nature by the Supreme Court because the President is prevented from removing ad interim appointees until rejected by the Committee on Appointments.²¹ Despite the criticism of the opposition, the two new appointees took their posts and served as commissioners for the May 10 elections.²²

¹⁹ A Social Weather Station poll conducted 10 days before the election showed 60 percent public confidence in COMELEC, but only 27 percent in its Chairman Benjamin Abalos. Just days before the election, the archbishops of Manila and Davao, along with retired Cardinal Sin, publicly expressed a lack of confidence in COMELEC.

²⁰ Malaya News. *Angara: Interim COMELEC Appointments Violate Charter*, February 13, 2004.

²¹ *Id.*

²² Allegations of partisan politics surrounding the two new commissioners re-surfaced when a challenge was made to Ferdinand Poe's ability to stand as a candidate for President. Petitioners sought to have Poe disqualified because they alleged that he could not be considered a Filipino citizen because his parents were not married at the time of his birth and his mother was not a citizen of the Philippines. The matter was originally brought before COMELEC and that commission ruled in favor of Poe, though Commissioners Barcelona and Garcillano, along with Commissioner Florentino Tuason, voted to disqualify Poe. The three Commissioners each submitted a dissenting opinion that was part of an appeal to the Supreme Court asking it to overturn the COMELEC decision and disqualify Poe. The Supreme Court ultimately ruled 8-5 in favor of Poe's candidacy, but the controversy surrounding the Commissioners actions in supporting Poe's disqualification coupled with the circumstances surrounding their own appointments to the Commission bolstered the growing public perception that their appointments to COMELEC were political in nature.

Failure to Automate the Election System

The Election Modernization Act of 1997 authorizes COMELEC to create an automated election system for the process of voting, counting votes and canvassing/consolidating the results of the national and local elections. The Act also authorizes COMELEC to procure the appropriate materials and services necessary to create and maintain such a system.²³ COMELEC initially intended to implement the automation during the May 11, 1998 presidential elections, but decided against full implementation at that time and limited the automation to the ARMM.²⁴ In October 2002, COMELEC adopted Resolution 02-0170 which set forth a modernization program for the 2004 elections. In January 2003, President Arroyo issued an Executive Order allocating three billion pesos to fund the automation program. Later that month, COMELEC outlined procurement and bidding procedures and began accepting applications.

On May 16, 2003 COMELEC awarded the automation project to Mega Pacific eSolutions Inc. Immediately following the award, several individuals and entities challenged the award on the basis that there were “glaring irregularities in the manner in which the bidding process had been conducted.” The case eventually went before the Supreme Court which ruled in January 2004 that COMELEC awarded the contract in “inexplicable haste” and without adequately observing mandatory technical and legal requirements. The court also noted that COMELEC accepted delivery of the computer hardware and software from Mega Pacific even though it had failed to pass eight “critical requirements designed to safeguard the integrity of the election.”²⁵ The Court voided the contract with Mega Pacific and noted that COMELEC’s actions in awarding the contract “cast serious doubts upon the poll body’s ability and capacity to conduct automated elections.”²⁶

Faced with an abbreviated time period within which to finalize election preparations, COMELEC officials briefly considered continuing with plans for an automated election system and using the computers and software supplied by Mega Pacific in spite of the Supreme Court decision on the matter. In the end, COMELEC accepted the finding of the Court and proceeded with preparations for manual balloting, counting and canvassing.

Not only was the failed automation attempt particularly damaging to COMELEC’s reputation, it left open continued opportunity for fraud in the election process. Many opportunities for fraud are found in the manual counting, tallying, and canvassing efforts. The practice of “dagdag-bawas,” or “shaving and padding,” is possible because of the

²³ *Election Modernization Act*, RA No. 8436 (1997).

²⁴ Due to the failure of the machines to correctly read some ballots in one town, COMELEC later ordered a manual count for the entire Province of Sulu.

²⁵ *Information Technology Foundation of the Philippines et al. v. Commission on Elections, et al.* Phil. S. Ct. No. 159139, January 13, 2004. The critical areas in which the Mega Pacific automated technology failed to safeguard the integrity of the election included: 1) Failed to achieve the accuracy rating criteria of 99.9995 percent set-up by the COMELEC itself; 2) Unable to detect previously downloaded results at various canvassing or consolidation levels and to prevent these from being imputed again; and 3) Unable to print the statutorily required audit trails of the count/canvass at different levels without any loss of data. *Id.*

²⁶ *Id.*

vulnerabilities of numbers to human intervention. Although technology is no guarantee that fraud will be eliminated, one of the main reasons for computerizing the election process was to minimize those opportunities for intervention. As noted above, COMELEC failed in this crucial effort to follow simple bidding processes properly. In addition, it also ignored the parameters of what aspects of the process were to be computerized. Rather than purchasing stand-alone machines, as the law mandated, COMELEC invested in networked computers, which were also more vulnerable to manipulation. These failures of judgment, particularly when taken into consideration with the loss of three billion pesos spent on the failed automation effort, further eroded the public's trust in COMELEC.

Voter Registration and Voter Lists

The accuracy and readiness of the voters' list merited serious concern in the run-up to the election. COMELEC launched an effort to "validate" the current voter list, which entailed using 1.2 billion pesos of technology to combine information from the old locally-maintained lists with current voter biodata in an effort to remove multiple registrants, the deceased, or those de-activated²⁷ from the list. But COMELEC was only able to validate about 5.7 million voters before it had to suspend the effort in order to concentrate its limited resources on digitally processing the new information. It was unable to restart the validation process due to a lack of funds, and was then faced with trying to combine the validated and non-validated lists. These complications meant that the voters' lists, which were legally required to be posted in February, were not made available to the public until about a week before the election, and long after opportunities for redress were gone.

COMELEC asserted that the failure to make the voters' lists public in the mandated time frame did not actually impede anyone from checking on his/her status based on the fact that voters could check and update their registration status at any time²⁸, but most citizens were not aware that it was possible to do so. NAMFREL and PPCRV, as well as local inter-agency task forces of government offices, civil society groups, and others, tried to help COMELEC clean the lists, but such efforts were only successful in some areas. To further complicate matters, in the absence of new lists from Manila, many local election officials continued to use the original locally-maintained registries. As a result, it was not clear on which of the three possible lists of names a voter's name had to appear in order for him/her to be allowed to vote, nor was it clear what decisions COMELEC had made to determine eligibility to vote in the event a voter's name was not on the most recent lists.

²⁷ By law, voters who have failed to vote in the past two elections are de-activated, or dropped from the list. Voters are supposed to be notified of this status by mail sufficiently in advance of the next election so that they can re-register if they so choose.

²⁸ *Continuing Registration Act*, RA 8189, 1996. This Act provides that: "All registration records/computerized voter list in the possession of the Election officer, the Provincial Election Supervisor, and the Commission in Manila shall, during regular office hours, be open to examination by the public for legitimate inquiries on election related matters, free from any charge or access fee. *Id.* at sec. 41.

Moreover, when the lists were finally released in late April, the number of total voters had increased to 43.5 million, an increase of more than seven million people since the 2001 election.²⁹ This represented an increase far larger than that accounted for by population growth rates. Some areas reported an increase of as much as 22 percent. The number of names on the voters' lists in some areas, such as Cotabato, reportedly surged in the days before the elections.

In addition to the list issues, some voters had been reassigned to vote in different precincts. Although COMELEC must send precinct reassignments to voters through the mail, few voters got such notifications. Others simply waited until the lists were posted, but in some cases, that was not until election day itself. All of these registration, verification, and notification factors contributed to a lack of confidence that the voters' lists accurately represented those who were entitled to cast ballots, or would ensure that those entitled would be able to do so.

Lack of Training for Election Officials

COMELEC's work is carried out by staff members and Board of Election Inspectors (BEIs). The staff members are civil servants and are generally regarded as competent and dedicated. To some extent, though, they suffer from a lack of standardized training. Many do not have copies of COMELEC's manual of general instructions and they do not regularly participate in retraining programs to learn about new procedures. NDI encountered significantly different interpretations of rules and procedures from COMELEC staff members, which suggest that such procedures are not uniformly understood. Local COMELEC officers interviewed by NDI uniformly complained of being short-staffed. One officer explained that out of the electoral period, his office could function smoothly with four staff members. During the election period, however, the workload demanded at least four times that, but it was increased by only two staff members. COMELEC also faces difficulties when it transfers local-level officials to different areas only about a week ahead of the election. Some COMELEC officials suggest this is done in order to avoid any partisanship, but there are also serious practical difficulties associated with changing officials at the last moment.

BEIs are responsible for overseeing the balloting and tallying. Most are local schoolteachers who have previously served in this capacity, and it is their involvement that helps increase public confidence. But serving as a BEI is extraordinarily taxing: they must appear the day before the election to collect the necessary materials, most are expected to work for a minimum of 24 straight hours on election day, and some have to endure the harassment of party-watchers or candidates when, out of sheer exhaustion, they make errors in the tallying process. For this, they are paid between one and three thousand pesos (US \$20-60).

²⁹ Total number of registered voters for the 2001 election as reported by COMELEC was 43,536,028. COMELEC Website, <http://www.comelec.gov.ph/stats/2004stats.html>. In 2001 the total number of registered voters was approximately 36,000,000 and in 1998 the total number of registered voters was 34,163,465. This is an annualized increase in registered voters of 4.6%. The population growth rate in the Philippines is between 2.2 and 2.3% per annum.

The teachers were among those disappointed by the failed modernization effort, given that it would have made their participation unnecessary. In the 2004 elections, some areas had to recruit almost half of their BEIs from local college graduates or professional groups, as many veteran BEIs found excuses not to serve. Many claimed to be the distant relatives of candidates; in one area, NDI was told that a family of teachers had persuaded a relative to run for local office solely for the purpose of making the teachers ineligible as BEIs.

Training for the BEIs in advance of the 2004 elections was much the same as it had been in the past. It focused on the legal and procedural aspects of the election, how to protect the integrity of the process, and how to set up a polling station for maximum efficiency. These trainings tend to be conducted as lectures, rather than interactive exercises, and given the higher percentage of first-time BEIs, the training might not have been especially effective. Moreover, although COMELEC officials said that the BEIs were trained by the middle of April, most were actually only trained in the week prior to the election.

COMELEC's Quick Count

COMELEC's efforts to undertake its own Quick Count became one of the most contentious issues in the pre-election period. Quick Counts are conducted as a means of verifying the integrity of official data by obtaining information from that source at the lowest possible level, then following the count to the national level to ensure that no fraud has taken place in the tallying and canvassing processes. In the past, a Quick Count has been conducted by NAMFREL (see *infra*) as an unofficial but necessary check on the integrity of COMELEC's counting. Observers were understandably surprised to learn that the official election body intended to undertake an unofficial count alongside an official count. COMELEC had planned to send results by VSAT-automated transmission of the municipal results to the national level, skipping the provincial level and hoping to minimize fraud in the count. Yet questions were almost immediately raised about whether COMELEC, which is entitled only to announce official results for congressional and local races, would share information about the presidential and vice-presidential results. Moreover, it was duplicative of NAMFREL's work. Serious concerns were raised about the prospect that COMELEC's Quick Count results would not, as most unofficial counts do not, ultimately agree precisely with the official count. Should those figures turn out differently, were people to believe the official or unofficial COMELEC count?

The opposition KNP Party in conjunction with other political parties and NAMFREL took the matter before the Supreme Court in late April, arguing that COMELEC had no mandate to conduct a Quick Count³⁰. The Supreme Court did not issue its decision barring the Quick Count until less than 48 hours before the polls opened, and observers noted the presence of COMELEC technicians in the far northern and southern reaches of

³⁰ Two days before the election, the Supreme Court ordered COMELEC to halt plans for its own Quick Count of the May 10 election results.

the country setting up transmission systems on May 9. One local candidate wondered why such resources had been spent on this effort rather than on fully cleaning the voters' lists.

Candidates, Political Parties and Campaign Organizations

Political parties are essential elements for elections. They are vehicles for mobilizing voters, upholding the integrity of the process, and articulating particular platforms. But in the Philippines, political parties remain relatively weak institutions. Although they have existed for more than half a century, they have never been more powerful than patronage systems, which only reinforce the power of the individual and force voters to make choices based on extremely short-term gains. For individual politicians, there is little incentive to cede his or her individual power to a political party.

Other obstacles also stand in the way of developing stronger parties. The remarkable powers vested in the presidency make proximity to that office so desirable that individuals and parties are constantly realigning themselves to do so. The growing cost of campaigns, and the relatively new phenomenon of paid television advertising, places even greater emphasis on generating name recognition for individuals among the electorate.

As a result, political parties barely exist outside of elections. Few parties are able to mobilize supporters to scrutinize the voters' lists; ideological discipline is fleeting, few parties exercise control over the number of candidates running, and in some cases parties are unable to prevent rivalries between their own candidates from escalating into lethal violence. Most parties rely on civic organizations to train party poll watchers, help investigate charges of fraud, or assist their supporters in finding the right precincts. And even the resulting administrations feature coalitions of individuals who are in no way constrained by a party affiliation, such that they tend to be quite unstable. It is worth noting that President Arroyo technically represented three different parties in the 2004 election (Lakas, Liberal, Kampi), while Fernando Poe Jr. is not actually a member of any of the parties in the KNP coalition.

It is not surprising that the 2004 campaigns were questionably financed, structured around individuals, lacked the support of or connection to national parties, and remarkably devoid of substance. The relationship between the national and local parties or candidates is highly inconsistent, particularly in terms of candidate selection. Both K4 and KNP use national committees to review and approve candidates for congressional and local races, though the approved candidates are given considerable discretion with respect to vice-governor or vice-mayoral running mates. Two candidates from Lakas in Abra, for example, gave different explanations regarding their campaigns' financial relationship to their party. One campaign said it had affiliated in order to get funds, but that none had actually been forthcoming. The other campaign explained that affiliating only meant that it would help distribute the parties' national candidates' literature and posters. Some of the party list organizations, such as Akbayan, conducted barangay-level

training programs on conflict resolution and then ran their more successful participants as candidates

Although parties are required by law to maintain certain financial systems and to report on campaign expenses after the elections, in reality those systems and reporting compliance are far from uniform. NDI was told that contributions to a party go to the party's president, and the president decides how the funds should be disbursed. At the local level, campaigns are primarily self-financed. Senate races, enormously expensive because senators are elected nationally, are to some extent party financed, though clearly candidates themselves bear the brunt of the costs.

In addition to wealth, incumbency makes individuals particularly attractive as candidates. Incumbent officials have an edge over the opposition, in that they can mask election costs, such as transportation and rally expenses, as part of their normal official duties toward their constituents. They can make visits using government vehicles in the guise of periodic visits, and food can be charged to appropriations. The months before the campaign season are the favored times to launch new infrastructure projects, where they can hire workers, or extract favors from contractors. In addition, previously unavailable services – primarily health and welfare – suddenly become available. Allegations were made in the pre-election period that the Arroyo administration made use not only of state resources such as health cards and rice subsidies, but also of government infrastructure projects and of the use of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). These problems reach all the way down to the local level and are so common that voters clearly expect some of their taxes to be used for campaigns. NDI witnessed the blatant use of an incumbent Mindanao mayor's use of a local "social fund" to cover his campaign costs. Non-elites do occasionally run and win, but they must be able to mobilize human machinery for their campaigns.

Candidates and parties offered voters no real platforms or positions on issues as a basis for discerning between them, further reinforcing the focus on individuals. Invariably, candidates claimed to be "for the masses," against corruption, and against nepotism, but their real selling points stressed either their level of fame or their connection to a political family. A remarkable number of movie stars, TV personalities, and other entertainment figures ran for office. In every municipality NDI visited, at least one candidate was related to a current or previous office-holder; in many areas, pairs of family members were running for mayor and vice-mayor, or governor and mayor. Some candidates went to remarkable lengths to illustrate such connections. Senate candidate Pia Cayetano, the daughter of a late senator, plastered the country with campaign billboards depicting her in front of a faded image of her father. Another senatorial hopeful, Jamby Madrigal, persuaded a popular film star, Judy Ann Santos ('Juday'), who vaguely resembled her, to appear in her campaign photographs, and Madrigal also convinced the COMELEC to accept votes cast for "Juday" to be counted in her favor.³¹ Voters in Baguio appeared to reject the incumbent mayor for having supported the construction of a controversial casino, but this issue-oriented competition was hardly the norm.

³¹ Both Cayetano and Madrigal were successful in getting elected.

Obtaining endorsements from large organizations mattered primarily in the presidential race. The heads of religious groups with at least a million members, such as the charismatic Christian sects Iglesia ni Cristo and El Shaddai, chose to back GMA, and it is generally understood that members of the sects will vote the same way. Similarly, campaigns garnered the support of business groups, unions, and even of a group of transvestite Arroyo look-alikes.

Standard campaign tactics included signs, posters, t-shirts, sample ballots, and endorsements painted on the sides of jeepneys. Posters and signs were supposed to have been confined to designated areas but often were not, though few took issue with this. Some campaigns, including local-level races, were highly organized and used sophisticated technology, such as phone banking, direct mailings, and SMS text messaging, to reach their voters. A few campaigns started their own newsletters to make up for the lack of local print media coverage.

Most campaigns held rallies and other public events, though senatorial candidates, constrained by the need to campaign nationwide, only made short visits. Wealthier candidates made use of private planes or helicopters to travel quickly. Provincial and local-level candidates employed different strategies to meet constituents, including making use of *barangay*-level networks, church events, or paid organizers. Local candidates got messages out on provincial radio stations and in the local print media if such outlets existed. At the national level, candidates availed themselves of paid TV time.

Some candidates, particularly in Mindanao and the Cordillera Autonomous Region in north-central Luzon, were unable to campaign freely. The New People's Army (NPA) extorted fees of up to 100,000 pesos in exchange for candidates' access to NPA-controlled areas. In late April, the Secretary of Defense said that 19 candidates had given money, guns, and mobile phones to communist insurgents in exchange for access to their areas. On several occasions, those candidates' PNP or AFP security forces were disarmed by the NPA. In some areas with higher levels of election-related violence, candidates did not make public appearances out of concern for their individual safety. Senate candidates made only short visits.

Most candidates at the local level arranged to have party poll-watchers trained by civil society organizations, usually NAMFREL or PPCRV. Few seem interested in conducting their own training programs.

Representatives of party list organizations fill up to 20 percent of seats in the House. These seats were originally set aside in order to ensure that "marginalized groups" had representation. There is a certain irony in this, given that the marginalized – the poor, farmers, fishers, the elderly – actually make up a considerable part of the population, and the special representation seems in part a commentary on the regular parties' disinterest in these constituencies and their issues. The party list organizations' campaigns obviously focused on the issues they represent, such as better health care for the elderly and rural electrification. Some of these organizations, such as APEC, Bayan Muna, and

Akbayan, were able to distribute campaign literature across the country, but NDI was unable to locate any particular campaign events. Little attention is paid to their races, in part because often the party lists often fail to garner enough votes (two percent) to earn seats in the congress. Socialist and communist parties are more organized and have fairly clear policy stances, but they, like the party lists, are in the minority and are often regarded with considerable suspicion.

Role of Civil Society in the Pre-Election and Campaign Period

Democratic elections require that citizen organizations be able to participate in the election process to help educate other citizens about the importance of the elections, and be free to monitor every aspect of the election process. Civil society organizations in the Philippines, ranging from religious institutions to election monitoring organizations to business associations, were crucial in mobilizing popular support against martial law in the early 1980s. That success left a deep impression – as one nun told NDI representatives, “We had never thought before that we were important, but once we did, we knew we had to fulfill our responsibilities again at each election.” Their involvement improves public confidence in the electoral process – a critical contribution amidst persistent charges of fraud, skepticism about COMELEC’s competence, and the low level of political party involvement. Relatively few civil society leaders make the crossover into politics, clearly preferring their watchdog role, and the organizations are known for being able to take down – but not put up – a government.

In the 2004 elections, most of these organizations continued to help update voters’ lists, conduct voter education and get-out-the-vote programs, and monitor the conduct of polling day and canvassing.

Parish Pastoral Council for Responsible Voting

The Catholic Church continues to play a prominent role in elections, primarily through the Parish Pastoral Council for Responsible Voting (PPCRV). PPCRV describes itself as “a faith response for political renewal and social transformation.” At the suggestion of the Catholic Bishops’ Council of the Philippines, PPCRV began working through its national network of parishes and volunteers in November 2003 to assist COMELEC in its efforts to clean the voters’ lists. In the past, PPCRV has run good governance seminars for newly-elected officials. In the 2004 elections it not only fielded election day observers, but also ran help desks for voters and helped direct COMELEC’s attention to various problems, particularly the need in some areas for more security forces.

The Catholic Church, along with most other religious denominations, also regularly encouraged voters to participate and choose leaders wisely, though they are occasionally accused of being partisan toward administrations. These exhortations were couched mostly in the language of having a say in one’s future, of participating and being a good citizen, and of service. A January 26 pastoral letter, for example, noted that “confusion, cynicism and loss of credibility” in the elections, yet it encouraged participation, cooperation, vigilance, and belief in “our own power to transform society.” A similar

pastoral letter was released on April 21, urging people not just to vote but to choose candidates of competence, conscience, and commitment, a statement that was seen as discouraging people from voting for Fernando Poe. The homily and prayers at Mass on the day before the election focused on a clean process, wise choices, and good leadership. The Prayer for National Elections 2004 reiterated the same messages.

These aspirations were not limited to Church statements. In February, the Church, along with COMELEC, the PNP, and local officials encouraged all candidates to sign “Covenants of Hope.” These pledges, which were not legally binding, were designed to morally commit candidates to following the law, not engaging in violence, and respecting citizen participation in the process. Most were signed in the presence of all local candidates and the parish priest. In some areas, the documents were effective; in others, however, they became, in the words of one candidate who was herself far from complying with the stipulations, “just another piece of paper because everyone else is violating them.”

National Citizen’s Movement for Free Elections (NAMFREL)

NAMFREL is a non-partisan national organization that coordinates individuals and organizations (civic, religious, professional, business, labor, and others) for “the cause of free orderly and honest elections.” NAMFREL was formally organized in 1983, but its roots can be traced back to work in 1957. It reports over 120 participated organizations and is organized into 78 provincial chapters and 1,608 city and municipal chapters across the Philippines. Each chapter is responsible for manning all the polling places in its area and conducting a parallel tabulation of results. NAMFREL does undertake between-elections work, such as advocacy in support of electoral modernization and analyses of COMELEC plans for voter validation and precinct mapping efforts. In addition, NAMFREL also helped try to clean the voters’ lists in areas where the most recent information could be obtained.

NAMFREL’s primary function is to conduct a Quick Count. As noted above, the purpose of a Quick Count is to collect precinct-level data and quickly tally it to the national level in order to verify the integrity of the official count. It is designed to minimize fraud and catch errors in the highly vulnerable manual counting process. In the past, NAMFREL’s ability to release information at a faster rate than COMELEC has acted not only as a deterrent to fraud but also, given the slow pace of the official count, as an early, though unofficial, source of results. NAMFREL and PPCRV coordinate their efforts, as PPCRV volunteers observe the process during the balloting and counting, while NAMFREL volunteers gather the sixth copy of the tally sheet and undertake the parallel count.

As the officially-designated “accredited citizens’ arm,” NAMFREL volunteers are entitled to collect the sixth copy of the precinct-level tally sheets. In the past, volunteers have taken the information from those tally sheets, compiled the data at the municipal level, and then faxed or phoned it to the provincial level, which in turn passed it on to about 50 Manila-based coordinators. NAMFREL tallies results until it reaches the same

number and volume of votes COMELEC has counted, though these need not be results from precisely the same precincts.

NAMFREL and COMELEC have a complicated relationship, one largely influenced by the personalities of their respective leaders. Not surprisingly, COMELEC tends to see NAMFREL as an irritant and a constant critic of its every move. NAMFREL argues that it tries to assist COMELEC, not undermine it. NAMFREL's impartiality is probably called in into question as often as COMELEC's, though with considerably less evidence, and often as a result of a poor understanding of NAMFREL's function, financing, and history.

For the 2004 elections, NAMFREL had some difficulty obtaining accreditation from COMELEC to conduct a Quick Count, apparently because COMELEC itself had planned to conduct such an effort. After concerns were raised by other citizens' groups and the Catholic Church in late 2003 and early 2004, COMELEC relented and again accredited NAMFREL. Local NAMFREL chapters told NDI observers that they had had more trouble during this election recruiting volunteers, as those already-trained volunteers were now in demand to perform the same function – and get paid – by candidates and political parties.

NAMFREL's leadership opted to try to employ more advanced technology to relay the precinct-level results. SMS text messaging is extremely popular in the Philippines, and NAMFREL decided that relaying the data through SMS could be considerably more efficient. Designated volunteers would work in pairs to cover five to ten precincts, collect the data, and relay it in a particular format, such that the figures would tally through a computer program. If the system worked, NAMFREL would be able to release results even faster than it had in the past.

When modernization does go ahead, the need for data verification due to a manual count will evidently change. NAMFREL is planning ahead to work on modernized elections with the Philippine Certified Public Accountants Association to conduct an audit of the results, and it is likely that NAMFREL will concentrate more of its energy on advocacy efforts and on monitoring campaign promises, government spending, and other governance-related issues.

In the pre-election period, the relationship of some of NAMFREL's leadership to organizations viewed as partisan – particularly the Makati Business Club which came out in support of President Arroyo – was perceived by some to undermine the organization's historically unquestioned neutrality. No claims of bias on the part of NAMFREL were ever substantiated, but the perception of a loss of neutrality left the organization open to charges of conflict of interest in the immediate post election period.

Other Civil Society Organizations

Other civil society organizations played important parts in helping prepare for and observe the elections. The Institute for Popular Democracy (IPD) conducts research and

advocates electoral and constitutional reform. The Institute for Political and Electoral Reform (IPER) and the Consortium on Electoral Reform (CER) have advocated the passage of new legislation addressing voter education, reform of election management, political party reform, and voting modernization. The Social Weather Station (SWS), a non-profit, social science research institute, conducted polls in advance of and after election day. The pre-election polls predicted not only victory but also a far larger margin of victory for President Arroyo than had previously been thought, about seven or eight percent. Hundreds of other local organizations, including multi-sectoral groups, the Rotary Club, C-Cimpel, Clean Philippines, People's Net, the Coalition of Alternative Politics, and Mincode all urged candidates and parties, voters, and the security forces, to conduct themselves properly, refrain from violence, and remain vigilant with respect to electoral fraud.

The Media

The media serves two important functions during elections: it informs the public about issues, candidates, parties, and electoral administration, and it serves as a watchdog by critically evaluating candidates' and parties' post-election performance. The government-controlled media must provide a vehicle for the political contestants to speak to the electorate and must be required to cover all political contestants accurately, fairly, and in an equitable fashion, while private media must be strongly encouraged to act ethically and in accordance with the guidelines for proper election-related coverage.

The current Filipino media is no longer the moribund, state-controlled press of the past. There are now more than twenty daily newspapers, most with different political affiliations, dozens of regional radio stations, and six national television stations. The Philippines has one of the highest newspaper readership rates in Asia. According to Philippine media observers, television has now become a more powerful determinant of people's voting behavior than their families, churches, or class, and the media has now become the main arena for political contests.

Yet the freewheeling and multifaceted press is falling short in fulfilling those two crucial functions. Serious concerns exist about the quality of media debate on candidates and issues. Problems range from outright corruption – instances of journalists or outlets taking money in exchange for positive coverage – to the recent involvement of entertainment publicists to solicitations by news organizations of candidates and parties for advertising in the 2004 elections.

Concerns about journalists and media outlets accepting payments from candidates or parties for positive coverage or negative coverage of their opponents were articulated well in advance of the 2004 election season. The partisan affiliation of many media outlets and executives also reinforced concerns about whether coverage would be objective. For example, the entertainment media's entry has further blurred the lines between objective journalism and press agency, as those providing the commentary are usually representing those being covered.

The broadcast media was deeply involved in lobbying for the adoption of paid TV advertising for candidates primarily because they were lucrative, not because they would necessarily inform the public. Those who raised concerns about this decidedly un-level playing field were accused of trying to curtail free speech. This is ironic, given that, after 1986, radio and television advertising was actually banned specifically because its cost would create a non-level playing field for candidates.

The focus on national races – president, vice president, and senators – meant that relatively little attention was paid to local races. There are no regional or provincial TV stations in the Philippines, and though there are dozens of local radio stations, the quality of coverage is not necessarily better. Radyo Mindanao Network and the Notre Dame Broadcasting Network (NDBC) only discussed candidates' biodata, not their positions on issues. However, NDBC did organize a candidates' forum. Local print media is also limited, and in some areas candidates who could afford to printed their own newsletters.

Even more fundamental than media bias or coverage are concerns about basic accuracy. In the run-up to the 2004 elections, news outlets regularly fabricated or misreported COMELEC procedures, the number of election-related deaths, and statements by domestic and international observers. Articles frequently made use only of unnamed sources, and in some cases fabricated information. Some journalists deliberately misconstrued information, perhaps most notably by treating poll results as tantamount to results. Most newspapers that reported on the Social Weather Station's controversial prediction of a considerably larger than anticipated Arroyo victory neglected to include the poll's margin of error which, when taken into account, actually suggested the race was still a dead heat. The national coverage also tended to be very day-by-day and offered almost no systematic evaluation of candidates' progress or platforms.

The public broadcast media ran public service announcements encouraging citizens to vote and providing some information about candidates and parties. The law provides for equal access to public television and radio during the campaign period, and the guidelines originally envisioned each candidate would have 120 minutes of time total, but changed that to 120 minutes of time per station partway through the campaign period.³² This change, which some thought was made to accommodate the Arroyo campaign, which had already exceed the 120 minute threshold, along with COMELEC's lax enforcement of equal access regulations during the campaign reinforced the perception that some candidates would get more airtime than others. COMELEC claimed in late April that it was enforcing the rule of 120 minutes of TV and 180 minutes of radio time per candidate per station, but it seems likely that was exceeded.

Two civil society organizations, the Philippine Center for Investigative Journalism and the Center for Media Freedom and Responsibility, planned to undertake monitoring efforts that focused on content analysis of news programs and other election coverage, and on editorial decision-making practices.

³² *Fair Elections Act*, RA No. 9006, Sec. 6.

The Security Forces and the Election

In any election, the electorate must be free and must believe that it is free to make political choices, without intimidation, bribery, undue influence and fear of retribution for their vote. Political contestants must be given a fair chance of reaching the voters and winning their support. Yet the 2004 elections were marred by a surge in violence and an inability or unwillingness on the part of the security forces to adequately address the concerns.

One of COMELEC's more unusual powers is the right to deputize the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) nationwide in order to ensure security. In effect, both forces take their orders during the election period from the Chairman of COMELEC rather than the Commander-in-Chief. Typically the AFP, which normally focuses on external defense, is deployed to urban areas and regions such as ARMM or the Cordilleras to deal with insurgencies like the NPA. The PNP is charged with keeping the local peace and guarding candidates. Both share the responsibility of guarding precincts, counting centers, and sensitive materials like full ballot boxes while they are being transported. According to one senior PNP spokesperson, COMELEC pays the PNP or AFP for its assistance in transporting materials to and from remote areas.

It has been less than two decades since the end of martial law in the Philippines, during which time the AFP served primarily to protect Marcos' rule. Since 1986, experts suggest, the force is primarily interested in self-maintenance rather than self-defense, and the tradition of military intervention into politics continues, with the most recent coup attempt less than a year before the elections. The PNP, which is a national force, is notoriously poorly trained, short of resources, and alleged to be deeply involved in organized crime. In some areas, the AFP and PNP were hired by candidates and parties to "moonlight" as security forces; in others, the squad cars driven by the PNP were donated by the local mafia. An AFP brigade commander in Sulu had to be replaced because of his partisan electioneering. Two PNP officers pointed out to NDI representatives that because their professional advancement depends upon the support of mayors and governors, it is difficult for them to maintain the required nonpartisan stances. Obviously, these have negative consequences for the elections.

For the 2004 elections, COMELEC's plan for security included at least one PNP officer at each precinct -- though that officer was not allowed within 50 meters of the precinct -- and as many as available on stand-by. By May 8, 14,000 PNP and 3,000 AFP were deployed in Manila alone and another 22,000 members of the security forces were on stand-by. Given the rising tide of violence in the run-up to the elections, COMELEC and the security forces had worked together to identify approximately 500 "hotspots," or areas with a particularly high degree of violence, and deployed additional forces to those areas. The PNP and AFP jointly maintained checkpoints to enforce COMELEC's gun ban, and the AFP mobilized strike forces that could respond quickly to any sudden problems.

Despite these preparations and PNP claims that these elections were not more violent than those of the past, the Secretary of Defense reported a week before the election that there were already 118 election-related deaths. On March 24, the PNP reported that 339 criminal cases had been filed for violations of the election law and that 593 investigations were ongoing, a few of which involved members of the security forces. It also stated that the NPA had been involved in 159 violent incidents during the election period, creating some confusion as to whether these incidents were in addition to, or tracked separately from, other cases. By May 9, the PNP had recorded 119 incidents in which 96 people had been killed and 166 had been wounded since December 15, 2003. It also reported that 1,808 people had been arrested for gun ban violations and 1,445 weapons had been confiscated, though the lack of cantonment procedures left some uneasy about where the weapons wound up. By focusing on the number of incidents – rather than the number of dead, wounded, or confiscated weapons – the PNP could claim that the elections were less violent than in the past.

By early May, the PNP was reporting about three incidents per day, all of which cast doubt on how free voters and candidates were to exercise their right to support candidates and campaign. These incidents included the bombing of a congressional candidate's headquarters in Pampanga; the shooting deaths of two campaign workers in Abra; an assassination attempt on a journalist in the Cordillera Autonomous region; multiple disarmings of candidates' PNP escorts; an assassination attempt on a mayoral candidate and his AFP escort in Misamis Occidental in which the latter man died; the spraying of bullets into a vice mayoral candidate's office in Angeles City; the shooting deaths of four and wounding of seven in a disputed mayoral race in Cavite; the killing of two and wounding of three in a disputed race in Ilocos Sur; the murder of a barangay association captain in Sorsogon; the murder of two mayoral candidates in Leyte; and the shooting death of a village councilor campaigning for her cousin's mayoral race at a fundraising dance in Bohol.

Part of the difficulty in gauging the magnitude and therefore appropriate responses to pre-election violence was a general disagreement as to its causes. According to COMELEC, the NPA was the greatest threat. Some PNP officials agreed with this, but not with the same conviction as COMELEC. The election administration's statements did not acknowledge that the NPA's status is now more complex than it was even in the 2001 elections. In some areas, former NPA commanders have run and currently hold office. In addition, peace talks between the administration and the NPA are ongoing. Others, including some PNP commanders, suggest that at least some NPA, whose numbers have also dwindled considerably over the past decade, now have a stake in the election process working and therefore are not likely to mount a wholesale disruption. It is true, as noted above, that in some areas the NPA "taxed" candidates, but this was not a nationwide or violent phenomenon. It is also true that some members of "goon squads," or private militias, are current or former NPA, but their activities do not appear to have been driven by the NPA.

The Arroyo administration and, to some extent, the international community, expressed concern about potential disruptions by Muslim militant groups such as the Jemmah

Islamiyyah, the Abu Sayyef Group, and the Moro Islamic Liberation Front, all of which have footholds in the southern Philippines. Little attention was given to the MILF's May 7 statement that it would not disrupt the process, and, by May 10, little JI or ASG activity had materialized. Some security force officials in areas plagued with other kinds of problems expressed frustration at the distribution of resources to stave off those threats.

Local actors battling over access to resources generated the bulk of the violence. Holding office is less about public service than it is about controlling and distributing public funds and goods. Several factors have made the stakes for gaining public office considerably higher. First, even local campaigns have gotten considerably more expensive. If candidates have paid to mobilize campaign workers and voters and fail to reach office, it is difficult for them to repay their debts. Some of the violence has been attributed to candidates who appeared unlikely to succeed and would therefore not be able to repay their debts; other incidents involved candidates attempting to regain the money they spent on buying votes, figures that sometimes reach as much as US\$60 per vote. In some areas, including Maguindanao and Caraga, voters were killed for their allegiance to particular candidates. Second, some areas have new administrative designations, such that their budgets are larger and therefore running them is even more desirable. One area of Pampanga, for example, had in the last election been a municipality and its annual budget was about 100 million pesos; now it is considered a city and its budget is about 500 million pesos. It was rating a higher level of violence in this pre-election period than at any point in the past. Third, despite the gun ban, some parties and candidates maintained "goon squads" or private militias who were particularly aggressive in ensuring local support.

The effects of violence were significant. Forty-six mayors in northern Luzon ran unopposed, and similar percentages were seen in Mindanao. In some areas, large numbers of candidates moved into municipalities in order to improve their personal security. In Maguindanao, 14 of 27 municipalities opted to allocate positions rather than go through the process of electing people. One PPCRV coordinator in northern Luzon was concerned about the effects of the violence on voters, saying that, "because of violence, people don't really care about elections – they are too frightened, and they will not vote." Clearly, some parts of the Philippine electorate must factor intimidation and violence into their political choices.

Given COMELEC's power to deputize the security forces, it is imperative to consider whether that power was used effectively in the pre-election period. Although COMELEC responded to some requests to assume direct control of problem areas, it was not particularly aggressive in directing the security forces to stem the violence. The PNP's efforts to present numbers that made the situation look better did little to assure observers that the problems were being objectively addressed. PNP spokespeople had no data available regarding the arrest and conviction rates from incidents in the 2001 elections, further calling into question the force's commitment to addressing the concerns. Moreover, NDI representatives were concerned by the security forces' failure to enforce even simple infractions, such as removing illegal signs. The failure to uphold

laws, investigate incidents, and prosecute perpetrators creates impunity, which is hardly conducive to democratic political participation.

Some local PNP officials said that short of “monitoring compliance with the Covenant [of Hope],” there was little they could do to stop the violence. A regional PNP commander said that his officers were “constrained by democracy” in the need to procure warrants and follow other aspects of due process. PNP officials pointed to witnesses’ unwillingness to provide accounts, file charges, or testify, and to the vulnerability of PNP officers themselves to those perpetrating the violence. Minimal witness protection services are available, and local PNP officials blame the lack of convictions on judicial corruption. COMELEC and the PNP seemed to share a laissez faire attitude with respect to this local violence, going so far in some areas as to suggest that the COMELEC’s and PNP’s jobs are made easier if violent candidates simply eliminate each other.

COMELEC and the security forces do not appear to have adequately addressed pre-election violence. While their explanations are not without merit, and while some of the problems are not specific to elections, the fact remains that their attitude and actions bear some of the blame for the ongoing and increasing levels of violence. It is those bodies’ responsibility to create and maintain an environment conducive to peaceful elections, and it is unacceptable for them to simply fail to fulfill their most basic function.

Election Day

Election Administration

Despite pre-election concerns, the polling, counting, and canvassing proceeded in most areas apparently without serious problems. Although the circumstances in many polling stations were somewhat chaotic, the voters’ patience and the local election officials’ fortitude helped make the process function. In general, the atmosphere was festive, though in some areas the environment was tense due to clashes between rival candidates and between security forces and rebel groups. There was no shortage of procedural errors in all of the processes nationwide, but there is little compelling evidence to suggest that these materially affected the outcome of the election. Indeed, most of the problems stemmed from issues of competence rather than partisanship.

Local COMELEC officials and BEIs deserve the bulk of the credit for conducting a smooth poll. Although the circumstances were less than ideal, most BEIs faced their challenge with efficiency and patience, and in conformity with the regulations. As noted above, some of the BEIs were not teachers. In some areas, such as Matanog, PNP and/or AFP forces served as BEIs, although the PNP denied this happened anywhere. This is a cause for concern, partly because they were not trained as BEIs, did not follow proper procedures, and may have been partisan in their conduct. One NDI representative witnessed one AFP BEI calling some, but not all, voters into a precinct.

In areas where NDI was present on Election Day, sensitive and non-sensitive materials were not always distributed according to the legally-mandated timetable. Although all

but a few areas received their materials in order to open at 7 am on May 10, the distribution to that point was problematic. In Ilocos Norte, for example, local officials did not get the non-sensitive materials until late on May 8 and the sensitive materials on May 9, creating some tension as to whether the distribution of all materials to the BEIs on May 9 would be possible. In at least one part of Abra Province, the materials were collected from the City Treasury not by the BEIs, as the law mandates, but by the incumbent mayor's wife. In another part of the province that had the same problem in past elections, the failure to deliver materials in time on May 10 meant a declaration of a failed election, followed by a special election held the following day. A few BEIs were forced to make do with hand-written voters' lists.

Observers had not previously expressed concerns about ballot secrecy, yet this emerged as a particular concern on Election Day. Paper folders, which were smaller than the ballot itself, were set up on desks as screens. But not only were the screens too small, they often impeded the voter's ability to write comfortably, such that many voters pushed them aside. In precincts situated in larger classrooms, this was not necessarily a concern, but in smaller rooms, where voters were sitting closer together and/or close to windows through which their writing could be observed, or in rooms that accommodated two precincts, the secrecy of the ballots was seriously jeopardized. In a few precincts, NDI representatives also noted unsealed ballot boxes, which could also call secrecy into question. In other areas, observers noted that the serial numbers of ballots, which correspond to the voter's name on the registry, were left on, such that a voter could be identified. It is particularly important to consider this lack of secrecy in relation to vote buying.

The quantity of materials was also not necessarily appropriate. Some precincts were concerned about whether they had enough ballots (one for each voter plus three for the BEIs), given concerns about the voters' list and reassignment of precincts. Other areas reported having too many ballots, leading to concerns about whether those would be used to stuff boxes. Observers reported shortages of ink, tally boards, envelopes, pens, paper, padlocks, and security folders.

Despite concerns going into Election Day about problems with the voters' lists, in some regions patience and local knowledge on the part of local COMELEC officials, BEIs, and voters helped avert major problems with respect to allowing people to vote. In other areas, though, thousands were unable to cast ballots because their names were not on the list, including people who knew they were registered and had the documents to prove it. It is impossible to know either how many voters were unable to cast ballots because their names had been omitted from the lists or because BEIs used different standards to admit voters to precincts, or how many, upon learning that they were to cast their ballots in different precincts, simply abandoned their efforts and went home. For example, in South Upi and Bangued, dozens of voters were told just minutes before 3pm that they were supposed to vote in different precincts, ones they could not possibly reach in the remaining time. PPCRV later speculated that a statistically significant number of voters – perhaps even more than the margin of victory-- may have been prevented from casting ballots as a direct result of problems with the list, but it is impossible to verify this claim.

It is equally difficult to determine the extent of multiple or illegal voting. Indelible ink is supposed to be applied to a voter's finger after he casts his ballot so that he is easily recognized as having already voted. Some observers suggested that the ink was easily removed, or that BEIs were bribed or harassed into ignoring an already-inked finger. In some precincts, NDI observers witnessed "excess" ink – the amount need to properly stain the fingernail – being wiped away so quickly as to render it ineffective. In Maguindanao, the use of ink was declared "optional" in some polling stations. Precincts in Davao del Sur did not receive indelible ink and instead used ink from an ordinary stamp pad. Some NDI observers reported credible stories of "flying voting" – individuals who move from precinct to precinct trying to cast as many ballots as they can. Some voters told NDI observers that while they could not find their own names on the voters' lists, they could find those of their dead relatives, and that ballots had been cast in their names.

Occasionally, voters voiced concerns that *barangay* captains and/or candidates were lingering inside or just outside precincts. When asked by an observer what he was doing inside a precinct, one *barangay* captain insisted that he and his colleagues had passed a local resolution enabling them to do so. Despite clarifications from the BEI that such resolutions had no bearing, the captain refused to leave.

Many allegations of vote buying were made to NDI representatives. Although this is generally thought to be a local phenomenon, it has been known to play into congressional and national races. Most parties and candidates to which NDI representatives spoke maintained that they did not engage in this practice, but those who did admit to vote buying claimed to do so only because everyone else was doing it. Vote buying must be considered alongside concerns about ballot secrecy and voter intimidation. Without the certainty that their choices will be known only to them, voters become vulnerable to pressure. Although the problem of vote buying is hardly new to Philippine elections, COMELEC appeared to do little in terms of minimizing concerns about secrecy or incidences of intimidation, and candidates clearly played on voters' uncertainties about both. NDI representatives were told that votes in some parts of the country commanded 15,000 pesos, and that in certain parts of ARMM, intimidation was such a problem that voters had no means to resist vote buying efforts.

Most polls closed on time and followed the correct procedures. Special elections had to be scheduled in Tinged (Abra Province) because materials had not been delivered in time, and in Dupax Del Norte (Nueva Vizcaya) due to inclement weather. In Tinglayan (Kalinga Province), local thugs blocked the arrival of BEIs and materials, leading to a postponement of elections there, and a similar "failure of precincts to function" led to a delay in Kapatagan (Lanao del Sur Province).

Consistent with past elections, turnout was quite high, 74 percent³³. Most voters cast their ballots in the morning, and voting took anywhere from 20 minutes to three hours,

³³ Voter turnout percentage is calculated based on the total number of votes cast for all Presidential candidates divided by the total number of registered voters. The Social Weather Station exit poll computed

depending on the BEI's efficiency, the number of voters trying to vote, and the time of day. A few isolated cases of low turnout (30-35 percent) were attributed to intimidation by local officials, and Mindanao reported about 70 percent turnout.

Election Day Monitoring

Civil society and party poll-watchers observed in large numbers. Party watchers were not particularly observant or helpful during the balloting, and while many could identify the particular candidate for whom they were watching, they could not identify the party. PPCRV and NAMFREL fielded more than 300,000 observers. PPCRV was to observe during the balloting, while NAMFREL would watch the tallying (see *infra*). Coverage of volunteer poll-watchers varied considerably. In some provinces, such as Abra, a smaller group of volunteers had to work in roving teams, while in other areas, like Pampanga, more than enough volunteers had mobilized to cover 5,000 precincts. In more urban areas, PPCRV set up voters' assistance desks primarily to help voters locate the right precinct.

Immediate Post Election Period

May 10 Results: Counting and Tallying at the Precinct Level

Polls closed at 3pm on Election Day. Immediately following the close of the polls, BEIs began the arduous process of manually counting and tallying the votes in each precinct. Election officials, in the presence of party poll watchers and representatives of domestic monitoring groups, began the counting process by checking the seal on the ballot boxes, opening the box and counting out the ballots to ensure that the total number of ballots cast inside the box matched the total number of ballots issued to registered voters in that precinct. Three officials then read, check and record the results. The manual process is painfully slow, it takes between two and five minutes to read one ballot, each precinct has an average of 300 ballots.

In the precincts in which NDI watched the counting process, the BEIs generally appeared to perform well despite exhaustion. Party watchers who were somewhat disengaged during the balloting, became quite engaged during the count, but appeared to focus most significantly on the counting of votes for local races, rather than on the national level races. Volunteers from PPCRV and NAMFREL watched the counting process and NAMFREL volunteers collected the sixth sheet of the tally form from the election officials. This form is what NAMFREL uses to conduct its own independent quick count of returns. Following the count, the election materials are then transported to canvassing centers. This transfer of the ballots and tally sheets to the provincial canvassing centers was often chaotic. In many instances the materials were not accompanied by the authorized individuals, in some cases ballot boxes were actually transported by

voter turnout to be 81.5 percent. Voter turnout for the 2001 mid-term congressional and mid-term elections was estimated at 85 percent by the COMELEC Chairman Alfredo Benipayo.

candidates. In Sultan Kudarat a dispute between the supporters of rival mayoral candidates over who would transport the boxes led to violence that left four people dead.

Except for what appear to be a few isolated instances³⁴, NDI election experts did not notice, and Philippine domestic monitoring groups and political party poll watchers did not report, any significant fraud at the precinct level in either the balloting or the counting process.

Canvassing at the Municipal and Provincial Level

Once ballots have been tallied at the precinct level, the materials are transported to canvassing centers in each province. At the canvassing center the election returns are reviewed by election officials in the presence of party poll watchers and volunteers from domestic monitoring organizations and the results are posted on public tally boards. The board of canvassers for each province or city then certifies the returns and transmits the certificate of canvass along with the ballots themselves directly to the President of the Senate.

In the areas in which NDI election experts were present, party poll watchers were present, but focused their attention primarily on local, rather than national level races. At this level, Philippine domestic monitoring organizations reported minor procedural irregularities such as inverted numbers on tally sheets, information sheets missing the correct precinct numbers and a lack of public tally boards. Party poll watchers did not raise any objections during this portion of the canvass.

In some areas, canvassing was conducted in military camps. While this helped alleviate some security concerns, the perception in some areas that the military had allegiances with certain local civilian leaders, cast doubt on the validity of the canvass. Additionally, because of restricted access to military bases, party poll watchers and representatives of domestic monitoring groups were not permitted to observe the canvass. The absence of such observers contributed to the perception of possible fraud in the reporting of the returns, though no substantiated allegations were reported.

Canvassing for Legislative and Local Government Seats

COMELEC's canvassing for legislative and local government seats began on the evening of May 10 and in some instances, the morning of May 11. The process was reasonably smooth and, in the areas NDI observed, engaged party and civil society poll watchers. By May 22 COMELEC had canvassed all but seven COCs, and three days later managed to proclaim eleven of twelve senators. The canvassing at this level was faster than efforts for other elections in recent memory, yet this success was marred when a senior COMELEC official told a journalist that the results would favor Arroyo. Given that

³⁴ Party poll watchers at a precinct in Sultan Kudarat provided NDI with a copy of the tally sheet for that precinct. The tally sheet records a total of 300 registered voters in that precinct and a total of 300 voters who actually voted. The total number of votes obtained by President Arroyo are recorded as 1,041. See Appendix.

canvassing for presidential and vice presidential results, let alone announcing them, is clearly outside COMELEC's mandate, such behavior reinforced opposition complaints regarding COMELEC incompetence and bias.

Congressional Canvassing

Congressional canvassing for the presidential and vice-presidential races was considerably more controversial. The Constitution mandates that the Congress canvass the votes for President and Vice-President and proclaim the winner as the candidate with the highest number of votes.³⁵ The board of canvassers (BOC) of each province or municipality transmits certified returns in the forms of certificates of canvass (COCs) directly to the President of the Senate. Upon receipt of the COCs, the President of the Senate must open all the certificates in the presence of a joint public session of the Congress within 30 days of the election and "upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes."³⁶ The Constitution further provides that the Congress shall promulgate its own rules for canvassing the votes.³⁷

The relevant law does not specify whether the full plenary or a committee conduct the canvassing, nor does it specify the composition of a committee should one be used in place of the plenary. In addition, the law does not clarify the procedures for the canvass, such that the rules governing who does the canvassing and how it should be conducted must be renegotiated for each election. As a result, convening the constitutionally mandated bicameral National Board of Canvassers (BoC) for the May 10 elections took a full week as members squabbled over the membership and procedures. The opposition KNP maintained that the canvassing must be conducted by the full congress and filed a petition with the Supreme Court.³⁸ The Supreme Court ruled that the Constitution expressly empowers Congress to promulgate its own rules for the canvassing of certificates and that the Court has no power to review the internal proceedings of Congress unless there is a clear violation of the Constitution and the creation of the Joint Committee does not constitute such a violation.³⁹ Following the Supreme Court decision, the House and Senate agreed to work through a joint committee. It took another three days to settle on the composition of that committee and another full week to agree to the rules of conduct. The actual canvass of votes began in the evening of June 4 and 176 COCs needed to be canvassed. The sitting government's mandate was set to expire on June 30, and this created concerns regarding a possible constitutional crisis if the canvassing was not completed and a winner proclaimed in advance of that date.

During the course of the canvassing, counsels for the candidates for President and Vice-President were given the opportunity to examine all of the certificates of canvass as well

³⁵ Phil. Const. Article VII, Sec. 4

³⁶ Phil. Const. Article VII, Sec. 4.

³⁷ *Id.*

³⁸ *Cong. Ruy Elias C. Lopez v. Senate of the Philippines, House of Representatives, et al*, G.R. No. 163556, June 8, 2004.

³⁹ *Id.*

as supporting statements of votes. Any objections of counsel were made orally and in writing. Counsel for FPJ made several objections regarding the authenticity of the COCs. These objections and other grievances raised by the opposition are discussed *infra*. The Committee noted the objections of counsel and in several instances took steps to address these concerns. Objections raised with respect to alleged erasures, alterations, superimpositions, “snopaking”⁴⁰ and padding and shaving of votes in the SOVs were duly noted, but the Joint Committee found no compelling reason or legal basis to exclude any COC from the canvass. (See *infra*.)

Upon completion of the preliminary canvass, the Joint Committee found that Gloria Macapagal-Arroyo received the most votes (12,905,808) and that her closest rival was Fernando Poe, Jr (who received 11,782,232 votes). In the race for Vice-President, the Committee found that Noli L. De Castro received the most votes (15,100,431). The Joint Committee recommended that Congress, as the National Board of Canvassers, approve the Report of the Joint Committee and adopt Resolution of Both Houses No. 2 declaring the results of the National Elections held on May 10, 2004 for the offices of President and Vice-President and proclaiming Gloria Macapagal – Arroyo and Noli L. De Castro as the duly elected President and Vice-President of the Republic of Philippines, respectively.

Grievances and Complaints

No election is free from all allegations of fraud and even localized irregularities can create a perception of more widespread electoral malfeasance -- this is especially true if the electorate lacks trust in the electoral authorities. Credible, non partisan election observers can be particularly useful in offering independent evidence that either confirms or dispels the perception of fraudulent practices. A grievance procedure that allows aggrieved parties to voice complaints and resolves challenges to the electoral process or results in a timely and transparent manner is also essential to the credibility of the electoral process.

In the Philippines, there are three categories of election complaints: pre-proclamation complaints that deal largely with grievances that arise during canvassing; election contests which challenge proclaimed results and; election offenses where violators of the electoral law are prosecuted. Jurisdiction of election complaints is dependent upon the type of complaint. COMELEC has sole initial jurisdiction over pre-proclamation cases involving provincial, city and municipal offices. The complaint must first be brought to the board of canvassers of the province or municipality. An appeal of the Board’s decision may be made to COMELEC. These cases are dealt with summarily in an effort to ensure that the proclamation of results is not unduly delayed. Pre-proclamation cases cannot be brought in House, Senate, Vice-Presidential and Presidential races.⁴¹

There is not a single body with exclusive jurisdiction over all post-proclamation complaints. Disputes involving barangay or municipal contests are heard by municipal and regional trial courts. Appeals of these decisions may be made to COMELEC.

⁴⁰ Snopaking is the process of using a concealing substance, such as “White Out”, to cover over writing.

⁴¹ *Synchronized National and Local Elections Act*, RA No. 7166, 1991 Sec. 15.

COMELEC has initial jurisdiction over cases involving elections involving regional, provincial and city offices. Tribunals of the Senate and House of Representatives hear cases related to their respective members. The Supreme Court is the sole judge of all contests relating to the Presidential and Vice-Presidential elections, and may promulgate rules for this purpose.

Elections offenses cover all aspects of the electoral process and are outlined in the Omnibus Electoral Code and subsequent legislation. Any person found guilty of an election offence is subject to imprisonment of not less than one year and not more than six years. Probation is expressly prohibited. Once found guilty of an election offence, an individual is disqualified from holding public office and deprived of his/her right to vote.

The most common criticism of the complaints adjudication system in the Philippines is that the system is overburdened and exceptionally slow. A lack of trust in the electoral system and in electoral authorities contributes to excessive litigation of complaints. It is often repeated in a discussion of Philippine elections that there are “no losers, only those who are cheated.” Rather than accept defeat, electoral losers will often file complaints that are intended to save face or begin the campaign for the next election.

Opposition Claims of Fraud and Electoral Irregularities

Following the 2004 election, the opposition charged the administration with fraud, intimidation, and massive voter disenfranchisement. In the immediate post-election period and particularly during the congressional canvass, the opposition maintained that not only had massive voter disenfranchisement taken place (to the detriment of FPJ) as well as clear misuse of state funds for the purpose of influencing the election, but the administration had manipulated the returns to orchestrate a GMA victory. Opposition leaders are convinced that had no manipulation taken place, even with the other electoral irregularities, FPJ would have won the election by a margin of approximately 500,000 votes.

The opposition raised the majority of its electoral complaints during the congressional canvass. At issue primarily was the opposition’s assertion that the COCs from several areas had been tampered with and no longer reflected the true tally of the election returns. During the course of the canvass the opposition raised objections regarding alleged erasures, alterations, superimpositions and padding and shaving of votes and requested that the Joint Committee look beyond the COCs to the election returns in particular areas in an effort to verify the accuracy of the COCs. Section 30 of Republic Act 7166 and Section 14 of the Rules of Canvass provide the Joint Committee with the authority to look beyond the COCs if it appears that any COC bears erasures or alterations which may cast doubt on the veracity of the number of votes as stated therein and may affect the result of the election.⁴² In particular, the Opposition cites the COCs from Cebu as being

⁴² Section 30 of the *Synchronized National and Local Elections Act* provides: “When it appears that any certificate of canvass or supporting statement of votes by precinct bears erasures or alterations which may cast doubt as to the veracity of the number of votes therein and may affect the result of the election, upon request of the Presidential or Vice-Presidential candidate concerned or his party, Congress shall, for the

particularly problematic.⁴³ While the Joint Committee noted the objections raised by the opposition, it did not deem it necessary to look beyond any of the COCs for any region and found no “compelling reason or legal basis” to exclude any COCs from the canvass.

The Joint Committee was particularly concerned that any examination of the election results beyond those as reported on the COCs would lead to an unacceptable delay in the canvassing procedure. Many members of the Committee were concerned that the canvass, already proceeding slowly due to partisan debate and tactics, would be so delayed that the proclamation of results would not be made by June 30 when the existing government’s term expired and that a constitutional crisis would develop. The Joint Committee noted that allegations of cheating and fraud involving the election returns are the proper object of a protest before the Presidential Election Tribunal and that such a protest could be made following the proclamation of results.

In July, Fernando Poe Jr. and running mate Loren Legara filed petitions with the Supreme Court, convening as the Presidential Election Tribunal asking the tribunal to annul the proclamation of Ms. Arroyo and Mr. de Castro as the winners of the election and seeking a retabulation of the votes. The petitions further allege that the government committed “massive and widespread electoral fraud, anomalies and irregularities” in up to 124,404 precincts.⁴⁴

In early August, President Arroyo and Vice President de Castro filed their answers and counter-protests with the PET. If the PET finds that the election protest brought by Mr. Poe and Mr. Legara are sufficient, it can require a retabulation of the election results.

NAMFREL Quick Count

In previous elections, NAMFREL’s quick count was conducted manually – observers would collect the results of the count at each precinct observed and transmit this data, usually by fax, to a central data collection site at the province and then at the national level. The count was quicker than the official tally, but still fairly time consuming because the group undertook a comprehensive count – attempting to get polling data from all of the precincts rather than just from a statistically meaningful sample.

sole purpose of verifying the actual number of votes cast for President and Vice-President, count the votes as they appear in the copies of the election returns submitted to it. *Synchronized National and Local Elections Act*, RA No. 7166, 1999, Sec. 30.

⁴³ The KNP alleges that massive election fraud took place in Cebu. In a speech before a plenary session of congress on June 23, 2004, Senator Aquilino Pimental asserted that President Arroyo appears to have secured her lead in the election by votes gathered in Cebu province and Cebu city. He notes that the returns from Cebu were “statistically improbable” and that the number of votes reported were greater than the number of registered voters in some areas. Speech of Sen. Aquilino Pimental, June 23, 2004. See also, “Cebu Witnesses vs. GMA Fraud Surface”, <http://www.erap.com/news/june> 11.

⁴⁴ Poe asked the PET to allow a retabulation of the election returns from 10,554 precincts in seven provinces, one city and seven municipalities as well as the ballots from 118,339 precincts in 42 cities. Legarda asked for a recount of the election returns from 9,007 precincts in six provinces, one city and five municipalities and the ballots from 124,404 precincts.

For the 2004 elections, NAMFREL sought to modernize its own reporting structures in order to increase the speed and efficacy of the quick count. NAMFREL opted to use text messaging to relay the data. Observers collected the data at the precinct level, then using the prescribed format – based on precinct number – the figures were tabulated through a computer program at the national level. The system, however, had several flaws that became apparent on polling day. Most notably, there was no mechanism to handle instances where the number of a particular precinct had been changed – in some instances, NAMFREL volunteers reported the polling data based on the new precinct number and in some instances used the previously assigned number. In the end, the data collected through text messaging had too many errors and could not be used. Fortunately, NAMFREL had kept in place its previous system of obtaining one of the tally sheets from election officials at the precinct level and this information provided the data for the quick count.

Partly because of the failure of the text messaging system, NAMFREL was slow in releasing the results of the quick count. The lack of this independent information at a time when the official count was moving slowly and both sides were making statements regarding possible victory as well as fraud by the competition, was a missed opportunity and contributed to a lack of confidence in the electoral system. The slowness of the count, particularly when considered along with the ties of some in NAMFREL's leadership to organizations that had endorsed President Arroyo, opened NAMREL to charges of bias in its own count. Had NAMFREL been in a position to release meaningful information quickly, it would have contributed to confidence both in the election and in NAMFREL.

Violence and Intimidation in the Post-Election Period

By a week after the election, the death toll from violent incidents related to the polling had risen to about 150, or about 30 more fatalities in a week, according to the Secretary of Defense.

The governor's race in Isabela provided the best snapshot of post-election intimidation, which reflected the power of political dynasties, the weakness of COMELEC, and the power of the media to involve the public. As the provincial canvass progressed, incumbent Governor Ferdinand Dy, Jr., whose family's involvement in politics predates that of the Marcos family, appeared to be losing by a considerable margin to Grace Padaca, a former radio journalist, by about 40,000 votes. Presumably under pressure from the Dy campaign, the local Board of Canvassers quit rather than proclaim Padaca the winner, whereupon Padaca went into hiding. Several days later, a new BoC arrived from Manila, and it was from that group that Dy's campaign successfully obtained a stay on the proclamation of the victory after lodging a petition with the local COMELEC that Padaca had intimidated voters with the help of NPA rebels. The allegations regarding Padaca's affiliation to the leftists emerged only after her victory seemed clear, and there was no evidence to believe it was true. When NDI observers met with the head of Dy's party in Manila and asked about the situation in Isabela, the party head treated Dy's behavior as an embarrassment, saying that, "He just really didn't want to lose," but

showed no signs of taking steps to ensure the results will be honored. It was not until June 14 – and another series of efforts by Dy to prevent her proclamation – that Padaca was proclaimed the victor, but her safety will likely remain an issue despite her win.

In the days following the election, the Department of Education established a legal defense fund for teachers. Candidates had already begun to file suits against BEIs for their mistakes on election returns. The Department of Education began to collect its own set of certificates of canvass in order to defend the teachers in question. Very few BEIs have filed complaints against overly aggressive candidates or party watchers, mostly because they do not want to make enemies in their own communities.

Threats of demonstrations in Manila failed to materialize. The Poe camp had tentatively scheduled a rally or vigil for the afternoon of May 15, but few people appeared. Small groups of supporters and protestors gathered outside the congress as the debates and canvassing commenced, but most were held without serious incident. The administration issued several ominous statements warning against attempts to interrupt the canvass, baselessly challenge the results, or try to derail the proclamation process, and repeatedly stating that it had put the security forces on high alert. Given that the opposition's behavior was thoroughly non-violent, and that the security forces arguably posed the greatest threat, these statements seemed excessive and misdirected.

Predictably enough, the business community and Catholic Church began to call for stability about two to three weeks after the election. Several large business organizations, such as the Philippine CCI, the Makati Business Club, and the Filipino-Chinese Business Association ran newspaper ads in late May encouraging a swift and peaceful resolution to the electoral process. NAMFREL had already publicly stated its confidence that there had been no serious fraud within a week of the election, while the Catholic Bishops' Council of the Philippines waited until June 1 to do so.

Recommendations and Conclusions

A genuine desire for credible elections was expressed by public officials, political and civic leaders and Filipino citizens generally; however, important challenges still lie ahead. NDI offers the following recommendations in an effort to contribute to the dialogue among Philippine stakeholders and to the hard and detailed work of reaching consensus on legal, administrative and institutional reforms that can be implemented prior to the next national election in 2007.

Electoral and Legal Framework

- 1) Consolidate relevant election legislation.** All relevant electoral laws, other than Constitutional provisions, should be consolidated in a new Omnibus Election Code.
- 2) Consider desynchronizing local and national elections.** Increased financing by national campaigns at the local level raised the likelihood of violence during the

election period. Desynchronizing the elections would put less pressure on security forces and political actors as outside pressures would be diminished.

- 3) **Strengthen Rule of Law.** Hold political parties responsible for acts of violence directed at rival parties and prosecute all election-related crimes through a speedier adjudication process.

Electoral Administration

- 1) **Undertake a full management audit of COMELEC and implement recommendations.** The Senate and House of Representatives Committees on Suffrage and Electoral Reform should propose, as one of their earliest actions in the new Congress and in keeping with their oversight responsibilities, a full management audit of COMELEC, to be conducted on an independent basis and to which the Commission should voluntarily comply. Priority issues for the auditors should include examination of: the ‘Commissioner in Charge’ system of management, professional capabilities, and organizational structure; staffing needs, human resource practices, and training and professional development programs; standardized operating policies and procedures; election budgeting and financing; and internal managerial and administrative firewalls.
- 2) **Improve the nomination process for COMELEC commissioners.** Establish professional standards and eligibility criteria for nominees to COMELEC. Open up the nomination process to allow for greater public scrutiny and input by stakeholders.
- 3) **Modernization of the voting process.** COMELEC should effectively use the time between elections and renew the process of modernization. This would include a concerted effort to review and improve the voters list. With this modernization program, COMELEC should institute a rigorous training program for its staff on any new election related equipment and procedures. COMELEC should conduct this effort in cooperation with the Congress to ensure appropriated funding.
- 4) **Reform the role of Congress in the canvassing system.** Create a standing set of rules for its responsibilities in the canvass and the procedures for carrying out the canvass.
- 5) **Establish a more efficient system to address the adjudication of complaints.** Streamline and consolidate the jurisdiction for dispute resolution. At a minimum, COMELEC should be relieved of initial jurisdiction. Local or regional courts could assume greater responsibilities. The establishment of a specific “electoral court” might also be considered. Introduce measures to penalize or discourage frivolous complaints. And, develop a greater range of sanctions to ensure that tribunals apply penalties that are proportional to the offense. Related to this, the significant intermingling of the criminal and electoral law should be re-considered as part of the electoral reform agenda. Establishing a more efficient system to address complaints would serve to remove a perception of bias and would increase public confidence in COMELEC.

- 6) **Ensure the transparency of results reporting, election monitoring, and parallel vote counting activities.** Transparency of the election results must be ensured by publicly posting a copy of the precinct Election Return outside the precinct door and on the Internet.
- 7) **Improve the electoral security situation.** COMELEC needs to exercise its extraordinary powers over the police and armed forces to ensure stability over the election period.

Political Parties

- 1) **Strengthen political parties.** Political parties should represent the citizens' interests. Without representative political parties, the citizens do not have an organized vehicle to have their concerns heard at a national level. An appropriate role for a credible opposition in the legislative branch should be cultivated. Engaging the opposition in the governing process would motivate them to engage in a more responsible and democratic manner. Political parties should develop meaningful political identities, policy-based platforms, and agendas; internal democratic structures; a reliable core of supporters and leaders; the ability to raise funds to support party activities. Parties and candidates that demonstrated innovative approaches in gaining broad grassroots support should receive support and encouragement.
- 2) **Strengthen and enforce political party and campaign finance laws.** Political representatives in Congress should renew their efforts to pass legislation governing political parties and campaign financing. Public financing of political parties and electoral campaigns should be considered. To enhance the ethical behavior of political actors, a debate must be initiated and new rules on the financing of parties should be introduced. Several options to consider include: imposing a ceiling spending limit; partially or fully reimbursing the expenses of approved candidates; requiring that all public and private sources of election financing be made public. Anti-dynasty laws should be considered.
- 3) **Re-evaluate the Party List System.** The party list system in its current state does not appear to benefit those marginalized groups originally intended as its beneficiaries. Electoral officials as well as political party leaders should re-evaluate the system, its original intent and current operation.

Civil Society

- 1) **Civil society groups should adopt more transparent reporting guidelines.** Civil society organizations involved in the electoral process should communicate reporting practices in a transparent manner so as to maintain full public credibility.

- 2) Consider and test current and new parallel vote tabulation approaches.** Civil society organizations should seek to test current and new technologies, especially in regard to the Quick Count, before employing them on Election Day. Regardless of whether or not automation is officially introduced into the electoral system, it will be important to support parallel vote tabulation by a third party to ensure electoral credibility in the Philippines. Domestic monitoring groups should also consider independent vote verification techniques and quick count methodologies based on statistically valid samples of randomly selected and representative polling stations across the country. Employing a parallel count methodology that is based upon statistically meaningful samples could address the need for more timely results and could contribute to greater confidence in the election system.

No election is entirely free of problems and this election is certainly no exception. Efforts to improve election administration are needed, but so too are other measures designed to ensure that safeguards are in place to identify and remedy problems and abuses when they occur. In this regard, political parties, civil society organizations, the news media and judiciary play significant roles. If the public does not have confidence in these institutions, the public's confidence in elections, and eventually in democracy itself, may also wane.

National Democratic Institute for International Affairs

NDI is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

Safeguard Elections: NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election monitoring programs. NDI is a world leader in election monitoring, having organized international delegations to monitor elections in dozens of countries, helping to ensure that polling results reflect the will of the people.

Promote Openness and Accountability: NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in every region of the world, NDI complements the skills of its staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

NDI in the Philippines

NDI co-sponsored with the International Republican Institute an international delegation that observed the historic 1986 snap elections in the Philippines. The Institute returned in 1987 for the legislative elections bringing a group of democratic activists from countries in transition to observe the election monitoring work of NAMFREL. Following those elections, representatives from NAMFREL participated in NDI programs in Africa, Asia, Eastern Europe and Latin America, assisting the Institute's efforts to help create and develop similar domestic monitoring campaigns in these regions. In 1989, NDI prepared a book, *Reforming the Philippine Electoral Process: Developments 1986-88*, of lessons learned from the Philippine electoral experience of 1986-1988.

In 2003, the Institute, through the support of the United States Agency for International Development, initiated a program to help promote democratic governance of the police and enhance community-police relations in the Autonomous Region of Muslim Mindanao (ARMM). Currently, NDI has an all-Filipino staffed field office in Cotabato City.

APPENDICES