Call to Action on the 2025 Automated Election System

With the budget process for the 2025 Automated Election System (AES) scheduled to begin in July 2023 and procurement by 2024, the undersigned stakeholders call on the Commission on Elections (COMELEC) to adopt for the 2025 Automated Election System (AES) the standards of transparency, cost-effectiveness, accessibility and inclusivity, reliability, security, safety, and fairness, and for Congress and the Government Procurement Policy Board to adopt before the end of 2023 the procurement law reforms necessary to further the standard of cost-effectiveness. These standards are all technology neutral: they apply whatever hardware, software, and mode of counting are adopted.

These standards are based on the mandate of the Constitution and election laws for free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises through the use of AES in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.

This call to action is the result of consultations with stakeholders conducted by the National Citizens' Movement for Free Elections (NAMFREL) through the focus group discussion held at The Bayleaf Intramuros, Manila on 28 April 2023, the virtual FGD on 16 May 2023 regarding the Terms of Reference released by COMELEC, and the Stakeholders' Forum on An Alternative Election System held at the Manila Hotel on 26 May 2023.

Transparency

Transparency means that principle of private voting, public counting must always be adhered to. The election process and the AES must be open to everyone's scrutiny and analysis, free from any conditions and restrictions. It should be clear who should be responsible for every step of the process, what their duties and responsibilities are, and how they will be held accountable.

AES software should not be proprietary. The use of licenses like General Public License or Election Technology Public License (OSET-PL) will ensure that the software can be reviewed by everyone. The certification process by the international certification entity as required by law must be available for public review, as well as the full audit report, as soon as possible before the election.

Transparency means the auditability of the AES and the entire election process from beginning to end. An independent verification and examination by bodies and organizations outside the COMELEC is necessary to ensure the accuracy and integrity of the electoral process.

The audit must not be limited to both the technical audit (such as the source code review) and the random manual audit, but must cover the entire AES. The audit must assess the functionality, security, and compliance with both election and data privacy laws of the AES, verify data accuracy, and detect any irregularities or discrepancies. Industry standards must be followed.

All steps must be traceable, from the ballot, to the Voter Verified Paper Audit Trail (VVPAT), to the election results, and to the canvassing and consolidation. This requires the maintenance of an audit trail and comprehensive documentation, including all logs, throughout the electoral process. This includes recording all relevant activities, transactions, and decisions related to the automated system. All these should be released to the public through the COMELEC website.

The random manual audit must not only involve human eyes' appreciation of the filled-in ballot. Instead, a counting machine that has not been used in the polling place or precinct level, and which is specifically dedicated for the audit, must be used. In the actual conduct of the Random Manual Audit (RMA), subject precincts should be selected randomly and announced or known on election day only, not a few days before.

With the use of the AES, voters must be assured that their votes are counted correctly. The VVPAT must be given the primary role in the public counting process, allowing both a human count through human-readable features and a machine count through machine-readable features such as QR codes that can be scanned. The count must be made for every VVPAT, with the count visible to everyone.

Election results from the polling place or precinct level must be available to the public in its original form, without processing or conversion. The metadata in the election results will allow validation that the results indeed came from the polling place or precinct it claims to be from.

Both the VVPAT and election results must be printed on paper that will not easily fade and can survive extreme weather conditions such as heat, rain and any other form of liquid.

All election data should be open for data analytics. This can be done by making such data available to the public through the COMELEC website.

A remedial/review mechanism must be in place in case any issues are apparent at any stage of the election. Voters must be allowed to correct their votes if the VVPAT does not accurately state who they voted for. Voters must always be given the opportunity to correct overvotes and undervotes, so that none of their votes are wasted.

If the COMELEC pushes through with transmission before counting at the polling place or precinct, a remedial mechanism should be in place to address cases in which candidates have already been proclaimed but discrepancies have been discovered in the count at the polling place or precinct level.

Transparency will be enhanced by livestreaming of all election activities.

All these measures will do away with black box counting, which is not visible to anyone without specialized knowledge. According to the Federal Constitutional Court of Germany, "The use of voting machines which electronically record the voters' votes and electronically ascertain the election result only meets the constitutional requirements if the essential steps of the voting and of the ascertainment of the result **can be examined reliably and without any specialist knowledge of the subject**." (emphasis supplied)

Enhancing transparency will discourage allegations of fraud and manipulation in the election results.

Cost-effectiveness

Cost-effectiveness means, considering that public funds will be spent for procurement, that the AES be at a price and quality most advantageous to the public. The AES must be at a low, but not the lowest price. All the procured AES equipment and other paraphernalia must be usable for all electoral exercises, instead of these remaining only in storage in between national and local elections. This will be achieved by a competitive procurement process, which in turn needs to be open to as many providers as possible. Changes will have to be adopted before the end of 2023, in time for the Procurement period by the COMELEC in 2024.

(1) Congress will need to remove the requirement under Section 12 of Republic Act No. 8436, as amended by Section 10 of Republic Act No. 9369, that: "With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad."

This provision is anti-Filipino since it requires prospective Filipino service providers to resort to the cumbersome situation of finding a way for the system to be used in electoral exercise in other countries which may be very hard to do, before they can be considered for use in our own country.

(2) The Government Procurement Policy Board will need to remove, or exempt the AES from, the requirement of Single Largest Completed Contract (SLCC) under Section 23.4.1.3 of the Implementing Rules and Regulations of Republic Act No. 9184 or the Government Procurement Reform Act:

"The bidder must have completed, within the period specified in the Invitation to Bid, an SLCC that is similar to the contract to be bid, and whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) consumer price indices, must be at least fifty percent (50%) of the ABC [Approved Budget for the Contract]. However, in the case of Expendable Supplies, said SLCC must be at least twenty five percent (25%) of the ABC.

If, at the outset and after conducting market research, the Procuring Entity can already determine that imposing the same will likely result to: (a) failure of bidding, or (b) monopoly that will defeat the purpose of competitive bidding, the Procuring Entity, in lieu of the above, may require the following:

> a) The bidder should have completed at least two (2) similar contracts and the aggregate contract amounts should be equivalent to at least the percentage of the ABC as required above; and

> b) The largest of these similar contracts must be equivalent to at least half of the percentage of the ABC as required above.

> For this purpose, the similar contracts mentioned under (a) and (b) above must have been completed within the period specified in the Invitation to Bid. The Procuring Entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project."

As applied to the AES, only providers that have had contracts that comply with the SLCC requirement can qualify for bidding. If the approved budget for the AES contract is in the hundreds of millions, then providers whose previous contract/s do not reach at least 50% of the approved budget are disqualified.

Both the requirements of demonstrated capability and successful use in a prior electoral exercise here or abroad and the SLCC restrict the playing field to a few providers, none of which are Filipinos. Therefore, these requirements should be removed.

COMELEC should also improve its capacity for market study and industry surveys. In the procurement of AES, pending the removal of SLCC, COMELEC should expand the definition of "similar contract" to allow other qualified contractors/suppliers to participate in public bidding. With this, the GPPB should give space to COMELEC to develop its own customized manual on procurement.

Accessibility and inclusivity

Accessibility and inclusiveness will mean that the AES must be easily understandable and usable in layman's terms by all election stakeholders, most importantly the voters, even to those residing in remote parts of the country. Voters must know how to correctly appreciate and assess the AES on their own. Again, according to the Federal Constitutional Court of Germany, "The use of voting machines which electronically record the voters' votes and electronically ascertain the election result only meets the constitutional requirements if the essential steps of the voting and of the ascertainment of the result can be examined reliably and **without any specialist [or special expert] knowledge of the subject**" (emphasis supplied). In short, the AES must be voter-centric as it should adhere to the principle that all essential steps in the election process are subject to public examinability.

Particular attention should be given to making voting comfortable and convenient for vulnerable sectors. This means senior citizens, as well as voters with disabilities and illiterates, consistent with the constitutional mandate that "The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot."

Accessibility and inclusivity requires training for Electoral Boards and voter education on the new AES. Training materials for both must be consistent and open to one another through the COMELEC website and social media platforms. Consistency and openness will manage expectations and avoid confusion on how the election process works, especially on election day.

An accessible and inclusive AES will provide less burden to voters who have already spent much time and effort on election day travelling to their voting centers and looking for their polling place or precinct.

Reliability

Reliability means the AES operates continuously and smoothly in both normal and in emergency situations, avoiding delays and doubts as to the integrity and credibility of the elections. Plans must be ready and easy to implement in case of AES breakdowns; electricity, Internet and other utility fluctuations or outages; weather issues; cybersecurity threats; peace and order situations; and other contingencies. Reliability requires electoral risk assessment and management, capacity building, effective communication to the public, collaboration with stakeholders, rapid response and support, and evaluation.

The contingency plans must expressly state who will be responsible, whether it will be the provider or the COMELEC, or both. If both, the duties of each must be clearly delineated.

Security

Security means that votes remain secret and accurate, upholding the principle of secrecy and sanctity of the ballot. Printing methods and security features on the ballot must prevent unauthorized duplication or tampering. Each ballot's unique identifier or serial number must be recorded to track its movement and ensure accountability. This helps prevent the introduction of counterfeit or unauthorized ballots into the system. Ballots must be stored securely before and after the voting period to prevent tampering or unauthorized access. Access controls, surveillance systems, and secure storage facilities must be employed to safeguard the integrity of the ballots. After the election, unused ballots, spoiled ballots, and other election-related materials need to be securely stored for a specified period as required by electoral laws or regulations. Proper documentation and procedures for storage and retention are crucial for maintaining the integrity and auditability of the electoral process. At the end of the retention period, the disposal of ballots should be conducted according to established protocols. This may involve shredding or secure destruction of physical ballots or the secure deletion of electronic ballot files.

Security requires that the entire AES, from voting machines to transmission equipment to servers, is neither hacked nor tampered with. The AES should be accessed only by authorized persons. Security requires measures to prevent unauthorized access, data manipulation, or tampering.

This can involve encryption, secure networks, audit trails, and other security protocols.

As a guarantee of security, the election results for every polling place or precinct must be authenticated by the personal digital signatures of the Electoral Board members specific to that polling place or precinct, and no other. The transmitted results must be in the same EML format, without processing or conversion, originating from the machines in the polling place or precinct level.

Safety

Safety means that the AES must allow voting, counting, canvassing and proclamation free from violence, intimidation, undue influence, and harassment. The transparent closing and counting process at the polling place or precinct must be concluded at the fastest time possible, to keep the Electoral Board members safe from harm.

Fairness

Fairness means that all candidates and party-list groups are on an equal footing on the ballot, with no advantages due to the alphabetical position of names. All positions must be sequentially numbered, with candidate names randomly assigned to a number.

Conclusion

Speed of the election results should be considered a low-hanging fruit: it is not enough. Instead, the undersigned calls on the COMELEC to adopt for the 2025 Automated Election System (AES) the standards of transparency, cost-effectiveness, accessibility and inclusivity, reliability, security, safety, and fairness. The undersigned also calls on Congress to remove the requirement of demonstrated capability and successful use in a prior electoral exercise here or abroad under Republic Act No. 8436, as amended by Republic Act No. 9369, and the Government Procurement Policy Board to remove the Single Largest Completed Contract requirement or exempt the AES from this requirement. Removal of these requirements

will open the playing field for local Filipino bidders and further the standard of cost-effectiveness and showcasing the Filipino IT expertise that we so proudly export and/or being used by so many multinational BPO companies operating in the Philippines.

All these standards will be important, not only in 2025 but in all electoral exercises, in building trust and credibility of the election process, the election results, and the COMELEC. Pursuant to its mandate under the Constitution, the COMELEC must assert its independence as a constitutional commission[1] tasked to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall."[2] It must not be locked in to nor wholly reliant on the AES provider.

The 2025 AES must be accompanied by non-AES reforms in the election process, such as preventing and punishing vote-buying and vote-selling, making voter registration easier and more accessible, introducing an accurate and reliable voter identity verification system, improving accessibility of voting centers and polling places or precincts, implementing secure Internet voting for overseas voters, expanding Internet voting to vulnerable sectors, ensuring safety and increasing pay of Electoral Board members such as public school teachers, absentee voting for Electoral Board members, increasing awareness of role of citizens' arms and election monitoring organizations in trainings of Electoral Boards, organizing logistics for delivery of AES and non-AES election materials, and political party development.

Signed this 27 July 2023.

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[1] Constitution, art. IX-A, § 1, *available at* https://www.officialgazette.gov.ph/constitutions/1987-constitution/ (last visited 7 June 2023). "The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit."

[2] Constitution, art. IX-C, § 2(1), *available at* https://www.officialgazette.gov.ph/constitutions/1987-constitution/ (last visited 7 June 2023).

ANGEL S. AVERIA, JR.
NAMFREL National Chairperson

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Dean

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Executive Director

SANDINO J. SOLIMAN
Executive Director

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VICTOR B. GRUET
Vice President

ICTLEADERS FOR GOOD GOVERNANCE

ROMY CAMBALIZA
Chairman

La Salle Institute of Governance

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Director
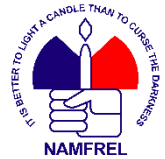
NAMFREL

GEORGE ESCARRAGA
NAMFREL Regional Convenor for NCR

Caritas Philippines

FR. ANTONIO E. LABIAO, JR.
Executive Secretary

PARTICIPATE

DR. JULIO TEEHANKEE
Chief of Party

PCS
PHILIPPINE COMPUTER SOCIETY

EDISON M. DIAZ
President

PROF. CLARINDA L. BERJA

PROF. CHRISTOPHER C. MANTILLAS