



National Citizens' Movement for Free Elections (Namfrel)

## **Pre-Election Assessment Mission**

**March 27 to April 4, 2016**

### **Report**

#### **Assessment Summary**

At the time of this report there will be 35 days left to the May 9 presidential and general elections. If the current opinion polls hold, the elections for president and vice president may produce close results.

PEAM was pleased to hear that there is a good level of confidence in the Commission on Elections (COMELEC) among stakeholders. COMELEC has a particular challenge relating to the issuing of voters' receipts. Voters want a sense of confidence that their votes will be counted as cast. Another issue relates to the timely and transparent reporting of vote totals. Swift and accurate reporting is essential, especially due to past experiences.

Free, fair, inclusive and credible elections depend also on a permissive environment, and we have heard concerns expressed about vote buying and private armed groups impeding access to polling centres.

In the event of close elections, it will be important for all stakeholders to respond in a measured way, and for COMELEC to be prepared to provide a clear narrative surrounding the conduct of the polls and the publication of results.

In addition to issues related to the present elections, this assessment also suggests a national dialogue concerning possible desynchronization of national and local elections, and the possibility of run-off elections to ensure future presidents and vice presidents have a strong mandate.

There is also work to be done to improve the access to their franchise of indigenous people, people with disabilities, and overseas Filipinos.

#### **Background**

Over 54 million of the 100 million population of the Philippines have registered as voters in the 2016 elections. Some 45,000 candidates are running for the 18,000 elective posts. At the national level, the positions of president, vice president and 12 senators will be

contested, each with a six-year tenure. At the local level, positions of town and city mayors, vice mayors, provincial and regional governors, vice governors, members of the local council and regional assembly and district and party list representatives will also be up for election, each with a three-year term.

The 2010 Presidential elections were the first nationally automated elections in Philippine history. Previously, all elections were manually done, in both the counting and canvassing of votes. The voter turnout in the 2010 presidential elections was at 74 percent while in the 2013 elections, the turnout was at 77 percent.

For the 2016 elections, 95,317 voting counting machines will be used and deployed to the 92,509 polling stations across the country. Voting will be managed and operated by a three-member Board of Election Inspectors (BEI) in each of the stations composed of public school teachers of the Department of Education. Alongside the BEI in each of the stations are party watchers and nonpartisan election monitoring groups who will observe on the election day.

The COMELEC is the principal government agency constituted to enforce and administer all laws on the conduct of elections and adjudicating election-related complaints on electoral contests. The body is headed by seven commissioners appointed by the president. They are an independent agency able to exercise fiscal autonomy to ensure efficient operation and to free themselves from political interference. They also serve as the registrar of political parties. The COMELEC administers the elections across the country as well as in close to 70 other countries for Filipinos overseas.

## **Recent Developments**

### **Voter Receipts**

In a petition by a senatorial candidate, the Supreme Court recently voted 14-0 to instruct COMELEC “to enable the [printed] vote verification feature of the vote counting machines.” COMELEC has taken steps to comply with the ruling.

### **Candidate Qualifications**

In the presidential candidacy of Sen. Grace Poe, an independent candidate, COMELEC ruled in December to disqualify her on the grounds that she failed to satisfy the citizenship and 10-year residency requirements provided in the Constitution. The Supreme Court reversed the ruling by the COMELEC in March, concluding that Poe is qualified to run for president and has satisfied the residency and citizenship requirements of her candidacy.

## **Campaign Finance**

In March, the Philippine Center for Investigative Journalism (PCIJ) issued a statement that from March 2015 to January 2016 advertising spending from major presidential and vice-presidential candidates had already topped PhP 6.7 billion, putting the 2016 national elections on course to be the most expensive in Philippines history.

## **Presidential Debates**

To enhance voter education, three debates for presidential candidates and one for vice presidential have been organized by the COMELEC. This undertaking is in coordination with the major media companies of the country [print and online]. The next presidential debate is scheduled to be held on April 24 at the University of Pangasinan, Dagupan City in a town hall format. The vice presidential debate will be held on April 10 at the University of Santo Tomas. These debates have received a strong market share surpassing viewer ratings for comparable time programming on the major media networks and have generated significant social media interest.

## **Issues and Concerns**

### **Election Preparations**

That all the stakeholders and the public accept the results of a closely-contested presidential and vice-presidential races as credible is a general concern. How ready will the various institutions be should the results come into question is a scenario that the interlocutors could not quite articulate. In turn they express that measures to improve the credibility of the process be put in place and explained to all the stakeholders. Some of these measures such as the Voter Verifiable Paper Audit Trail (VVPAT) are already in place. But the publication of the individual precinct results and the random manual audit will also be important.

There appears to be no universal endorsement of the counting machines. Contestants and other stakeholder representatives seem confident on the functionality of the machines although information technology professionals maintain their reservations.

Finally, the requirement to print voter receipts has delayed the roll-out of vote counting machines. Given that in 2010 there was an instance of a mismatch between ballot papers and machine configuration, we are concerned that the lateness of final testing and sealing has the potential to lead to a recurrence of the issue.

## **Campaign Costs**

The cost of candidacy and in getting elected appears to be very high. A bulk of the costs for national candidates are for publicity through traditional media. Local costs also include ad placements in the media but are more concentrated on logistics, mobilization and provisions for campaigners and supporters. While there are clear steps taken by the COMELEC to improve the accuracy of the reporting, vote buying seems to be a generally admitted practice, which cost could never be accounted. Coverage and timeliness in reporting campaign expenses and contributions received from contestants are viewed as inadequate to fully reflect the cost of the campaigns. The unadjusted low spending limits drives contestants to not properly report and fully account costs.

## **Unopposed Elections**

From 12 and 16 percent of the number of provincial, congressional, and town and city races are unopposed -- the most compared to the previous exercises. Voters are essentially denied choices in these conditions, and there appears to be no legal and procedural remedies to address this.

Stakeholders explained that it is hard to compete against entrenched politicians, or go against political families whose members have fanned out to establish dynastic control of electoral positions in a province. Going up against third-termers, who are really difficult to unseat, was also seen as a factor. Inability of parties, which are already weak to start with, to field candidates is another explanation. Intimidation, too, plays a role discouraging would-be contestants to pursue candidacy.

## **Findings and Recommendations**

### **Election Administration**

#### **1. Use of Vote Counting Machines (VCMs)**

PEAM heard from some information technology practitioners that the use of VCMs is undesirable due to the difficulty of ensuring faithful recording of votes. However, the alternative, manual count of votes is not only time-consuming, but is susceptible to human error and corrupt conduct. Given the order by the Supreme Court to produce a VVPAT, there are a number of immediate challenges facing COMELEC...

First, the on-screen verification functionality is to be disabled, saving at least two hours in each polling place, but giving voters only one chance to mark their ballot papers correctly. COMELEC has produced excellent posters showing the right and wrong ways to mark a ballot. PEAM believes these could be augmented by laminated sheets, which could be passed among, and discussed by, voters waiting in queue.

***Immediate recommendation: That COMELEC reproduce its “right and wrong ways to mark a ballot paper” poster on laminated sheets to be handed among, and discussed by, voters waiting in queues***

Second, VVPATs, or receipts, will need to be cut from the VCM paper roll and initialled by polling officials, occupying their time and attention, and providing an opportunity for the secrecy of the ballot to be compromised.

Third, receipts provide voters with a record of their transaction, but no opportunity to correct it. Polling officials are required to make a journal entry of any ensuing complaints, and PEAM fears this could lead to an excessive workload.

***Immediate recommendation: That COMELEC consider appointing a fourth polling official, at least in busier precincts, to mitigate potential bottlenecks in polling***

Fourth, if the paper roll becomes completely exhausted, the VCM will have to be rebooted. PEAM was told this could take 15-30 minutes later in the day. This has the potential to cause excessive delays, and can be avoided if the paper roll is replaced as it nears exhaustion. Given that each VCM will consume 10-15 rolls of paper, this will be an essential training message.

***Immediate recommendation: That COMELEC stress the importance of replacing VCM paper reels before they are exhausted in polling official recall training***

The PEAM also noted that vote marks bleed from one side of the ballot to the other. While this is not a practical issue (it will not invalidate ballots), it may cause a number of time-consuming questions during polling.

## **2. Voter Information**

PEAM understands that some tenders to produce the 54 million voter information sheets (VIS) are still open, and that, at previous elections, VIS have not been distributed in time for polling day. The VIS contains critical information as to the voter's allocated precinct and its location and will minimise confusion and inquiries on polling day.

***Immediate recommendation: That COMELEC expedite production and distribution of VIS***

## **3. Canvassing and Publication of Election Results**

In principle, each VCM will make three identical transmissions, one each to the

Municipal Board of Canvassers, the COMELEC central server, and the COMELEC transparency server.

We have heard that, at previous elections, large numbers of precinct results were not transmitted, so creating significant, and probably unnecessary, mistrust in election results.

While COMELEC's service provider is contractually required to transmit 100 percent of precinct results within 24 hours, in an undertaking of this scale, it is probably inevitable that some failures will occur, or that transmissions will be received by one or two, but not all three, servers.

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

The RMA will be an important undertaking to build confidence in the accuracy of VCMs.

Clearly, there will be cases of ballots where the voter's intention is clear to a human eye, but nonetheless has not been read by a VCM in accordance with the machine's settings. Auditors will need to be careful to distinguish these cases from any cases of outright failure to read marks, and from any spurious reading of marks.

***Immediate recommendation: That RMA protocols carefully distinguish between ballot paper marks not scanned in accordance with VCM settings from outright failure of VCM scanning***

### **Campaign Finance**

PEAM heard concerns from numerous stakeholders that campaigns are "very expensive, so expensive". Expenses, more so for national and local candidates, go to TV and radio in the form of commercials. The other components are logistics, food and allowances, the production of materials and sample ballots, and lawyers' fees. Political stakeholders are in agreement that current limits on election spending appear to be too low to be realistic. Overspending seems to be the norm and few appear to be reporting properly.

COMELEC has gained significant ground in enforcing laws and regulations on campaign finance reporting by parties and contestants. It could seek a perpetual ban on candidacy for some 2,000 individuals who failed to submit a report on contributions and expenses in the previous elections. The newly set up Campaign Finance Unit at the COMELEC has oversight and is proactively setting the conditions for truthful and timely reporting by providing digital file templates and clear guidelines to the contestants. COMELEC has also warned corporations that they are prohibited from making any contributions to parties and candidates.

The Campaign Finance Unit is a small outfit tasked to do a huge amount of work. While they have instituted a set of improvements to facilitate for candidates and parties to report on completely and on time, they believe that all contributions to and expenses of the campaign will not be completely reported. They admitted that it would be very difficult for them to track expenses and contributions from donors.

Corporations channel donations through individuals: they do give to campaigns, in most cases to all, and the amounts may vary and be secretly higher for candidates they favor. Some stakeholders say political contributions are important to the survival of some enterprises.

There appear to be voters who have been relocated by the local government unit to suburban areas who are still in the list of voters in the city or municipality they were relocated from. They will be bussed back to these places on the day of voting. Political patronage is needed to keep these voters loyal and would be maintained throughout the period in-between elections. One interlocutor describes it as “systematic, long-term, and continuous.” The political finance reporting system would never be able to account for these election-related costs.

Vote buying seems to be prevalent and concerns the contestants, too. Some see this as an exchange transaction, without regard to its negative implications or consequences after the elections and during the period of governance of the elected official. They come in the form of goods, rice, and other food stuff, or other new forms like cash cards. The poor are most vulnerable.

The Bureau of Internal Revenue requirement for official receipts in the transactions is deemed by contestants as a significant step towards better accounting of electoral finance.

***Recommendation 1: That the Campaign Finance Unit of COMELEC be better resourced to carry out its functions***

***Recommendation 2: That legislators set realistic campaign spending limits***

***Recommendation 3: That legislators consider whether state subsidies could operate to reduce the cost of spending by individual candidates, thereby making candidacy less expensive and probably more inclusive***

## **Electoral Contests**

There are at least 477 elective posts that are uncontested in these elections. Twelve gubernatorial and 11 vice gubernatorial posts (12 and 11 percent of 81 provinces,

respectively); 38 district representatives (16 percent); and 200 mayors and 216 vice mayors (12 and 13 percent respectively).

Control by “political bosses” means their likelihood of being able to command voters to vote one way or the other, a term stakeholders referred to as “command votes.” This makes the bosses key in determining the outcome of the presidential and senatorial elections, especially in closely contested elections such as the one expected on May 9. One interlocutor alluded to local political bosses holding undue sway with elected regimes.

Dynastic political control and prolonged stay in power of politicians in an area also means that they are likely to control economic activities there. They also extend to putting up their own party-list organizations as another area of competition or trying to get members elected into congress. There are also indications of control or ownership of private armed groups (PAG) in such areas. Apparently many do not see anything undesirable with political dynasties and to them these are akin to family businesses.

In some places where posts are actually contested, the exercises are really extensions of the long rivalry between families fought in the electoral stage. The police and the COMELEC classify these places as those with “intense political rivalry” and list them among the election watchlist areas (EWA), also referred to as hot spots.

Particularly in Mindanao and in some areas in Luzon, local political bosses and rival families stage the failure of holding elections in towns and villages. The level of their rivalry is such that they could manipulate the holding or non-holding and postponement of elections to favor them. Even securing the environment for voters to vote could sometimes mean clearing the way for one group to be able to cast their vote.

A contestant revealed to the mission that uncontested posts also a result of horse-trading. Before the elections they would negotiate with each other on where to field candidates and which places they would contest or not contest.

The establishment of regional or local political parties is sometimes an off-shoot or a result from falling-out with the national established parties. The splintered group would leverage itself as a player to be approached by national or local candidates to secure command votes for them.



## **Citizen Participation**

### **1. Women and Youth**

Women comprise 52 percent of voters, and youth between 18 and 30 years of age comprise 49 percent of voters. When fully engaged, their sizeable numbers could influence the results of the elections and eventually change the fabric of public governance.

The Philippine Commission on Women indicates that the country has a well-developed legal framework for the attainment of 50/50 gender balance in politics and decision making bodies. However, only 19 percent of the candidates are women.

The preferred medium by the youth for accessing and consuming information is social media. While candidates still use traditional media to push information to them, more and more efforts are put to reaching the youth through social media.

***Recommendation 1: That COMELEC explore ways to intensify current efforts and work alongside political parties and civil society organizations to create the conditions for fair and competitive elections in order to encourage women to be represented in politics through elections***

***Recommendation 2: That COMELEC explore ways to fully utilize the social media to reach the youth to encourage their participation in elections***

***Recommendation 3: That COMELEC capture and publicize data on youth and women participation in the elections through voter turnout, gender representation among polling, etc.***

### **2. Overseas Absentee Voters**

The COMELEC has established overseas absentee voting in the different countries where there are overseas Filipino workers. This allows Filipinos abroad to vote on the national level, through registering in their respective embassies. Voter registration for the overseas absentee voting has increased, reaching 1.376 million overseas voter out of the estimated 10 million OFWs. In the 2013 elections, there were around 737,759 registered overseas absentee voters. The turnout in 2010 was 17 percent, and 25 percent in 2013. The challenge is to increase participation.

***Recommendation: That COMELEC explore methods of online and postal registration and voting to facilitate participation by overseas Filipino citizens***

### **3. Indigenous People**

It has been noted by members of the National Commission on Indigenous Peoples that traditional indigenous people from the hinterlands have difficulty getting their names in the voters' list due to distance. Consequently, they are disenfranchised.

### **4. Persons with Disabilities (PWDs)**

While a law has been passed that alleviates some of the difficulties PWDs experience when voting such as ground floor precincts, the law does not go far enough. Most of the PWDs are staying at home or in hospitals. Going to the voting centers is an ordeal witnessed in past elections.

*Recommendation 1: The COMELEC may want to consider alternative registration procedures for the indigenous people and for persons with disabilities. Enumerators may be sent to their respective areas or residences and on-line registration which is being done now for overseas absentee voting may be extended to persons with disabilities.*

*Recommendation 2: Similarly alternative voting procedures such as a mobile ballot box may be provided to indigenous people from far places and for PWDs unable to go to the precinct. Postal voting may have to be considered too.*

### **5. Prisoners**

Prisoners are allowed to vote provided their cases are not yet decided with finality. Issues on residency has restricted their eligibility to vote. Similarly their limited option to voting for national positions only has dampened their desire to participate in the elections.

*Recommendation: It is recommended that the residency issue be construed liberally to favor the detainee. The principle of inclusive elections favor such application of the rule on residency. A prisoner then has to be considered a voter of his residence prior to incarceration. That said he should be allowed also to vote for the local candidates in the area of his last residence.*

### **Election Security**

The COMELEC through its deputation of the police and the armed forces is charged with securing the electoral environment. Under the program "secure and fair elections (SAFE)," various national and local coordinating mechanisms are in place to track and address security issues. Included in these are the confiscation of loose firearms, cantonment of registered firearms; activities that are being undertaken to carry out the gun ban during elections. The overall assessment of the security personnel of the situation thus far is that "the threats remain manageable."

The presence of private armies employed by politicians is a perennial security problem. The police have also indicated the contributory factors that places a challenge on the security forces like intense rivalries among politicians, candidates vying for the same positions and family feuds particularly in the ARMM area. These families normally have their own private armies. The presence of organized threat groups like the Communist Party of the Philippines-National People's Army (CPP-NPA) and rogue elements of the Moro National Liberation Front (MNLF) are considered risk factors and can be contributory to cheating in the elections.

Reports say that politicians had to pay a sum to enter an area and to secure a "permit-to-campaign." An innovation of this activity is what they call "permit-to-win", which is acquired through demanding a negotiated sum to be paid to ensure a win.

It has been observed by some that the security challenges in Mindanao are more manifest now than at past elections and the potential for violence is greater. Security may be more challenging in these elections because there are areas that are not completely controlled by the government. These areas are covered by the organized threat groups where the incidence of violence is greater. Another reason is that there is a prevailing disappointment among the Muslims in the non-passage of the Bangsamoro Basic Law (BBL). Also, family and clan feuds, though prevalent in the country, have been more pronounced in the Autonomous Region Muslim Mindanao (ARMM).

***Recommendation 1: Consider holding ARMM elections on a separate date so that the security forces can be concentrated in the area***

***Recommendation 2: The government, the COMELEC and the police forces must have the political will to sideline private armies. Only a decisive COMELEC and a determined police force can remove their influence.***

## **Longer-term Considerations**

### **Discussion on Desynchronization of Polls**

Desynchronized polls mean there is a separate election for the national and local elections. It has been noted that the local elections turn out to be the more violent elections. First, this is because the incidence of violence is by far greater among local candidates and their followers. Second, with too many candidates vying for positions in the current synchronized elections where you can have as many as 650 names or parties, the differentiation among candidates is lost when it comes to their positions on issues, the elections tend to become personality based because the issues are lost. Third, during elections, some of the security forces are thinly spread out because they are deployed as

security personnel for politicians. Due to the sheer number of elections in synchronized polls, voters may tend to vote for a slate instead of examining individual candidates.

### **Discussion on Run-Off Elections**

At present, it is possible to win a presidential or vice-presidential election with a relatively small plural majority. Run off elections between the two most-voted candidates would ensure a strong mandate for the eventual winner. PEAM recognises that this is a constitutional issue, and simply notes that the matter may merit public debate in the years ahead.

### **About PEAM**

The pre-election assessment mission was organized to identify concerns and issues in advance of the May 9 national elections, as presented by Philippine stakeholders, and offer a series of recommendations to address them. Stakeholders included the electoral commission, representatives of the different political parties, the security sector, civil society organizations active in the elections, the media, political analysts, business and others.

The mission appreciates COMELEC for the access that they have granted and to the other stakeholders for their time and valuable contributions in informing the PEAM.

The members of the mission are (Ms) Izumi Chibana (Japan), lawyer and researcher on the Philippines, law and development and dispute resolutions; Rick Inderfurth (USA), former assistant secretary of state for South Asia and former U.S. special representative for Special Political Affairs to the United Nations; and Julian Type (Australia), former Electoral Commissioner of Tasmania and former deputy chair of the Joint Electoral Management Body of Afghanistan in 2005; Damaso Magbual, Namfrel national council member and chair of the Asian Network for Free Elections (ANFREL) and Telibert Laoc, Namfrel national council member, former Namfrel executive director, and international election specialist. The international members serve in a personal capacity.

The mission thanks the Australian Department of Foreign Affairs and Trade (DFAT) and the National Democratic Institute (NDI) for support to the international component of the endeavor. Namfrel wishes to thank the volunteers, individuals and organizations who have contributed to the mission.

### **About NAMFREL**

Nanfrel is a nonpartisan, non-governmental volunteer-supported organization established in 1983 by various groups led by the business sector and the Catholic church. Its main purpose is to help ensure elections are free and fair. Its work on pollwatching, mobilization of at least half-a-million volunteers, and the Operation Quick Count (OQC) in

the 1986 Snap Presidential elections was internationally recognized and earned nomination for the Nobel Peace Prize. Since then it has observed all national and most local elections and has embarked on advocacies to improve the electoral exercise and enhance competitiveness of the elections. Over the years, Namfrel officers and members have gone to 40 countries to observe elections, share its experiences or helped set up mechanisms for election monitoring. Broadening its scope, the organization is actively participating in monitoring public procurement in the departments of Education, Health, and Public Works and in the COMELEC, a role that the Government Procurement Reform Act has accorded civil society organizations.

Nanfrel is composed of volunteers throughout the country with 109 provincial and some sub-provincial chapters, which are in turn composed of municipal and city subunits. All members of Namfrel are volunteers and the organization is funded through donations from individuals and local organizations.

In this elections Namfrel is accredited by the COMELEC to support work on compliance on electoral finance reporting; monitoring the roll-out of the automated election system; better understanding the transactional dynamics of vote buying and selling; measuring the service delivery for election-related processes for overseas Filipino voters; conducting a random check of the voters list for irregularities; and supporting the COMELEC in the conduct of the random manual audit.

### **List of Acronyms**

ARMM	Autonomous Region for Muslim Mindanao
BEI	Board of Election Inspectors
BIFF	Bangsamoro Islamic Freedom Fighters
BBL	Bangsamoro Basic Law
BIR	Bureau of Internal Revenue
COMELEC	Commission on Elections
CPP-NPA	Communist Party of the Philippines-New People's Army
EWA	Election Watchlist Areas
MNLF	Moro National Liberation Front
NAMFREL	National Citizens' Movement for Free Elections
OAV	Overseas Absentee Voting
OFW	Overseas Filipino Workers
OQC	Operation Quick Count
PAG	Private Armed Groups
PEAM	Pre-Election Assessment Mission
PWD	Persons with Disabilities
RMA	Random Manual Audit
VCM	Voting Counting Machines
VIS	Voter Information Sheet
VVPAT	Voter Verifiable Paper Audit Trail