



## **STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO THE REPUBLIC OF THE PHILIPPINES**

*Manila, March 13, 2010*

### **INTRODUCTION**

The May 10 national elections in the Philippines are of crucial importance to the future of the country. While progress has been made in many areas, concerns remain as to the efficacy of the election preparations, the lack of dialogue between those administering the process and civil society groups committed to effectively monitoring it as well as other areas. There is growing concern that the process has not been sufficiently open and inclusive. In numerous meetings, the delegation perceived a high degree of anxiety and lack of confidence in the election process to date.

This statement is offered by an international delegation organized by the National Democratic Institute (NDI), which visited the Philippines from March 6 to March 13. The delegation's work was based on the Declaration of Principles for International Election Observation, launched at the United Nations in 2005 and endorsed by NDI and 35 other international and intergovernmental organizations. The delegation reviewed the political environment and the framework for the upcoming elections for President, Vice President, The House of Representatives, the Senate, and a range of provincial, municipal, and local offices scheduled for May 10, 2010. In total, more than 17,000 offices will be contested across the country.

The delegation included: Sam Gejdenson (United States), former Member, U.S. House of Representatives; Nora Owen (Ireland) Former Minister for Justice, Equality and Law Reform; Sue Wood (New Zealand), Former President of the New Zealand National Party; Jamie Metzl (United States), Executive Vice President, Asia Society, and Thomas V. Barry, (United States) NDI Deputy Regional Director for Asia. Telibert Laoc, Resident Program Director was the delegation's chief consultant. The delegation was also assisted by NDI staff members: Tess Pantow, Sudila De Silva and Luz Antonnette Manzano. The delegation wishes to express its appreciation to the National Endowment for Democracy that provided funding for this effort.

The delegation set out to gather information to report on preparations for upcoming elections. It met with government and electoral officials, leaders of political parties and civic and human rights associations, the news media and international organizations. The delegation offers its findings and observations in the spirit of

international cooperation and recognizes that it is the people of the Philippines who will ultimately determine the legitimacy of the upcoming elections. The delegation stresses that it did not seek to reach any final conclusions on the 2010 electoral process.

NDI has organized over 150 delegations to examine election processes in 52 countries around the world, in addition to its broad work with local partners to strengthen democratic institutions and practices through political parties, civic organizations, legislatures and other governmental institutions. NDI's electoral experience in the Philippines dates back to 1986 when it cosponsored an international delegation to observe that year's snap elections.

## **SUMMARY OF FINDINGS AND OBSERVATIONS**

The delegation recognizes the enormity of the challenge facing the Philippines in organizing its first nationwide automated election. It is clear that substantial efforts are being carried out by governmental agencies, political parties and civil society to organize an election process that enjoys the confidence of the people of the Philippines. At the same time, however, suspicions and lack of trust among the political competitors and toward authorities, combined with insufficient inclusiveness and transparency, have inhibited public confidence in the elections and generated anxiety about the automated election system. There is still time for all participants to take appropriate steps to achieve democratic elections in May, but concerted efforts are required to increase transparency, build in needed safeguards, heighten security and develop public trust in the process.

## **POLITICAL ENVIRONMENT**

Since the "people power" revolution of 1986, the Philippines has struggled with the challenge of conducting multi-party democratic elections that are transparent, safe and credible for all participants. The delegation heard many reports about problems in previous elections that have included violence, intimidation and widespread fraud. This has resulted in a lack of public confidence in the process and, most important, the election results. In response to these challenges, the government, political parties and civil society have spent more than a decade debating the need for an automated process of voting and counting that will serve as a deterrent to misconduct and restore the promise that the choices made by all voters will be reflected in the official outcome. However, the decision to move to an automated process has not settled the debate.

While the Automated Election System (AES) remains the focus of much public debate and the topic most often brought to the attention of the delegation, other equally important aspects of the electoral process should be considered.

**Parties:** To date the parties have been actively engaged in robust campaigning throughout the country. There are frequent debates or forums, many televised, for all national offices. On a single day citizens might listen to or view debates for Congress, the Senate, and the presidency. As campaigning opens for local offices it is expected that there will be even more discussion. Based on information presented to the delegation, the

amount of open public discourse is both welcome and unprecedented. The results of independent polling are regularly released and covered by all of the major news media.

**Civil society:** The delegation was impressed by the role being played by non-governmental organizations (NGOs) in the run-up to the elections. This is not surprising in a country known for being a pioneer in citizen participation in election monitoring and advocacy for reform. Since the days of the “people power” revolution NGOs have evolved beyond election monitoring to play a role in advocating for greater transparency and information dissemination to virtually every aspect of the electoral process. This advocacy has addressed issues such as the role and responsibilities of the Commission on Elections (Comelec), the role of the courts, campaign spending limits, media balance, youth participation, the rights of women, human rights, voter registration and the use of government resources.

**Government security agencies:** Electoral misconduct and violence have far too often marred Filipino politics. The election-related massacre of 57 people, including 32 journalists, in Maguindanao on November 23, 2009 has cast a shadow over the country in the run-up to the elections.

As a result, the Government of the Philippines has announced unprecedented steps to bring an end to the proliferation of armed political gangs. The delegation was impressed by the openness of the Philippine Anti Private Army Commission (PAAC). Among other things, the commission has included Catholic and Muslim leaders, former or current military, police, and judicial officials, along with a media representative, in recognition of the importance of such actors.

Officials of the PNP expressed an appreciation for the critical nature of security problems and reported that additional resources will be deployed to identified trouble spots throughout the country on election day.

Representatives of journalist organizations and minority communities remain deeply skeptical of the role and effectiveness of the PNP. It is incumbent on the PAAC, the Philippine National Police, the Armed Forces of the Philippines, and other agencies to overcome these doubts. The protection of journalists will be vital to the integrity and openness of the election process.

## **ELECTORAL PROCESS**

The Constitution of 1987 created the Commission on Elections (Comelec) and endowed it with authority over virtually every aspect of the electoral process. The Commission, creates procedures and regulations based on the laws passed by the Congress; enforces and administers all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall; regulates campaign donations and expenditures; registers political parties and civil society organizations that seek to participate in elections; and commands the resources of all state institutions that may assist in the conduct of elections.

Comelec is overseen by seven commissioners appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment.

### *Automation*

On January 23, 2007, Republic Act 9369 was enacted “authorizing the Commission on Elections to use an automated election system.” It is this law that is at the heart of the process now underway.

While automation of the national election process has been under consideration for many years, the upcoming balloting will be the first time machines will be used to count ballots, as well as aggregate and transmit results nationwide. Comelec signed a contract valued at 7.2 billion pesos with a joint venture of Smartmatic-Total Information Management (STIM) to provide the automated election system.

A Precinct Count Optical Scanning (PCOS) machine using optical mark reading (OMR) equipment is at the heart of the system. OMR devices are machines that capture data by scanning and recognizing a set of predetermined marks on sheets of paper. Voters are asked to indicate their choice by shading an oval next to their choice of candidate on the ballot paper. The ballot papers are then fed through the OMR device, and the machine is able to quickly recognize the marks and tabulate the results.

The system designed by the Comelec will provide an opportunity for the more than 50 million eligible voters to cast their votes at 76,000 polling centers servicing voters of over 350,000 precincts. The polling centers will be equipped with PCOS machines that will count ballots. Each ballot will contain a bar code that only allows it to be read by the PCOS machine in the appropriate precinct. The ballots will be printed at the Philippine National Printing Office with an authenticating mark only visible under an ultraviolet light. The Board of Election Inspectors (BEI), who staff polling places, will receive a hand held ultraviolet light to demonstrate to voters the authenticity of their ballot paper.

When the polls close, BEIs will print out election results from the PCOS machines in full view of candidate, party, and independent monitors. Only after multiple copies have been printed will the PCOS machine transmit the same results to central servers. Results will be transmitted simultaneously to servers in different locations. Those servers will be at the municipal level, the Comelec, and at a location open to the news media, political parties and a Comelec-accredited monitor.

Electronic voting is often employed as a means to ensure the integrity of elections. However, without proper safeguards the use of automation can breed suspicion and be misused.

Experience demonstrates that the decision about whether to adopt a costly electronic voting system is an important public policy issue that requires considerable public education, open debate and broad participation in decision-making. The decision about whether to adopt electronic voting requires this approach because it goes to the essence of elections: whether everyone's properly cast vote is accurately recorded and honored; and whether the ballot is secret. This concerns whether a particular technology, that affects votes cast, is capable of safeguarding universal and equal suffrage. The technology must be sufficiently transparent to allow requisite witnessing by party/candidate agents, nonpartisan monitors and other appropriate persons.

Electoral contestants and citizen monitors must be consulted in the design, procurement, testing and certification in the pre-election periods, as well as election day and post-election verification processes. A thorough and inclusive public review of the performance of electronic voting systems and other elements of the electoral process is needed in the immediate post-election period to effectively promote electoral integrity.

If there is insufficient public confidence during the pre-election period, it is all the more important to conduct a rigorous verification of the electronic voting technology as well as a thorough and inclusive public review in the immediate post-election period. This can contribute to confidence building and to appropriate policy adjustments and other electoral reform.

In the Philippines, a rigorous verification of electronic voting technology is needed in the immediate post-election period. This will contribute to public confidence in the voting system and help to identify problem areas for improvement. It should be emphasized that verifications, including random manual audits (RMAs) required by law do not negate the need for political party agents and domestic election monitors to be present in polling stations throughout voting, counting and all related processes. Potential problems exist concerning disenfranchisement, illegal voting, following procedures, proper operation of voting machines, handling of electronic and paper records, and first hand monitoring by electoral contestants and impartial citizen monitors.

*AES source codes:* The law on automation of elections required both an independent evaluation of the computer codes that direct the operations of the automation equipment (source codes) and an opportunity for political actors and NGOs to review those source codes. The delegation has received conflicting information as to whether the Comelec has complied with either of these requirements. Because the law was unclear, parties had significantly different expectations as to the availability of the source code.

This lack of clarity in the law has fueled suspicion as to the integrity of the automated process.

#### ***Random Manual Audit (RMA)***

Section 29 of Republic Act 9369 states "...there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each

province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error”.

Everyone with whom the delegation met identified the safeguard provided by an RMA as central to ensuring the integrity of the vote tabulation. Regrettably, the Comelec has not yet issued guidelines to implement the RMA provision of the law. In our meetings with representatives of the Commission, they expressed support for an RMA and an expectation their guidelines will call for a sample well above the minimum required by law. In the meantime, multiple questions remain:

-What should be the size of the sample? Should it be a random sample of precincts selected nationally or a random sample of machines examining every precinct in selected machines?

-What standard will be applied in counting ballots selected for the RMA? The PCOS machine is calibrated to read only those marks that fill fifty percent or more of the oval. Should a less stringent method be used that seeks to determine voter intent? If so, what should be the standard?

-Should the RMA be conducted prior to certifying the results of the precinct, what is known in the Philippines as pre-proclamation? If not, what standing will the RMA results have?

-Who will be authorized to conduct the RMA?

-How will transparency of the RMA be ensured to garner public confidence?

An RMA conducted on a proper national statistical sample, while important for examining national performance of the AES, would probably not identify performance problems in sub-national elections or in localized areas of the country. Identifying localized breakdowns or problems in the AES, and providing effective redress in such cases, would require further actions. This is also true if one precinct per Congressional district was used as the basis of an RMA.

Where there is reason to question performance at legislative district and local levels, a more detailed review would be required (such as recounts). Identifying such localized problems requires the presence of sufficiently trained party/candidate agents and domestic election monitors in addition to properly trained election officials. Moreover, preparations must be made to effectively remedy problems on the spot and through electoral complaint mechanisms.

The move to an automated system was widely advocated by all parties involved in the electoral process due to significant fraud and an erosion of public confidence in the past. Issues in addition those surrounding the AES also stand out as important. Among them are the following.

-Is the Comelec's mandate too broad? (The wide-ranging legislative mandate of Comelec requires it to adjudicate, police, and implement the electoral processes.)

-Does Comelec have sufficient resources to fulfill its mandate?

-What is the impact of delays on candidates, political parties, the Board of Election Inspectors and election-day processes? (These include, for example, the rolling out of a comprehensive voter education program, the issuing of General Instructions (GIs) to BEIs and canvassers, standards for the Random Manual Audit (RMA), and training of BEI and intermediate poll workers.)

- What was the quality of the voter registration process and what was its impact on the quality of the voter list?

The General Instructions (GIs) expected to be released by the Comelec governing the RMA are likely to be both widely discussed and hotly contested. Election law provides that a disagreement with a decision of the Comelec must first exhaust the Commission's internal mechanisms before it may be contested in court. Historically, this has been time consuming. Therefore, if the final GIs governing RMAs are to be accepted by citizens, it is essential they be released immediately so that public examination and resolution can begin.

**Ballot design:** There has been considerable controversy concerning the design of the ballot selected by the Comelec. Previously, ballots required voters to write out the names of their candidates. It is now a traditional "Australian ballot" formatted to meet the technical requirements of the PCOS machine. However, the Comelec began the printing of ballots before resolving outstanding questions over the eligibility of presidential candidates. Subsequent to the commencement of ballot printing, Comelec ruled one candidate ineligible. However, this candidate remains on the ballot. Inclusion of this candidate has led other candidates to allege that this will cause voter confusion.

**Voter education:** The introduction of the AES and the Australian ballot call for an extensive voter education effort. This has not occurred. Interlocutors from around the country have reported little evidence of government created or supported voter education. While the delegation does not wish to underestimate the enormity of the myriad tasks facing the Comelec, a major effort is required to avoid confusion and related problems on election day.

**Infrastructure challenges:** Any country attempting to roll out a nationwide system of automation for more than 17,000 offices at one time would be hard pressed to address all challenges. In a country with a voting population of over 50 million, spread out over 7,100 islands totaling 300,000 square kilometers, the task is particularly daunting. The recent drought has created shortages of hydroelectric power and brownouts in key areas. Some communities lack access to both landline and cellular communication envisioned for the transmission of data.

Security features have been added to the AES that tie ballots to specific machines and precincts. This means memory cards and ballots are specific to one another and their delivery must be linked. Questions remain about the ability to deliver and secure ballots, machines, electoral materials and memory cards in a synchronized fashion before and after polling. The use by the Comelec of a group of small logistics companies instead of recognized national carriers has also raised questions.

The AES machines are equipped with a battery back-up which may prove adequate to allow them to operate during polling hours and the period of ballot tabulation and transmission of results. However, numerous questions have been brought to the attention of the delegation concerning the adequacy of the telecommunications network needed to transmit polling place results. A briefing provided to the delegation by the AES contractor Smartmatic, highlighted the fact that similar information has not been widely shared with the public by the Comelec. This is essential as there is little doubt that the AES will not be able to transmit data from every PCOS machine in the same way. In fact, memory cards from some PCOS machines will likely be hand delivered to intermediate canvassing centers or other polling centers where telecommunications infrastructure is available. While the delegation believes a credible explanation for this may exist, and law allows it, it has not been a part of the information made publicly available by the Comelec or in the GIs sent to BEI members.

***Campaign financing:*** Republic Acts 881 and 7166 regulate campaign donations and expenditures but in practice provide only minimal information on the donations to, and expenditures made by candidates and political parties. Practically speaking, these political candidates do not have to provide the bulk of this information until 30 days after the elections. Violations of the law may result in the assessment of penalties by the Comelec but interlocutors have told the delegation that the authority of the Commission in this area is so minimal and exercised so infrequently as to be negligible. Unfortunately, this process denies voters information that may influence their votes.

Fortunately, civil society organizations and the news media have gathered and widely distributed information about campaign expenditures by candidates for national office. Using publicly available information, as well as Comelec filings, NGOs have been gathering detailed information concerning campaign expenditures and distributing it to the public and the news media. By tracking candidate purchases of advertising, monitoring candidate activities, and using grassroots volunteers in key areas of the country, the public is for the first time receiving information that it may consider in making their choice on election day.

***Nonpartisan domestic monitoring:*** There is an established and growing international acceptance, evidenced by state practice, of the positive contribution of nonpartisan election monitoring by national citizen organizations. Domestic monitoring is based on the right of citizens to participate in government, the very precept from which electoral rights derive. Election monitoring by nonpartisan domestic organizations helps to raise public confidence in the election process. It deters irregularities and electoral manipulation and exposes them if they occur, provides an important avenue for citizens



to take part in electoral processes, and furnishes the domestic and international communities with important information concerning the integrity of elections, as well as recommendations for improving the process.

The Philippines has a long and distinguished history of citizens voluntarily acting together to exercise oversight and add transparency to the electoral process. Filipino election monitors have been an inspiration to citizens throughout Asia and around the globe.

Regrettably, after two decades of successful acceptance of this practice, a recent decision by the Comelec concerning the registration of the National Citizens Movement for Free Elections (NAMFREL) has introduced to a level of controversy to election monitoring. While other citizen organizations have or may be registered by the Comelec, the exclusion of the country's most well-known domestic monitoring organization was viewed with concern by the delegation. It is essential to protect and promote the rights of citizens to associate and to seek, receive and impart information about the election process, which should not be unreasonable restricted.

## **RECOMMENDATIONS**

The delegation offers the following recommendations in the spirit of international cooperation and with the hope that they will be helpful in promoting inclusive, transparent and credible elections:

***Election preparation:*** In an environment with a history of election irregularities, it is essential that the Commission undertake a major effort to bolster public confidence in the new AES system and the impartiality of its decisions. The perception, whether fair or not, is that the Comelec has not done so. When it concerns elections, perceptions can be as important as reality. The Comelec should move expeditiously to clarify and issue instructions on a range of outstanding issues. Delays in releasing General Instructions have led to speculation that the Commission is unwilling to consider public opinion or allow sufficient time for debate. For this reason, it will be critical for Comelec to far more actively encourage, promote, and facilitate non government monitoring and oversight of the electoral process.

One approach the Comelec should consider is a series of public dialogues with representatives of the presidential candidates about the AES. Such forums could go a long way to educating the public. In particular, the Commission should address contingency planning, access to AES source codes, ballot design, and election day procedures. Political parties should be willing to participate in such discussions without preconditions.

***Random manual audits:*** The delegation shares the views expressed by virtually all interlocutors that a one precinct per congressional district sample for an RMA is inadequate. It recommends an RMA process focused on a sample of machines rather than single precincts. Past experience and sound statistical methodology indicate that a sample

of PCOS machines should be the basis for demonstrating reliability. The delegation recommends that the RMA be conducted prior to the proclamation of results. Any other approach will undermine rather than bolster public confidence. In addition the RMA must be conducted in a transparent manner to encourage public confidence.

An RMA based on a national sample probably would not be able to identify problems other than those concerning reliability of the AES at a national level. Comelec, therefore, should ensure the presence of party agents and domestic monitors in polling stations as well as the effective functioning of complaint mechanisms.

***Security Services:*** The Armed Forces of the Philippines and the Philippine National Police should do all they can to support the integrity of the electoral process and the sanctity of the ballot. Leaders across the political spectrum should support efforts by the military and police to impartially support democracy in the Philippines. Greater public dissemination of information about such efforts would bolster public confidence and reassure voters they will be able to safely vote and their vote will be accurately recorded without interference or intimidation.

***Nonpartisan election monitoring:*** It is to the benefit of all political actors as well as the Comelec to have robust and widespread public participation in nonpartisan citizen monitoring of elections. The delegation encourages the Comelec to carefully consider the contribution made by election monitoring organizations to the growth of democracy in the Philippines. Any decisions that break with longstanding practice and precedent may undermine that contribution now and in the future. Reasonable doubts, therefore, should be resolved in favor of granting accreditation and promoting citizen monitoring of elections.

***Voter and Civic education:*** The government of the Philippines should mobilize all of its resources to educate the public about balloting procedures and the new AES system. Such efforts, which may also involve expanded assistance from citizens groups would serve to reduce confusion on election day and bolster participation.

***Safety of journalists:*** The delegation was disturbed by the lack of confidence expressed by some journalists' organizations in steps taken by the PNP and AFP to bolster the safety of members of the news media. The delegation encourages these institutions to enter into a dialogue about concrete steps that will allow this essential sector of society to be secure in its work.

Further, media owners must meet their responsibilities for the safety of their employees. To be effective, this should be expressed through providing resources and support (such as communication systems and personal security), as well as using their collective voice to denounce violence and intimidation.

***Campaign finance:*** Broadcasters are required by law to file with the Comelec information about contracts signed by candidates and parties with media outlets. Candidates and parties are also required to make other minimal filings with the

Commission. Unfortunately, faced with a multitude of other responsibilities the Comelec has not created a process to make this information accessible to the public in a timely fashion. In the meantime, the delegation encourages the Comelec to take steps to make available on the internet and other forms the information currently available on campaign expenditures before the election. It will begin filling a key gap in the public's access to meaningful information about spending by candidates and political parties.

***Contingency planning:*** Section 13 of RA 9369 requires “a continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay obstruction, or nonperformance of the electoral process.” The Comelec is required to furnish this plan to political parties and candidates as well as publish it in major newspapers. This has not yet been done. The delegation believes the release of such a comprehensive plan, addressing both national and local planning, could go a considerable way to assuring voters that the Comelec is aware of, and sensitive to the many issues raised in the public domain. Release would bring greatly needed transparency to the planning process and has the potential to dispel rumors about the intentions of the Commission. The delegation encourages Comelec to fulfill its legal obligations in this area without delay. In addition it should consider expanding use of the Commission's extraordinary powers to mobilize state resources on behalf of free elections.

The delegation noted that many expressed a desire for Congress, after the elections, to address the allocation of the vast responsibilities required for organizing elections and the provision of adequate and timely resources to meet those responsibilities. The delegation hopes that any such considerations should be based on broad and inclusive public dialogue.

The delegation expresses its appreciation to everyone with whom it met. The delegation consulted 30 organizations in 27 meetings. Without their willingness to openly share ideas and concerns about the electoral process the delegation would not have been able to complete its work. NDI will continue to follow the process and offer support to those seeking to advance democratic elections and governance in the Philippines.