



## **Limited Election Observation Mission to the Philippines June 2016 Statement**

### *Summary*

The Carter Center deployed a limited election observation mission to the Philippines in advance of the May 9, 2016, general elections. The mission focused its observation work on Mindanao, and in particular on the broader electoral context, including violence around elections; freedom of expression, assembly and choice in the campaign environment; campaign finance; and the resolution of electoral disputes. The small size and limited scope of the mission meant that it was not in a position to assess the election process comprehensively and did not observe polling, counting, and tabulation processes in a systematic way.

The key findings of this report are as follows:

Most electoral stakeholders seemed to feel that the automated elections of 2016 marked a significant improvement over previous Philippine elections.

While not all conflict surrounding elections is related to elections, election-related violence remains a significant problem in Mindanao and in many other areas of the country. It is more often linked to local-level competition than to national contests.

The Autonomous Region in Muslim Mindanao (ARMM) saw comparatively limited violence in the runup to the election but suffered a spike in violence on and around election day.

The volume and complexity of electoral legislation and regulation constitutes a real barrier to clarity and transparency.

Although legislation designed to encourage political participation among women and minorities has been enacted, it is not yet fully implemented.

Vote-buying remains a substantial problem, and there are some indications that it is growing. As with election-related violence, it appears to be predominantly linked to local-level competition rather than to national contests. One potentially positive sign is the common perception that verification of vote-buying is considerably more difficult under the automated election system.

Limited observations found indications of a significant level of electoral malfeasance in the conduct of polling in areas in and around the ARMM.

While the view of most interlocutors was that the conduct of the polling, counting, and tabulation processes was generally satisfactory, this did not always guarantee a level playing field in the wider local electoral environment.

Voting procedures do not fully safeguard the secrecy of the vote.

Regulation and transparency in campaign finance are beginning to take root, but their general acceptance will take time and require continuing commitment. There is widespread consensus that campaign spending limits are too low, which undermines the regulatory framework by creating pressure on candidates to file false reports.

The Carter Center also notes with concern recent informal statements by the president-elect that may serve to erode respect for human rights in the Philippines and urges the president-elect and other authorities to reaffirm the country's commitment to fundamental human rights as set forth in international conventions.

The Carter Center will issue a final report on its observation work in the coming months with recommendations for further improvement of the electoral process.

### *Introduction*

The Carter Center deployed a limited election observation mission for the May 9, 2016, general election in the Philippines.<sup>1</sup> The mission, accredited by the Commission on Elections of the Republic of the Philippines (COMELEC), deployed on March 21 and focused its work in Mindanao. It consisted of a three-member core team based in Davao City and two long-term observer teams, each composed of two experienced observers, based in Cotabato City and Cagayan de Oro. Security issues were intensively considered in the siting of these teams and to some extent limited their movement outside these bases. The Carter Center previously deployed a limited mission to the Philippines for the 2010 elections. That mission focused on the use of technology, in particular vote-counting machines, in the election process.<sup>2</sup>

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The Carter Center thanks the Commission on Elections for facilitating the Center's efforts to observe the elections. The Center also thanks government officials, political party members, civil society members, and other individuals in Mindanao and Manila who took the time to share their views on the election process.

### *Commitments of the Philippines to international treaties and agreements relating to electoral standards*

The Carter Center bases its assessments of elections on international standards for democratic elections.<sup>3</sup> The Republic of the Philippines has undertaken a wide range of international obligations that have a bearing upon the electoral process. The relevant international legal commitments are the International Covenant on Civil and Political Rights (ICCPR) (accession 1986), the International Covenant on Economic, Social and Cultural Rights (1974), the Convention on the Elimination of All Forms of Racial Discrimination (1967), the Convention on the Elimination of All Forms of Discrimination against Women (1981) and its Optional Protocol (2003), the Convention on the Rights of Persons with Disabilities (2008), and the Convention against Corruption (2006). The Carter Center also references the interpretative documents and case law of U.N. treaty bodies, in particular the U.N. Human Rights Committee's General Comments on the ICCPR.

The Philippines is also subject to an extensive body of human rights law that has attained the status of customary international law, applicable to all states. The Universal Declaration of Human Rights; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and the Declaration on the Rights of Indigenous Peoples apply in this context. The Philippines has not yet ratified ILO Convention 169, the Indigenous and Tribal Peoples Convention.

### *Elected bodies in the Philippines*

The 1987 constitution establishes a presidential system, with separation of powers, within a unitary state. Elections at national, provincial, and municipal level take place simultaneously. The president and vice president are each elected in a first-past-the-post system. The president may serve a single six-year term, while the vice president is limited to two consecutive terms. Unusually, these elections are separate, and candidates from different tickets may be successful. Congress has two houses. The Senate has 24 members, who serve six-year terms. Senate elections take place every three years to fill 12 seats, with the whole country as a single electoral district, using what is known internationally as block vote.<sup>4</sup> The House of Representatives currently has 297 members, of which 238 are elected in single-member districts using first-past-the-post. The remaining 59 (representing 20 percent of the total) are elected from party lists representing "sectoral interests", using a form of proportional representation.

The Philippines has 81 provinces, each of which elects a governor, vice governor, and a council; and 1,634 cities and municipalities that each elect a mayor, vice mayor, and council.

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<sup>3</sup> See *Election Obligations and Standards: A Carter Center Assessment Manual*, 2014, available at [www.cartercenter.org/resources/pdfs/peace/democracy/cTf1001367.39220.97Tm0g0G\[ \]JTJET00.0000088660594.96842.04](http://www.cartercenter.org/resources/pdfs/peace/democracy/cTf1001367.39220.97Tm0g0G[ ]JTJET00.0000088660594.96842.04)

Some of the longer-

### *Unopposed elections*

Unopposed contests took place in 545 out of 3,668 – or 15 percent – of elections for a single position (excluding the presidency and vice presidency). This is a growing trend – for example, the proportion of unopposed congressional contests has grown from 7 percent in 2010 to 11 percent in 2013 to 16 percent in 2016. More detailed analysis suggests that this may reflect both an increasing trend of deals being made between locally powerful families, replacing local electoral contests, and a tendency in districts in which there is strong support for one candidate or group for potential challengers to regard opposition as a waste of money and time. The result is that voters do not get the opportunity to make a choice, and where incumbents are unchallenged, electoral accountability disappears. This is not necessarily unpopular; several of the mission’s interlocutors said that there is a common public perception that by reducing the potential for violence,

quiet campaign period, there was a spike in violent events, including assassination attempts on candidates and bombings of a number of polling stations: six people were killed in five separate incidents on the day before election day and election day itself. Most, if not all, of the election-related violent incidents in the ARMM appeared to relate to local conflict and competition rather than to national electoral issues.

Elsewhere in Mindanao, there were six election-related killings,<sup>9</sup> including the assassination of a candidate for mayor in Lantapan, Bukidnon, shortly before polling day. Shortly after polling day, a volunteer of the citizen observer organization Parish Pastoral Council for Responsible Voting (PPCRV) was killed in Pagadian, Zamboanga del Sur, while transporting hardcopy election results. These incidents again appear to relate to local conflict and competition rather than to national electoral issues.

### *Campaign environment*

While the overall atmosphere of the election in areas visited by the mission was calm, it was noted that a significant number of *barangays* (neighborhoods) in some areas had been declared by their local power holders as supporting particular candidates. In such cases, campaigners for other candidates were not welcome, and posters and displays for them non-existent. The electoral environment in these areas did not appear to offer an unpressured choice to voters or a level playing field to candidates.

Peace covenants were widely used during this election period, as during previous elections. These are not legally binding instruments, operating instead as moral suasion. Candidates took a pledge to conduct their campaign with integrity, committing themselves to free, orderly, honest, peaceful, and credible elections that abided by the constitution and election laws. They also pledged to abstain from the use of violence, force, or threat that might impair the free exercise of the right of suffrage. These pledges were taken in public in the presence of the PNP, the AFP, election observers, and COMELEC, and included a religious oath. While these covenants only reiterate the prohibition of practices that are already election offenses, they do serve to remind stakeholders of their obligations. The PNP reported that 968 covenants were signed nationwide. Their impact appears to have been real but variable.

Carrying a gun in public without specific permission was an election-related offense during the five months preceding polling and the month following polling. In 2016, the PNP reported 4,661 arrests for breach of this provision. This compares with 3,724 in 2013 and over 3,000 in 2010. The existence of the election gun ban appears to be widely known, although the need for compliance is not universally accepted; the rise in arrests appears most likely to reflect stronger enforcement.

### *Election day*

Although the limited scope of the Carter Center mission means that it cannot make a comprehensive assessment of the conduct of election day, observers did visit 28 polling stations in Cagayan de Oro, Cotabato City, Maguindanao, Davao City, and Davao del Norte. The observations do not provide a statistically robust sample.

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<sup>9</sup> Five of the incidents are clearly election-related, while a sixth may be.

The polls opened at 6 a.m. on May 9, and closed at 5 p.m. Voters within 30 meters of the polling station at 5 p.m. were entitled to cast their votes. Each voter was found in the voter list, checked for indelible ink, and had her/his identity established. A ballot paper was then issued, along with a marking pen. The voter filled in the ballot and fed the ballot paper into the vote counting machine (VCM), which printed a receipt.<sup>10</sup> After checking the receipt, the voter was required to place it in a receptacle close to the VCM. COMELEC issued regulations stating that attempts to remove this receipt from the polling station would be an electoral offense.





unofficial figures provided by PPCRV resulted in widespread praise for the work of COMELEC and greatly shortened the period of uncertainty that used to exist between the close of voting and the public knowledge of results.

On May 19, the National Board of Canvassers, made up of the COMELEC commissioners sitting *en banc*, proclaimed the results of the election for the Senate, followed by the party-list election results. The declaration of complete Senate and party-list results had never previously taken place on the same day or been completed so soon after polling.

On May 24, the House of Representatives and the Senate convened in joint session to establish the Board of Canvassers for the presidential and vice-presidential elections. The contest for vice president, won by Representative Maria Leonor (Leni) Robredo by a margin of around 263,000 votes, has been the subject of controversy because of the introduction of a script change to the transparency server by an employee of Smartmatic, the IT contractor, during the aggregation process. Although COMELEC and Smartmatic have stated that this change was cosmetic (the introduction of the letter “ñ” to enable the correct printing of candidate names), the campaign of Senator Ferdinand “Bongbong” Marcos Jr, trailing by a margin of under 1 percent, seized on this intervention as h



Challenges to the results of elections are known as election contests, and may be filed within 10 days of the proclamation of results. The adjudicating body, either the courts or COMELEC, is determined by the position at issue. The Senate and the House of Representatives each has an Electoral Tribunal that is the sole adjudicator of all contests relating to each body. The Supreme Court, sitting *en banc*, is the judge of all contests relating to the elections for president and vice president. For municipal election contests, a petition must be filed with the regional trial court. For city and provincial offices, petitions are filed with COMELEC.

There is no legal deadline for the determination of electoral disputes. This absence of a timeframe for the adjudication of disputes allows procedures to continue for several years, often past the end of the term of office being contested. This denies timely and effective remedies to aggrieved parties.<sup>20</sup>

There is a widespread perception that the judicial system is, in general, fundamentally flawed and corrupt. Delay is endemic, with many election-related cases from 2013 still lingering before the courts, with the contested terms now about to expire. The high cost of taking cases is also a deterrent to many, as lawyers are necessary to file a complaint with either COMELEC or the courts. Finally, fear keeps many from reporting on violations of electoral laws that they may have witnessed or of which they may have been the victim.

Some losing candidates have filed challenges to individual local-level results, although the total number of cases lodged with COMELEC in 2016 is noticeably lower than at previous elections. Representatives of unsuccessful vice-presidential candidate Marcos have stated that he will contest the result.

#### *Campaign finance regulation<sup>21</sup>*

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The mechanisms for regulation of the income and expenditure of election campaigns have been substantially strengthened since the 2013 election. A Campaign Finance Office (CFO) to monitor and enforce the rules governing campaign finance has been established within COMELEC, and specific rules laid down for the 2016 elections. In line with COMELEC's standard approach to internal structure and management, the CFO is overseen by one of the seven commission members.

The CFO is responsible for all investigations and oversight that relate either to returns submitted or to failure to submit returns. It is responsible for the supervision of the income and expenditure declarations of around 44,000 candidates for around 18,000 positions. It is quite small, with only around 30 staff.

agreement with the Securities and Exchange Commission against possible prohibited contributions; and the possibility for the ombudsman to cross-reference campaign-finance declarations with the statements of assets and liabilities that are required of public officials.

COMELEC recognizes that some further electoral cycles will be needed to fully establish an institutional climate in which compliance with campaign-finance regulations and declaration requirements is an accepted norm. It is,

money is sometimes presented as a gift, and sometimes with the clear implication that reciprocation is expected.

Even within its limited scale of operations, the mission received a number of claims that such vote-buying had taken place. Carter Center observers reported on two *barangays* in Cagayan de Oro where they observed residents being called into the *barangay* hall by identified supporters of a candidate for mayor, signing in on arrival, and leaving with what appeared to be envelopes. Observers also overheard a discussion of the rate paid in other *barangays*. This candidate subsequently lost.

In a city in Davao del Norte, where a real and vigorous contest for the mayoralty took place, a member of the winning side alleged that vote-buying by their opponents had taken place on a previously unknown scale, estimating some 15 million pesos were distributed in the two days before the election. The losing side claimed that their candidate had won in the freely accessible urban areas and had been robbed of overall victory because of fear of loss of jobs in the *barangays* located on the privately owned plantation land of the largest local employer (in one of which, for example, the successful candidate for mayor polled 93 percent of the vote across 14 polling stations).

While stories were heard of money paid to local leaders to organize vote-buying for national-level elections, attempts to influence the electoral process by illegal payments appeared considerably more likely to be related to local-level competition.

There was concern within COMELEC that the decision of the Supreme Court requiring the provision of paper receipts to voters (which enable the voter to verify that her/his vote has been correctly recorded) would facilitate vote-buying. As a result, COMELEC conducted additional training for polling-station staff on management of the voter receipts to ensure that they would not be removed from polling stations. A COMELEC resolution made the removal of a receipt an electoral offense. Both the limited direct observation of the mission and the comments of mission interlocutors indicated that polling staff generally enforced the requirement that the receipts not be removed from the polling station and the ban on use of cellphone cameras in polling stations.

After three cycles of automated counting of elections, most interlocutors believe that it is more difficult for vote-buyers to verify that the seller has indeed delivered his/her vote than it was in manually counted elections. It remains to be seen whether this translates into a sustained reduction in the use of vote-buying in the longer term or will merely lead to attempts to

COMELEC, engage in activities such as voter education, promotion of voter registration, cleansing of voter lists, and exhorting voters to vote on election day. The constitution of 1987 expands this provision, conferring upon COMELEC the power to accredit NGOs engaging in electoral observation and voter education as “citizens’ arms.” COMELEC’s rules of procedure stipulate that accredited NGOs must remain nonpartisan and impartial during the registration and election period.

NAMFREL and PPCRV were the two largest NGOs engaged in the electoral process, both as observers and as participants. PPCRV conducted an unofficial vote count based on results transmitted from vote counting machines to the transparency server, which was located at PPCRV premises, releasing results as they were established. On election day, PPCRV observers in some polling stations monitored the deposit of counting machine receipts into a receptacle as voters left the polling station, de facto serving as a fourth polling staff member. NAMFREL was COMELEC’s designated partner in the conduct of the random manual audit.

The Commission on Human Rights (CHR) conducted a project during the elections titled *Bantay Karapatan sa Halalan*

86 women in the House of Representatives (68 elected from districts and 18 from party-lists). Altogether, just under 29 percent of the members of the new congress are female. There were three women in the outgoing ARMM Regional Legislative Assembly, and three have been elected to the new assembly.

The reality is, however, that women exercise less power than those numbers indicate. The Filipino phenomenon of political dynasties is so deeply engrained in political culture that a substantial number of the elected women are considered to be place-holders. When spouses, brothers, or other male relatives reach term limits, the male incumbents step aside for a term, to return as soon as the term has passed. In the interim, while the female may appear to be the office-holder, there is sometimes a public perception that in fact the male relative is exercising effective power and control. That said, there are many prominent examples to the contrary.

There was a strong public reaction to comments made by candidate Rodrigo Duterte (now president-elect) on April 12, 2016, regarding the rape and murder of an Australian missionary during a Davao prison siege in 1989. Women's groups – and others – accused him of trivializing a heinous crime and characterised his words as a verbal assault on women. A formal complaint to the CHR resulted in a finding that Duterte's words and actions were discriminatory and amounted to a breach of the Magna Carta of Women. The CHR has recommended that COMELEC institute a code of conduct for gender-sensitive language during election campaigns.

The election of Geraldine Roman to the House of Representatives in the first district of Bataan in Luzon represented a significant milestone in the advancement of LGBT rights. Roman is the first transgender politician elected in the Philippines.

### *Participation of indigenous peoples<sup>23</sup>*

The constitution recognizes the rights of indigenous cultural communities within the framework of national unity and development, and requires the state to protect their rights to their ancestral lands to ensure their economic, social, and cultural well-being. Legal means to give substance to these constitutional provisions have still not been adequately enacted or implemented.

Republic Act 8371, the Indigenous Peoples Rights Act, became law in 1997. This statute provides that indigenous peoples have the right to self-governance and self-determination, allows for the continued applicability of customary law within their communities, recognizes the right of indigenous peoples to participate fully at all levels of decision-making in matters that might affect their rights, and establishes mandatory representation in policy-making bodies and other local legislative councils. It was only in 2009 that national guidelines on

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<sup>23</sup>ICCPR,



implementing this representation were drawn up, and their introduction in practice to date has been patchy.

Indigenous peoples are specified as a sector eligible to compete for party-list seats in the House of Representatives. Out of 44 party-lists elected to the outgoing congress, only one was indigenous, the National Coalition of Indigenous Peoples Action (ANAC-IP). This party-list also contested the 2016 elections, again winning one seat. One other indigenous party-list, the Tribal Communities Association of the Philippines (TRICAP) of Mindanao, also contested in 2016 but was unsuccessful.

There are many barriers that restrict indigenous people from registering to vote and from actually voting. These include the long distances that must be traversed to register or to vote; the high levels of illiteracy that render the voting process inaccessible; and difficulties with identity documentation required for voter registration.<sup>24</sup> In 2016, COMELEC established some accessible polling precincts for indigenous people in a pilot project in Mindoro island.

In recent years, indigenous people in Mindanao have suffered the consequences of the armed

Republic Act 10366 of 2012 authorizes COMELEC to establish accessible polling places for persons with disability and senior citizens. Subsequent COMELEC resolutions stipulated that such polling places should be situated on the ground floor and have space to accommodate at least 10 voters, including wheelchair users, at a time. However, very few accessible polling places were created in 2013.

For the 2016 elections, COMELEC made efforts to improve the ability of persons with

recorded in higher-level elections before 2010. In addition, analysis of election-related violence in 2013 within the ARMM shows that the level of election-related violence at the *barangay* elections was more than

administration should be a wholly federal function with lower-level offices in the states, or whether state-level electoral commissions with separate status and authority should be established.

A further major element in the drive towards federalism is the strongly expressed desire within lower-level government – both by elected members and by civil servants – to devolve service delivery and its finance from central line ministries in Manila. The relationship between the new federal states and city/municipality governments and the future role (if any) of the existing provinces are thus also areas that will require a great deal of definition and discussion and that may be controversial. The existing 81 provinces would appear to have potential vested interests against the change to a federal system (as may the current nationally elected senators).

The adoption of a federal structure would require constitutional amendment. Proposals to amend the constitution of the Philippines may be put forward by congress itself on a 75 percent vote; or by a constitutional convention; or by popular initiative. In all three cases, the proposed amendment has to be put to a referendum for final acceptance. To call a constitutional convention, a two-thirds vote of congress is required.

The mechanism for drafting amendments is now under discussion; the relative role of politicians and experts in the process is an important underlying issue. While the constitution does not state how a convention should be formed, both Senator Koko Pimentel (who appears likely to be Senate president) and Representative-elect Pantaleon Alvarez (who now has widespread support for election as House speaker) support an elected convention.

A current suggestion is that a constitutional convention election be held simultaneously with the *barangay* elections, although this might require some delay in holding the *barangay* elections to enable COMELEC to organize it. A convention election is not covered by the automated voting law and would therefore be manually counted.

The relationship between the federalism debate and the Bangsamoro Basic Law is currently unclear. Alvarez was quoted on May 19 as saying that federalism would render the pending BBL moot, indicating that it would be abandoned. He also expressed a belief that the BBL is unconstitutional, and that no BBL acceptable to the Moro Islamic Liberation Front could pass the scrutiny of the Supreme Court. The designated new presidential adviser on the peace process has insisted that there will be wide consultations on crafting a Bangsamoro peace roadmap.

In a statement issued on June 11, the MILF maintained its position that the BBL, based on the Comprehensive Agreement on the Bangsamoro, “

Some Carter Center interlocutors have also stressed the need for consensus-building across Moro groups, and the necessity for Moro voices to be chosen from within the Moro community and not identified by outside actors.

Finally, the president-elect has made statements that condone and encourage extrajudicial killings of alleged criminals by the police and general public. These are in line with similar statements made during the