

Comments and Recommendations on

COMELEC Strategic Directions from 2006 to 2010 and Electoral System Assessment [ESA] Integrative Report¹

From Human Rights and Gender Perspectives

I. Background

The *Country Programme Action Plan Between the Government of the Philippines (GOP) and the United Nations Development Programme (UNDP), 2005-2009*, aims to contribute to "political, electoral and legislative reforms... to democratize and increase participation especially the poor." Under the Programme on Fostering Democratic Governance (FDG), the first expected output is:

Enhanced capacities of political institutions to (respect), protect and fulfill human and gender rights and promote equitable distribution of resources through political exercises.

It is in this light that the Programme, which is being implemented by the University of the Philippines - National College of Public Administration and Governance (UP-NCPAG), is providing the Commission on Elections (COMELEC) with these comments and recommendations.

Under the GOP-UNDP Programme on FDG, UP-NCPAG and COMELEC are working together in crafting the Medium Term Action Plan for Philippine Electoral System. Public fora are to be held as part of the thematic consultations and action planning on the following: (1) Legal framework; (2) National/local leadership; (3) Political Parties/Candidates; (4) Electorate and Other Stakeholders; and (5) COMELEC and its Deputies. The two initial outputs of the partnership between UP-NCPAG and COMELEC are (1) Electoral System Assessment covering the same five themes; and (2) Commission on Elections Strategic Directions from 2006 to 2010.

Relevant to this process is the full recognition by all stakeholders, including the COMELEC, of the obligation of the Government of the Philippines to respect, protect and promote the political rights of all Filipinos regardless of sex, age, ethnicity, religion, political creed, economic status and education. This is in line

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with the GOP's accession to the international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obligates the GOP to ensure non-discrimination against women in all fields including in politics and to achieve substantive equality between men and women. In recent years, local and international assessments of Philippine elections have found serious issues in regard to the rights of Filipinos related to the electoral processes. The low level of women's representation in politics, which stands at 16 percent of all elective positions from municipal to the national levels, is an indication of persistent gender discrimination in the political system particular in the electoral processes.

In line with this, the GOP-UNDP Fostering Democratic Governance (FDG) Programme emphasizes the importance of taking on the rights-based approach (RBA) in the assessment of the electoral system and in the formulation of the Medium-Term Action Plan for the Electoral System. Within the RBA, the human rights of women are to be given full and equal attention in line with the gender mainstreaming approach. As such, the poor and other marginalized sectors of Philippine society are identified as 'claimholders' who must be empowered so they can meaningfully participate in democratic and governance processes. At the same time, it calls on 'duty-bearers' to enhance their capacities so they can establish the enabling environment for the full realization of the human rights of all.

As a government body whose function is to guard every Filipino's right to vote and be elected, it is important that its strategic directions and reports be set within the framework of a rights-based approach (RBA), of which non-discrimination against women is an essential principle.

II. Rights Based Approach to Electoral Exercises²

A. Introduction on the Rights Based Perspective

Electoral exercises are crucial means to facilitate the free and full expression of people's political will, which, in human rights, forms the basis for all governmental authority. Electoral exercises are also among the means to enjoy *without any discrimination* four essential and interlocking rights: the right to take part in government, the right to vote and be elected, the right to equal access to public service, and the right to self-determination. The enjoyment of these rights is also dependent on the enjoyment of other rights, among them, the rights to

² This paper is largely based on the United Nations *Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994.

free opinion, free expression, information, peaceful assembly, association, independent judicial procedures, and protection from discrimination of any kind.

Elections compatible with human rights must be *free, fair, periodic and genuine*.

Free elections are the extent to which the political will of the people is fully expressed. Applicable human rights standards to ensure *free* elections include, among others, the *absence of unreasonable interference* in the production and dissemination of political propaganda, voter education activities, political meetings and rallies and activities of partisan organizations; the *presence of an electoral administrative body that is fully insulated from corruption and partisan influence*; the *absolute privilege of every vote*; and *equal and nondiscriminatory access to all aspects of the electoral exercise*.

Fair elections are the extent to which the political will of the people is fully respected—in essence, a prohibition against any measure that would frustrate the will of the people. Applicable human rights standards to guarantee *fair* elections include, among others, *equal, universal and nondiscriminatory suffrage*; *positive measures to ensure broadest participation*; *one person one vote*; *an objective, unbiased, independent and effective administrative electoral structure*; *fair media access for all parties and candidates*; and *strict observance by police and security personnel of their duties and obligations during electoral exercises*.

Periodic elections refer to the requirement for the conduct of elections often enough to reflect the will of the people. Thus, human rights mandate, among others, that elections may be *postponed only in most exceptional circumstances* and that the electoral calendar must be widely publicized.

Genuine elections refer to the effective implementation of *procedural* (i.e., guarantee of periodicity, equality, universality and secrecy, etc.) and *outcome* (i.e., reflection of free expression of will of the people) mechanisms. Applicable human rights standards governing *genuine* elections include, among others, the following: elections must be *subject to the rule of law*; elections must provide *real choices*; elections must be based on *informed choices*; guarantees to *protect every vote* must be in place; voter registration must be *nondiscriminatory and broad*; effective mechanisms to *guard against unfair advantage of government-supported candidates* must be in place; there must be *no unreasonable restrictions on participation and campaigning* by political parties and candidates; there must be a system of *open and transparent counting*; and corrupt practices and electoral fraud must be *outlawed, prosecuted and punished*.

To meet the four human rights standards (*free, fair, periodic, genuine*), elections must be conducted in an atmosphere devoid of intimidation where people freely and fully enjoy all their human rights.

B. Gaps in the COMELEC Strategic Directions from 2006 to 2010 and Electoral System Assessment [ESA] Integrative Report

Neither document discusses the crucial role of the police and military during electoral exercises; neither document requires the police and military to strictly observe their duties and obligations, including the *duty to prevent attempts at election fraud, bribery, intimidation or any acts that frustrate the authenticity of election results and the duty not to commit any act of corruption, election fraud, bribery, intimidation or any act that frustrates the authenticity of election results*. In addition, neither document stipulates parameters regarding police and military presence. Such parameters could include the requirement for *discreet, professional and disciplined* police and/or military presence at precincts, a *minimum number of police and/or military personnel at precincts necessary to ensure security at a given location, and the positioning of the police and/or military in a way that does not impede access to the polling places, or does not intimidate voters or does not discourage voters from voting*.

Neither document upholds the guarantee of *fair media access* for all parties and candidates. This guarantee includes, among others, *safeguards against political censorship, unfair government advantage and unequal access to media*. Neither document encourages media to act with *responsibility, truthfulness and professionalism*, nor to adopt its own Code of Conduct for election coverage (*self regulation*). Neither document regulates the *use of mass media* by candidates and political parties (i.e., *no false, slanderous, etc. statements, no unrealistic or disingenuous promises, no false expectations, etc.*). Neither document requires the COMELEC to monitor political broadcasts, to broadcast civic education programs, and to receive and act on complaints regarding media access, fairness and responsibility.

Both documents are *silent on measures that guard against unfair advantage of government-supported candidates or parties; full protection for political parties to function effectively in order to provide real choices; and measures to ensure full transparency of all COMELEC activities, policies, actions, etc.* These measures are necessary to ensure *fair and genuine elections*.

C. Comments and Recommendations on the COMELEC Strategic Directions from 2006 to 2010 and Electoral System Assessment [ESA] Integrative Report

Both documents are coherent with human rights *to some degree*. COMELEC's Values Statement upholds the human rights principles of accountability, impartiality and transparency, while many parts of the ESA incorporate some human rights standards.

Strengthening COMELEC as a constitutional institution is coherent with human rights. A rights based electoral administrative body is one that is *insulated from corruption and partisan influence*. The proposal to create a nominating Council (similar to the Judicial and Bar Council) is a step in the right direction. To further *insulate* the COMELEC from corruption and partisan influence and in order to enhance *transparency and accountability*, it is recommended that the Council that will nominate Commissioners hold *public hearings* to receive endorsements and/or objections; this requires *public prior notice*. It is also suggested that the *shortlist* to be submitted to the President be *publicly* announced to avoid insertions of names not on the shortlist or other alterations to the shortlist.

To further *insulate* the COMELEC, it is also recommended that the prohibition on appointments to the Commission be *expanded* to include not only those who have served in any elective position, but also those who have been *appointed to the executive branch of government by the sitting President at the time of their nomination*, and those who have relatives within the 4th degree (first cousin) of consanguinity and affinity in any elective position.

COMELEC's proposal to include active COMELEC officers who have served the Commission for at least 10 years could contribute towards creating an *effective* COMELEC. However 10-year service alone is not sufficient qualification for a COMELEC Commissioner. It is recommended that this qualification be augmented by requiring the active COMELEC officers to possess an *impeccable and unimpeachable reputation for integrity and probity within and outside the Commission*.

While the ESA recommends the prosecution of violators in line with human rights standards, this is not incorporated in the COMELEC Strategic Plan. It is recommended that COMELEC consider ESA's recommendation, and expressly articulate and comply with its duty to *initiate the filing and prosecution* of all (including COMELEC's own officials) for corruption, official misfeasance, obstruction, undue influence, bribery, intimidation, forms of illegal and corrupt practices, and other election law violations.

COMELEC's proposed Geographic Information System is coherent with human rights as this should impact on the distribution of polling places to guarantee equal access. Such a system should take into consideration census data, territorial boundaries, geographic distribution, topography, etc. and, more importantly, should *not result in the dilution or exclusion of particular groups or areas.*

COMELEC's proposal to use data capturing machines raises issues that may impact on respect for and protection of human rights. It is thus recommended that: access to data captured by machines be *strictly limited* to ensure its integrity and to guard against abuse; *standards* be adopted to *ensure integrity* of data; and *safeguards* be adopted to *protect against tampering.*

Voter education is a key element of *free, fair and genuine* elections; the proposals in both documents are fully compliant with human rights. Human rights suggest the use of *multi-media* and *multi-lingual* voter education material that is *culturally appropriate.*

III. Gender Mainstreaming in the Electoral Process

A. Introduction on Gender Mainstreaming

A key component of the rights-based approach is gender mainstreaming. Essentially, this seeks to ensure that women are able to fully participate in the electoral processes either as voters or as candidates. Article 7 of the Convention on the Elimination of Discrimination Against Women (CEDAW) requires State Parties to institute all necessary measures to guarantee the human rights of women to vote, run for election and hold public office on a basis of equality with men. Article 4 of CEDAW legitimizes the adoption of *temporary special measures* "aimed at accelerating *de facto* equality between men and women" and clarifies that such measures "shall not be considered discrimination" and "these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

Women's equal participation in electoral politics is important as both an end in itself and as means to realization of women's human rights in all fields, civil, political, economic, social and cultural, including at the personal level. The UNDP report entitled *Women's Political Participation and Good Governance: 21st Century Challenges* (2000) showed "that until gender parity is reached in governance, women cannot reach full equality with men in any sphere." The absence of women in shaping the national budget has ensured the preservation of discrimination against women in regard to "women's health and security in

their own homes," UNDP added. Moreover, a World Bank³ study found that women's greater participation in legislative politics yield lower levels of corruption.

B. Gaps in the *COMELEC Strategic Directions from 2006 to 2010 and Electoral System Assessment [ESA] Integrative Report*

The ESA recommendations on the election of local sectoral representatives and the amendment of the Party-List System Act are notable in so far as these measures ensure the participation in governance by the basic/marginalized sectors including women themselves. In line with the RBA, the passage of an enabling law for local sectoral representation should rank high in the legislative agenda of the Medium-Term Action Plan for the Electoral System. The lack of reference on the role and obligation of COMELEC in ensuring the effective implementation of the Party List System Act in the COMELEC Strategic Directions for 2006 to 2010 is a cause of concern.

While in general both documents presented some human rights principles, the gender dimension of these rights are not explicitly addressed and expressed. The absence of any reference to the low representation of women in elective posts reveals lack of awareness of or commitment to women's human rights in politics. Throughout the world, many countries that have more than 30 percent women in the legislature make use of some kind of electoral quotas, be they be legal or voluntary party quotas.

Awareness by both politicians and voters of women's political rights is essential to the elimination of democratic deficit in the country as well to attainment of good governance. Both the ESA report and the COMELEC document are silent in the need to educate stakeholders on the links between gender equality, democracy and good governance.

C. Recommendations on the *COMELEC Strategic Directions from 2006 to 2010 and Electoral System Assessment [ESA] Integrative Report*

The COMELEC Strategic Directions should consider inclusion of the goal of the adoption of *temporary special measures* in the electoral system to benefit not only women but also other marginalized sectors. The nature of such measures, whether legal or voluntary party quota and whether through a Constitutional provision or by law, should be a subject of public policy debate. Key stakeholders such as political parties, women's organizations, women voters and

³ David Dollar et.al. 1999. Are Women Really the 'Fairer Sex'? Corruption and Women in Government. World Bank.

the other concerned sectors should be part of a policy debate that also learns from the successful practices across the world in both developed and developing countries and countries under different systems of government.

The COMELEC itself must demonstrate its recognition of women's human rights by ensuring gender equality across the hierarchy and gender awareness among its officers and staff. A policy in support of these goals needs to be developed under the COMELEC strategy for Reorganization/Reengineering.

Moreover, while the proposed nominating council is good, women should have equitable representation in the council, and women's groups should have equal access to information and equal opportunity to participate in the nomination process.

In terms of voter education, it is suggested that COMELEC ensure that women voters who comprise 51 percent be equally benefited in its voter education campaign. Moreover, it must also partner with civil society organizations, including women's organizations, in conducting voter education to ensure the participation of the grassroots sector.

In regard to the ESA Integrative Report, it would be instructive to find out if the full reports took up gender-related issues that might have been lost in the integration. Constraints to women's representation in political parties especially at the decision making levels and to their selection as party candidates, as well as voters' perception of women as politicians/leaders and of gender issues as election/policy issues are matters that the ESA need to address.

Political parties' integral role in the political process makes it a viable vehicle in improving the level and nature of representation. Thus, they must be considered as an arena where women's access to the political power can be improved. Therefore the design of political parties and party system must take into account how women's political participation can increase. For instance, campaign finance reforms can be designed to give incentives to political parties that meet a certain quota or percentage of women members. Moreover, party platforms must also contain agenda related to equality for women and their empowerment in the socio-economic, family and political spheres.

Finally, in terms of the legal framework, the report did not explore the possibility of temporary special measures or electoral quotas to increase women's participation in politics. It is also silent on how the lack of law prohibiting political dynasties has become detrimental to the few women who are able to join politics. The term limit for incumbents has also reduced women to 'bench-

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warmers' of husbands or relatives until the ban on running for the same office expires.

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Women in the Eyes of Justice
Gender and the 2006 Philippine Constitution