

Root of Nullity of the Exercise Is the Rape of the Constitution

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Smartmatic, a foreign corporation, conducted the Elections, with the Comelec acting as its Secretariat

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By Ado Paglinawan

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“Crisis of Sovereignty” Series (Part 15)

What defines the Philippines as a democracy, what defines the Philippines as a republic, is Article 2 Section 1 of the Philippine Constitution, as it proclaims sovereignty residing in the people.

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Written by Ado Paglinawan
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This is not the case however of the 2010 automated elections, where the exercise was not, of the people, for the people and by the people.

It is on this basis that the position of the Solidarity for Sovereignty (S4S), has become a most serious document, especially as Dean Merlin Magallona, a foremost constitutionalist from the University of the Philippines, lays down the foundation of the legal theory further bolstering the case filed by Homobono Adaza et al in the Supreme Court.

Frankly it is more of a historic document than the filing itself.

It should be remembered that this ghastly phenomenon did not reveal itself during the elections as everyone had given the Comelec the benefit of the doubt and cooperated for a peaceful and orderly voting at the precincts. The big picture became evident only as more and more parties began connecting the pieces like a Lego mountain, after S4S called for a People's Congress on June 3, 2010
, at the
Club Filipino
, encouraging the general citizenry to blow their whistles and submit claims and proofs of infirmities and irregularities.

At the end of the day, it was not just the wanton violation of laws that did the conspirators in. What lied under the landscape of lawlessness and utter manifestation of evil, was basically the rape of the Philippine Constitution.

A Framework for the Question of Constitutionality of Automated Elections

1. It is the intent of the Constitution in instituting the Commission on Elections (Comelec) that it shall possess plenary powers “relative to the conduct of elections, plebiscite, initiative, referendum and recall.” [See Constitution, Art. IXC, sec. 2 (1)]

2. The plenitude of powers mandated by the Constitution means that they are exclusive to the Commission.

3. Exclusivity of the grant of powers means they are non-delegable. The Constitution provides no authority for the Comelec to delegate its powers as constitutionally defined to any agency or instrumentality of the Government much less to any private person. It has the sole accountability and responsibility arising from the exercise of its powers.

4. The plenitude and exclusivity of such powers at once constitute limitations to the authority of all agencies or instrumentalities of the Government over the conduct of election, plebiscite, initiative, referendum and recall. Accordingly,

§ (a) all laws in regard to that subject matter the Commission shall enforce and administer; [Const., Art IXC, see 2 (1)]

§ (b) it has exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, p[rovincial and city officials. [Const. Article IXC, see 2 (2)]

§ (c) it has appellate jurisdiction over all contests involving municipal officials decided by trial courts of general jurisdiction as well as elective barangay officials decided by trial courts of limited jurisdiction; [Const. Section IXC, see 2 (2).]

§ (d) it shall decide all questions affecting elections, except the right to vote; [Const. IXC, see sec. 2 (3)], and

§ (e) it has the authority to deputize the armed forces and all law enforcement agencies of the Government for the purpose of ensuring free, orderly, peaceful and credible elections, with concurrence of the President.[Const. Art. IX C, sec. 2 (4)].

5. It is in derogation of the Constitutional mandate as to its powers and functions when the Commission on Election entered into the “Contract for the Provision of an Automated Election System for the May 10, 2010 Synchronized National and Local Elections” with Smartmatic Tim Corporation.

By this Contract, the Commission has contracted out or outsourced the conduct of the entire Philippine Electoral System, including “the counting, transmission and canvassing of votes for the May 10, 2010 Synchronized National and Local Elections.”

6. The subject-matter of the Contract is referred to as the Project which comprehends virtually the entire area of responsibility charged upon the Commission by the Constitution. Paragraph 1.16 of the Contract reads:

“Project refers to COMELEC’s nationwide automation of the voting, counting, transmission,

consolidation and canvassing of votes for the May 10, 2010 Synchronized National and Local Elections...”

7. Under the Contract, the national and local elections are, as they were, conducted by means of goods and services to be supplied or performed by the Provider (or Smartmatic Tim).

These goods as provided in paragraph 1.14 of the Contract, consist of “the precinct count optical scan (PCOS) machines and their principals, personal computers, servers, electronic transmission devices, printers, integrated software and other related equipment, both hardware, and software, including all deliverables supplies, ballots, and materials, necessary to carry out the Project.”

The services to be rendered, as they were rendered, by the Provider under paragraph 1.17 of the Contract consist of the following: “all acts to be performed or provided by the Provider to the COMELEC for the operation and completion of the Project...”

8. In defining the “Scope of the Project” --- namely, the Synchronized national and local elections of May 10, 2010 – the Contract in paragraph 3.1(b) specifies further the services to be rendered by the Provider, which when performed, as they were performed by the Provider, amount to the conduct of the said elections by the Provider. Thus:

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“Advocacy, Training and Information Campaign Materials, Pre-Election Testing and Rollout Support, Site Preparation, Ballot Box, Design, Deployment, Installation, Pullout and Warehousing Election-Day Support, Post Election Support; ...”

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9. The Scope of Responsibility of the Provider under the Contract in the conduct of the said elections is not limited to the goods and services described above.

Under paragraph 3.2 of the Contract “It shall provide competent project management, technical manpower and efficient services.”

Overall, the Provider, under the same paragraph: “shall ensure the proper, satisfactory and timely execution and completion of the Project.”

10. Emphasizing with more clarity the role and function of the Provider in the conduct of the said election, paragraph 3.2 of the Contract provides:

“Smartmatic, as the joint venture partner with the greater tract record in automated elections, shall be in charge of the technical aspects of the counting and canvassing software and hardware, including transmission configuration and system integration. Smartmatic shall also be primarily responsible for preventing and troubleshooting technical problems that may arise during the election.”

11. What functions and responsibilities are left to the Commission on Election in the conduct of the May 10 elections?

At best, it performed a subsidiary role to Smartmatic and the Provider. The perversion of its Constitutional functions over elections is shown in paragraph 6.3.6 of the Contract. It is consigned to overseeing the execution and implementation of the mechanics for the elections in question. This paragraph states that the COMELEC has the responsibility of:

“Creating its own Project Team called the Project Management Office (PMO) for the purpose, among others, of overseeing the Project’s execution and implementation.”

In gross departure from its Constitutional functions and powers, under paragraph 6.3 of the Contract, it is reduced to the following jobs, in service of the Provider:

“6.3.1 Notifying the Provider of the polling precincts and canvassing centers...;

6.3.2 Closely coordinating with the Provider in the preparation of the sites and set-up hardware, network installation... For the duration of the Project, COMELEC shall provide continuing assistance to the Provider on the needs of the Project,

6.3.3 Supplying the Provider with detailed functional information on the Philippine Electoral System;

6.3.4 Ensuring full cooperation of COMELEC

6.3.5 Making available the policies, procedures, reports, data, source documents and other information as may be needed by the Provider's Project Team."

12. Hence, under the Contract the COMELEC has transformed itself into the secretariat of the Provider which, in consequence, has aggrandized the functions and powers of the COMELEC under the Constitution.

13. On the basis of all these considerations, it must be affirmed that the May 10, 2010 elections, in its entirety were conducted not under the Constitution, they were held under the Contract. They stand together with the results, as the product of usurpation of Comelec's Constitutional responsibility by the Provider.

14. The synchronized national and local elections conducted under the Contract are a nullity and a wholesale betrayal of the people's sovereign will, While under the Constitution, it becomes the duty of the Comelec to comply with the laws of Congress, which enacted the automation of the electoral system, the legislative will in this case has been deformed to illegality by the Contract. # # #