

Democratizing Election through Campaign Finance Reforms

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The Philippines has long been considered as a changeless land (Timberman 1991). It is a land where the same faces and family names have been able to withstand even so-called revolutions. It has also been called a country that is in “permanent crisis” - where the same problems and issues resurface time and again (Bello 2005). For the longest time, systemic change that bridges the gap between the rich and the poor, as well as between the powerful and marginalized, has evaded the country. More than a century after the 1896 Philippine Revolution that gave birth to an independent Philippine Republic, and almost three decades after the 1986 EDSA People Power Revolution that restored a rudimentary framework of democracy, Filipinos continue to clamor for both political and social change.

Tuwid na Daan, Unsustainable Change?

The Aquino II Administration’s track record is positive in its pursuit governance reforms—particularly in making governance transparent and participatory. Numerous programs have been initiated to open government and enable citizen participation. Some of the notable programs include the Seal of Good Housekeeping (SGH) and the Performance Challenge Fund (PGF), which aim to improve local governance. The Grassroots Participatory Budgeting, or Bottom-Up Budgeting, and other initiatives to open up the budgeting process to civil society and make the budget more responsive to people’s needs are also undertakings worth mentioning.

The government has also taken preliminary steps to advance accountability in the exercise of power. Cases have been filed against some of the biggest political personalities in the country, including those from the Martial Law years. The appointment of competent and credible leaders in key accountability institutions such as the Office of the Ombudsman, Commission on Audit (COA), the Supreme Court and the Department of Justice (DoJ) have laid the initial groundwork for reforms to begin in these agencies. These agencies are, however, known to be plagued by the most difficult hurdles to government reform: insufficient resources, weak competency of personnel, and corruption. It will take considerable time and resources to make these agencies effective. Leadership is the key to achieving these reforms.

There are also significant efforts to begin instilling fiscal discipline in the government—to make sure public resources are spent efficiently and where they are needed most. To encourage good performance, incentive systems have been improved and mechanisms for accountability, including sanction, have been tested.

By no means are the reforms enumerated above sufficient to achieve long-term political and social change to be achieved. Unfortunately, these are not the kind of reforms that are able to change the power relationships, nor are they the kind of reforms that are essential for genuine development and social justice. At best, these are changes in forms and procedures. They

expand the spaces by which people can interface to advance the collective good and may change the norms and expectations of people. The substantiveness of these reforms, however, lies in whether and how they will be sustained and expanded to cover other critical arenas of development: economic, environment, and social.

The question is whether these governance reforms can be sustained beyond the current administration. Mendoza (2013) posed the question on whether the gains that we are achieving in the fight against corruption could be likened to a financial bubble, which could burst once it fails to meet the people's expectations.

What is Missing?

Official Gazette (2013) reports that the country has undergone a radical transformation – from a government with institutionalized corrupt practices to one that provides genuine public service. It asserts that these achievements are mere foundations. The gains of good governance and sustained investment in the welfare of our citizens will be the driving force to push the momentum forward beyond the end of office of the Aquino II administration. It can be surmised that the current administration is keen about achieving political reform.

In the broadest sense, political reform in the Philippine context means changing (in incremental or radical ways) the old ways of patronage-based, personality-oriented politics and corrupt, unaccountable governance. In this light, the theory and concept of political reform in the Philippines is referring to the development of rational, effective and efficient government institutions. To pursue political reform means to establish rational public institutions and processes that are governed by good governance principles—transparency, accountability, participation, the rule of law, and responsiveness in government.

The context of this basic and rough definition of political reform substantiates the discourse and agenda of reform in the country. The Philippines has been described as having weak institutions captured by particularistic and oligarchic interests. These interests have remained in power through patron-client relationships, which, in turn, is fueled by corruption. This dependency and highly disempowering arrangement is perpetuated through elections.

In this light, the social and political overhaul of Philippine society would, therefore, require substantial and radical reforms in elections.

General State of Elections in the Philippines

Nine elections after the end of Martial Law, Philippine electoral politics has largely been unchanged. Electoral politics is still governed primarily by money politics and patron-client ties. The same set of political personalities continues to monopolize electoral victory. Though once in a while, break-through candidates like Miriam Defensor-Santiago and Raul Roco captured the electorate's imagination, Philippine politics is still personality-oriented. Programs and platforms are mere props for candidates who vie for popularity rather than mandate. The electoral system is too huge, in terms of the frequency of the conduct of elections and the number of seats to be filled, that it tends to disempower ordinary voters.

By and large, the Philippine electoral system's design and function is not responsive to performance that supports sustainability of good programs and strategies in government. Elections do not function as an accountability mechanism for the performance of candidates and parties. The Philippine electoral exercise does not facilitate or support the participation of new politicians and political actors who will bring about a healthy political competition. Electoral outcomes that are not program or platform-based ultimately leads to a governance that is dependent on personalities. There is no focus on long-term development strategies, which will sustain good governance and economic gains.

Significant progress has been made to modernize the processes and procedures of the electoral exercise, particularly in terms of the management of elections by the Commission on Elections (COMELEC). However, significant reforms have yet to be seen that will enable a shift in power. Our electoral laws are outdated. COMELEC is persevering to strengthen itself, but it remains weak and vulnerable vis-à-vis the powers that the poll body supposed to discipline and regulate. The country has yet to accomplish significant milestones on things that matter most in ensuring democratic elections, such as:

- Keeping the influence of money at a minimum;
- Preventing vote-buying/ vote-selling;
- Getting candidates and parties with substantive platform and solid track record to run and have an equal chance of winning;
- Reducing election fraud to the minimum; and
- Stopping election-related violence.

Ironic as it may sound, the electoral system, which is a minimum requirement in a democracy, has yet to be democratized in the Philippines. To be democratic, the electoral system must be able to regulate political monopoly and promote competitiveness and universal participation in the political arena.

Money Politics

How do we make elections truly competitive?

Elections are meant to be a peaceful means for contestation of power. Elections are premised on the framework of peaceful competition as a way to decide on the best program or platform to guide the country, and who is the best leader or party to hold public posts. Through competition, elections become an accountability mechanism that checks the track record and background of those who compete for office. It works on the assumption that voters will choose the best leaders who can best serve, protect, and advance the interests of the country.

The unregulated use of money in election campaigns perverts these basic assumptions. Campaign finance regulation is supposed to level the playing field to support a healthy competition among vying candidates and parties. It is supposed to prevent money from perverting the logic of competitive elections. Regulating campaign finance could also prevent the richest candidates from enjoying an undue advantage that could thwart the true will of the

people. For the government to be of, for and by the people, the people must be able to freely choose their leaders in a fair and peaceful election.

Campaign finance regulation thwarts “money politics.” This refers to a condition where money is the name of game, determining who holds power, and how that power is exercised.

There are many ways in which money is used to corrupt elections. The National Democratic Institute for International Affairs study on campaign financing highlights the following: (1) political contributions that contravene existing laws on political financing, (2) the use for campaign or party objectives of money that a political officeholder has received from a corrupt transactions, (3) unauthorized use of state resources for partisan political purposes, (4) acceptance of money in return for an unauthorized favor or the promise of a favor in the event of election to an office, (5) contributions from disreputable sources, (6) spending money on banned purposes such as vote-buying.²

Pera’t Pulitika, an initiative of various civil society organizations to monitor campaign finance, recognizes how unregulated campaign finance leads to corruption in government: “When candidates are virtually allowed to spend for their campaigns as much money as they have the ability to collect and assemble, they become susceptible to illegally using their public office to recoup their campaign expenses and to compensate their benefactors, to the detriment of good governance. Corrupt electoral processes beget corrupt public servants.”³

The same report (Pera’t Pulitika, 2008) provides the following estimates on how much it takes to run for key public posts in the country:

- City mayor – PHP 10 Million
- Governor – PHP 5-150 Million
- Senate – PHP 150-500 Million
- President – PHP 2.5-5 Billion⁴

These estimated campaign costs automatically exclude a significant portion of the population, almost a quarter of which live below the poverty line.⁵ Such a situation is anathema to a democracy that presupposes that all citizens of right age enjoy the right to suffrage: the right to vote and to run for office. This also clearly indicates a total failure in campaign finance regulation in the country. These figures are well above the allowed campaign costs. Yet in the entire history of Philippine electoral politics, only one politician has been removed from office on account of campaign finance overspending.⁶

Legal Framework of Campaign Finance Regulation

The 1987 Philippine Constitution contains a provision that sets campaign finance regulation as a policy of the Philippine State. Article II, Section 26 states that, “the State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.” The Supreme Court, in the case *Chavez vs. COMELEC*, clarifies this Constitutional provision: “[e]qual opportunity to proffer oneself for public office, without regard to the level of

financial resources one may have at his disposal, is indeed of vital interest to the public. The State has the duty to enact and implement rules to safeguard this interest."⁷ⁱ

The specific rules and measures that regulate campaign finance are contained in several election laws administered by the COMELEC. One of the explicit functions of the COMELEC, as stipulated in the 1987 Philippine Constitution, is to recommend effective measures to minimize election spending.⁸ This is in line with the core mandate of the COMELEC to ensure that elections remain fair, credible and peaceful at all times.

Campaign finance regulation in the Philippines consists of at least four key components:

- Spending limits – how much can candidates and parties spend during campaigns, what are the allowable spending items;
- Regulations in contribution – how can contributions for campaigns be made, who are not allowed to contribute;
- Public financing of campaigns – what is provided by the State or what is disallowed to be provided by the State; and
- Monitoring of campaign finance – what are the reporting requirements to candidates and parties and what are the responsibilities of the COMELEC in monitoring campaign financing.

Spending Limits

In Philippine campaign finance regulation, campaign spending has limits. Campaign spending of both candidates and parties must abide by limitations in campaign expenses articulated in Section 13 of Republic Act 7166, which amended Sections 100 and 101 of the Omnibus Election Code (OEC) or Batas Pambansa 881. Candidates for president and vice president can spend PHP 10.00 for every voter, while other candidates can spend PHP 3.00 for every voter registered in the constituency where the candidate filed his/ her certificate of candidacy. Parties can spend PHP 5.00 for every voter currently registered in the constituency or constituencies where it has official candidates.⁹

This limitation on spending applies only during the campaign period. The law defines the campaign period as 90 days before the day of the elections for national candidates, political parties and party-list groups, and 45 days for local candidates.¹⁰

What the candidates and parties can lawfully spend on is provided in the laws as well. These are as follows:

1. For travelling expenses of the candidates and campaign personnel in the course of the campaign, and for personal expenses incident;
2. For compensation of campaigners, clerks, stenographers, messengers, and other persons actually employed in the campaign;
3. For telegraph and telephone tolls, postage, freight, and express delivery charges;

4. For stationery, printing and distribution of printed matters relative to candidacy;
5. For employment of watchers at the polls;
6. For rent, maintenance and furnishing of campaign headquarters, office or place of meetings;
7. For political meetings and rallies and the use of sound systems, lights, and decorations during the meetings and rallies;
8. For newspaper, radio, television, and other public advertisements;
9. For employment of counsel, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof;
10. For copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists the costs of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof; or
11. For printing sample ballots in such color, size and maximum number as may be authorized by the Commission and the cost of such printing shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof.¹¹

Republic Act 9006 or The Fair Election Act Section 6 provides regulations on air time for political advertisements for all national candidates and political parties: 120 minutes of television and 180 minutes radio advertisements whether by purchase or donation.

Regulations in Contribution

The Omnibus Election Code (OEC) provides the following encompassing definition of contribution:

(a) gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute, whether or not legally enforceable, made for the purpose of influencing the results of the elections but shall not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. It shall also include the use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area.¹²

The legal framework of the Philippines for campaign finance does not provide a ceiling or limit to contributions. What exists is a regulation on who are not allowed to contribute to campaigns, which are as follows:

1. Public or private financial institutions (with exceptions),
2. Natural and juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation,

3. Natural and juridical persons who hold contracts or sub-contracts to supply the government or any of its divisions, subdivisions or instrumentalities, with goods or services or to perform construction or other works,
4. Natural and juridical persons who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government or any of its divisions, subdivisions or instrumentalities, including government-owned or controlled corporations,
5. Natural and juridical persons who, within one year prior to the date of the election, have been granted loans or other accommodations in excess of P100,000 by the government or any of its divisions, subdivisions or instrumentalities including government-owned or controlled corporations,
6. Educational institutions which have received grants of public funds amounting to no less than P100,000.00,
7. Officials or employees in the Civil Service, or members of the Armed Forces of the Philippines, and
8. Foreigners and foreign corporations.¹³

The said provision also clearly prohibits candidates and parties from soliciting and receiving contributions from these entities.

Public Financing of Campaigns

The Philippines has no direct public financing of campaigns. The Philippine State does not provide subsidy to parties and candidates.

However, what is not so commonly known, is that the Fair Elections Act (Republic Act 9006) requires media entities to provide discounted rates on political advertisements for all registered political parties and bonafide candidates.¹⁴ This can be considered an indirect subsidy of the government to campaign financing of candidates and parties. The challenge is on how to ensure that this is observed.

Meanwhile, the OEC provides strict prohibitions on the use of the following public funds for election campaign:

1. Public funds deposited in public financing institutions or by government offices, banks, or agencies;
2. Printing press, radio or television station operated by the government, government-owned and –controlled corporations, and the armed forces; and
3. Equipment, vehicle, and facilities owned by the government government-owned and –controlled corporations, and the armed forces.¹⁵

There are also explicit prohibitions on the release of public funds for public works and for the Department of Social Welfare and Development during campaign period.¹⁶ The COMELEC passed several resolutions to further specify and clarify the application of these prohibitions.¹⁷

Monitoring of Campaign Finance

The main tool for the COMELEC to monitor campaign financing is the Statement of Campaign Expenditure (SOCE), which candidates and parties are supposed to submit 30 days after the elections.¹⁸ Contributors must also submit reports on the amounts they contributed. Media must submit reports on contracts they have entered into with candidates and parties.¹⁹

The law does not allow anonymous contributions. The parties and candidates are required to record the name of their contributor upon receipt of contribution and include this in their SOCE.²⁰

The COMELEC Campaign Finance Rules also provides a prescribed format of the SOCE and the details that must be provided in the SOCE. The SOCE is expected to be accompanied by the following:

- Report of Contributions
- Authority to Incur Election Expenditures
- Notice of Public Rally
- Statement of Expenses on Public Rally
- Summary Report of Advertising Contracts
- Statement of Election Contributions & Expenditures
- Schedule of Contributions Received
- Schedule of Expenditures
- Summary Report of Expenditures
- Schedule of Unpaid Obligations
- Report of Contractors & Business Firms²¹

Aside from the Constitutional provision recognizing the right to information by citizens and given the lack of a Freedom of Information Law, there is no other law or COMELEC Resolution explicitly requiring the COMELEC to make campaign finance information accessible to the public. However, with the creation of the Campaign Finance Unit (CFU) in the COMELEC in February 2014 through COMELEC Resolution 9476, campaign finance information has been made more accessible to the public.

The reporting by candidates and parties has been standardized. COMELEC's efforts to secure the reports have been most persistent and consistent through the CFU. Through the efforts of the CFU, a politician has been removed from his post on account of campaign overspending.²² Furthermore, a number of overspending complaints have been filed by the CFU for further investigation by the COMELEC Law Department.²³

Unregulated Campaign Finance

Despite the extensive and explicit legal provisions on campaign finance regulation, campaign finance in the Philippine remains largely unregulated.

The table below compares the known estimated campaign costs and the estimated allowable cost for campaigns in key elective posts. The figures show a difference of as much as 3,000%. This is a rough estimate of the extent of unregulated campaign financing in the Philippines.

Table 14.1: Estimated Extent of Unregulated Campaign Financing

| Position | Commonly Known Estimated Cost | Estimated Allowable Cost ²⁴ | Percentage of Difference ²⁵ |
|------------------------|-------------------------------|--|--|
| City mayor (1,092,809) | 10 million | 3,278,427 | 205% |
| Governor (1,520,893) | 5-150 million | 4,562,679 | 10-3,188% |
| Senate (48,221,863) | 150-500 million | 144,665,589 | 4-246% |
| President (48,221,863) | 2.5-5 billion | 482,218,630 | 41.8-937% |

Miriam Grace Go's article on Newsbreak in 2001 provides a vivid description of how campaign financing happens on the ground:

This is how negotiations are done: [political operators] Claudio or Puno, or their trusted lieutenants, talk to a politician perceived to be influential in a district. If the district leader estimates that votes he can command compose 70% of 500,000 votes in the district, he asks, "How much of that can you pay for?" The negotiator will buy either all of the 70% or just a portion of it; the remaining "controlled votes" the district leader can sell to other interested parties or individual candidates...At this stage of the campaign, operators from both camps say the buying rate for controlled votes is PHP 20.00 per vote per candidate. This means that if either camp wants the hypothetical 70% controlled votes for its 13 senatorial candidates, it will have to spend P260.00 for every vote for the entire slate, or PHP 91 million in one district alone. There are 204 congressional districts nationwide.²⁶

This narration gives one an idea of the scale and complexity of the problem of campaign finance regulation is. There are many issues involved that can also point to the ways forward, such as:

- Gaps in the legal framework;
- Capacity of the COMELEC to enforce the campaign finance laws and rules;
- Enforceability of campaign finance laws and rules;
- Effective monitoring and accountability efforts by COMELEC and other actors, such as civil society organizations (CSOs), media and political parties; and
- The structure of incentives and disincentives in campaign finance that affects the behavior of key actors: candidates, parties, media, contributors and voters.

Gaps in the legal framework

The absence of a realistic and enforceable contribution ceiling is clearly one of the major legal gaps in the Philippine campaign finance regulatory framework. This means that a few individuals with enough money to monopolize campaign contributions are able to capture available campaign financing. This may compromise the independence of candidates.

The lack of direct public financing for campaigns (usually, through a subsidy to parties) is likewise a major gap. In other countries, subsidies are considered as an equalizing tool, allowing less-moneyed candidates and parties to run for elections. In the Philippines, a proposed party law provides for state subsidy to political parties that can be used to finance campaigns of candidates. This supposedly addresses the problem of candidates being captured by specific individuals with vested interests who will fund their campaigns. In addition, a state subsidy is also expected to help parties to be more programmatic and accountable.

Another crucial legal gap is the regulation of expenditures of candidates and parties before and after the campaigns. The *Peñera vs. COMELEC* Supreme Court decision in 2009, which defines who are considered “candidates” that can be subjected to campaign finance regulation, is a good illustration of the challenge we face. According to this decision, the candidacy of a candidate only becomes official during campaign period.

Congress has laid down the law — a candidate is liable for election offenses only upon the start of the campaign period. This Court has no power to ignore the clear and express mandate of the law that “any person who files his certificate of candidacy within [the filing] period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy.” Neither can this Court turn a blind eye to the express and clear language of the law that “any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period.”²⁷

Henceforth, campaign finance regulation can only be applied during this limited period of time (90 days for national candidates and 45 days for local candidates). This significantly limits what can be subjected to campaign finance regulation. Political ads and implicit campaign activities before and after elections are exempted from any form of regulation.

To note, many political ads are aired before the campaign period. After elections, also candidates spend a lot to protect their votes. Joel Rocamora estimates that candidates must spend at least three times to get elected: (1) to get nominated by a party, (2) to garner votes and (3) to get their votes counted.²⁸ The existing regulation of campaign finance covers the second spending item only and only up to a limited extent.

Capacity of the COMELEC to enforce the campaign finance laws and rules

In the history of campaign finance regulation, only one official has been removed from office due to a violation on campaign finance regulation. ER Ejercito, gubernatorial candidate of Laguna in 2013, was removed from office under the charges of overspending.

Given the complexity of the problems and issues surrounding campaign finance, how capable is COMELEC to regulate it?

At present, COMELEC is focused on enhancing its organizational and institutional capacity. COMELEC Resolution 9254 promulgated on June 17, 2011 presents the 10 Strategic Priorities of the Commission. COMELEC Strategic Goal 1 focuses on improving “the institutional and

organizational capacity and accountability of the COMELEC for managing and implementing modernized and credible electoral processes.”

Addressing COMELEC capacity can be viewed from two levels: the immediate organizational capacity and the institutional capacity given its Constitutional mandate. Its organizational capacity is affected by constraints in resources, the need for capacity building and human resource development, and the modernization of its processes and procedures. Openness to change and improvement by its core civil servants and support from the top would be most crucial.

There is also a serious issue on how COMELEC local offices are being financed and supported. At the moment, COMELEC local offices receive financial and logistical support from the local government units (LGUs) where they are located. This has been noted to affect the independence of COMELEC, making its local offices vulnerable to capture by local politicians.²⁹

Despite this compromising source of financial support, COMELEC local offices remain dismal in condition and capacity. The Philippine Center for Investigative Journalism (PCIJ) reports: “Many of the commission’s field offices, for one, appear to be lacking in basic resources that are required to carry out the poll body’s mandate.”³⁰ These basic resources include personnel, mobilization funds and office space.

On the positive side, we take note of the creation of the Campaign Finance Unit (CFU) in the COMELEC.³¹ This is a noteworthy achievement, indeed a milestone, in enhancing the capacity of COMELEC to regulate campaign finance. However, the CFU is not without its own challenges in terms of organizational and resource constraints. There is still a need to provide it with sufficient full time staff (especially lawyers), resources and support from the ground.

Another challenge is COMELEC’s dual Constitutional mandate. COMELEC performs both managerial and quasi-judicial functions. These functions are not easily reconcilable. Management would entail engaging and working with all stakeholders involved. The performance of quasi-judicial functions to resolve cases, however, requires a certain distance from candidates with pending cases to ensure impartiality. More importantly, this dual mandate is overly burdening. Managing a huge electoral system is by itself a huge task. Adding quasi-judicial functions to it would be too much for one institution with persistent organizational constraints to handle.

Enforceability of Campaign Finance Laws and Rules

The spending cap is considered a major hindrance in the enforcement of laws. COMELEC itself sees it as unrealistic, given the actual cost of the campaigns.³² Many think the spending cap encourages politicians to lie about their spending.³³ Former COMELEC Commissioner Resurreccion Borra was documented sarcastically noting that, “based on the 1992 findings... almost all the candidates appeared to be law-abiding citizens in terms of filing their statements of contributions and expenditures. They did not overspend because they simply understated their figures.” Commissioner Borra finds the spending limits “unrealistic at present costs.”³⁴

Enforcement of campaign finance regulations during campaigns is also a major challenge. The report of the Institute for Political and Electoral Reforms (IPER) on their ground-level monitoring of campaign spending points, for instance, to blatant violations on the spaces where campaign posters were posted: "...the most blatant violation is with regard to common poster areas. Simply put, candidates and their supporters placed their propaganda materials in every space or trees that are available especially in major thoroughfares and public areas. The COMELEC should review its rule on common poster areas since it is not being followed anyway."³⁵

The weak enforcement of campaign regulation is largely because of weak enforcement institutions on the ground. COMELEC local offices face major constraints in resources, as discussed earlier. During campaigns, COMELEC tap the police (and in election hotspots, the military) to help enforce electoral laws, including campaign finance rules. However, monitoring campaign finances (authorized expenses, sources of funding, prohibited activities such as vote-buying, etc.) during campaigns may actually be impossible without immediate access to the internal affairs of parties and candidates.

What is most critical in the enforcement of campaign finance rules is the seeming impunity that comes with the violations and neglect committed by election actors. PCIJ's account of the 2010 elections is telling:

... the May 10, 2010 elections could also go down in the country's annals as a grand spectacle of lies, half-truths, and concealed truths foisted on the Filipino voters...These reasons include: Porous campaign-finance laws and inconsistent interpretation of the specific provisions by the Commission on Elections (COMELEC); The negligence and inability of the COMELEC to enforce these laws for reported lack of trained manpower, time and resources; An apparent pattern among most candidates, political parties, and their representatives to circumvent the laws in a "knowing and willful" manner; A patent conspiracy among candidates, political parties, party-list groups, and donors to defy the laws; and Uneven compliance by media agencies and service contractors with their reporting duties.³⁶

Effective Monitoring and Accountability

It could very well be assumed that the SOCE submissions under-report the figures. At the moment, only those who declared over-spending in their SOCE are investigated. This could be seen as tantamount to punishing the honest.³⁷ Heidi Yorac, former COMELEC Commissioner (1986-93) observed that, "these are grossly understated reports, but we hear talk from people who know a donation of P1 billion from just one source and yet this was never reported."³⁸

Even with the CFU, it takes more than a year for COMELEC to gather the SOCEs of candidates and parties. The deadline has been pushed several times to accommodate late submissions. As of October 2014 (17 months after the elections), a comprehensive report on SOCE compliance has yet to be prepared.³⁹

At the moment, campaign finance monitoring is largely ex-post facto based only on the submitted SOCE. A more proactive monitoring should be explored to prevent violations. There have been efforts by civil society organizations (CSOs) to monitor campaign finance. It is good to closely examine the viability of a more proactive/ preventive monitoring of campaign finance, gleaned from the past CSO experience, like that of Pera't Pulitika. Tapping the aid of political parties to monitor the spending of their candidates might be worth exploring as well. This gives political parties a proactive role in electoral management.

Spending more time, resources and political will on SOCE-based monitoring/auditing itself is a challenge that must be addressed. Boosting the capacity of and investing in the CFU would be one critical action agenda. Clarifying the mandate of other agencies, such as the Commission on Audit (COA), the Anti-Money Laundering Council and the Bureau of Internal Revenue (BIR), in auditing/ investigating the SOCEs or providing institutional support to COMELEC in auditing/ investigating the SOCE might be another.

Finally, to date, there is a need to pay closer attention to the media and contributor reports. The discount on airtime that media outfits are mandated by law to provide to bona fide candidates and political parties is, in a small way, a form of state subsidy. COMELEC and other stakeholders who can help in monitoring campaign finance regulations must also look closely at compliance to the implementation of this discount.

The Structure of Incentives and Disincentives in Campaign Finance

Elections have been turned into a business with public power serving as both capital and profit of private individuals and groups. Rent-seeking is so embedded in the structure and logic of elections that it is now a form of incentive that motivates actors to participate in elections. Joel Rocamora explains how this leads to corruption and undermines democracy:

Campaign finance issues lie at the heart of electoral reform in the Philippines. If in the past, patron-client ties limiting effective participation by the the most serious problem corrupting democratic representation, today rapidly growing election campaign expenses is the key problem. Running election campaigns have become so expensive that only rich people or those dependent on rich financiers can run. Qualified, popular candidates without money and without financial backers cannot win. Even when relatively honest people do win, they have to spend so much money to campaign that they invariably become corrupt in order to recover their expenses or to return the favor of financial backers.⁴⁰

An Editorial of the Philippine Star also drives the same point:

The lack of transparency in campaign finance is one of the roots of corruption. People who donate substantial amounts to the campaign kitty of a candidate or political party typically expect a return on investment. This comes in the form of sweetheart deals if the candidate wins, or appointment of the donor or his relatives or friends to government positions.⁴¹

The question of how to disincentivize violations of campaign finance regulation has to do with our ability to thwart rent-seeking activities, which is a form of corruption. If financiers are not be able to get “rent” from the politicians they put in office, they will not be motivated to give out an excessive amount of money. If politicians do not have sources of excessive funding that will affect how they exercise their power in government, this could change their attitude towards elections and public service, leading to more democratic elections and true service for the common good.

In the same light, our ability to curb violation in campaign finance regulations is also expected to address corruption and the undermining of democratic institutions. The next issue to tackle is incentive. How do we incentivize good practices in campaign finance? How do we encourage candidates, parties, media and contributors to abide by campaign finance regulations? How do we make the voting public more sensitive and aware of malpractices in campaign finance, such that they consider whether candidates and political parties are abiding by campaign finance regulation as part of their decision-making? Pro-active monitoring and up-to-date information on campaign activities would be a pre-requisite for this to even have a chance of getting tested.

Making Elections Truly Democratic

One common definition of democracy is a government of, for and by the people. For governments to be considered democratic, those who will hold positions of power must be elected. Those who are elected must reflect the will of the people.

The 1987 Philippine Constitution guarantees the right to suffrage of all Filipinos aged 18 who have resided in the Philippines in the past year prior to the election. The right to suffrage means the right to vote and to be elected. Yet, it requires at least Php5 billion to run for the presidency, PHP 500 million to run for the Senate, PHP 10 million to run for mayor. With a large portion of its population barely making ends meet, the high cost of elections automatically means that a significant group does not, in fact, enjoy the right to suffrage. This also means that money is largely determining the outcomes of elections, thwarting the will of the people.

This is one of the reasons that Philippine democracy remains to be considered an “elite democracy.” Electoral contests are exclusive to those who are moneyed, well-connected, and who come from known political families. This is negatively affecting governance and democracy. Particularistic interests continue to dominate government. This fuels corruption and perpetuates disempowerment. It also undermines the rule of law and weakens institutions, leading to a breakdown of accountability and democratic deficit.

One of the culprits in this situation is the issue of poorly regulated campaign finance in the Philippines. There is a need to make elections inclusive and democratic by making them competitive and fair. Key to this would be addressing existing legal gaps, such as campaign contribution limits and regulation before and after campaign period; and improving the enforceability of campaign finance laws and rules, most urgent of which is the review of the spending cap. It is also crucial that COMELEC's capacity to regulate campaign finance is strengthened. Its organizational constraints must be addressed, especially those that compromise its independence. The dual mandate of COMELEC enshrined in the Constitution must be seriously studied.

Passing a law that provides state subsidy is key to level the playing field. This could help shield politicians from capture by big campaign financiers. State subsidy could help strengthen accountability in campaign financing, especially when coupled with support for the development of programmatic, full-pledged, and accountable political parties. The passage of a party law, therefore, is a key measure that complements campaign finance regulation

Furthermore, there is a need to seriously consider passing an anti-dynasty law. Political families who have been in power for a long time have likely been able to concentrate political and economic power. This over-concentration of power can seriously compromise efforts to regulate campaign financing and promote fair competition. The latter undermines accountability and automatically skews the playing the field.

Finally, there is a need to restore the integrity of elections by changing how the different key actors view elections and behave in the electoral exercises. Why do candidates run for office? Why do contributors support politicians? What is the role of media in leveling the playing field and promoting issue-based elections? What is the role of political parties in making campaigns more accountable and program-based? How can voters select the candidates who can serve their interests and the common good? These are key questions election stakeholders must reflect on. Answers to these questions will help determine whether the Philippines can bring back the integrity of elections. This issue is central to achieving sustainable change that makes a difference in the lives of common Filipinos

Endnotes:

¹ With research assistance from the team of Political Democracy and Reforms (PODER) program of the Ateneo School of Government.

² Bryan, S. and Baer, D. (2005). Money in Politics: A Study of Party Financing Practices in 22 Countries, National Democratic Institute For International Affairs.

³ Pera't Punitika (2008). Developing Baseline Data on Campaign Spending in the Philippines (Pilot Test: 2007 National and Local Elections). Unpublished paper. Page 2.

⁴ Ibid. Page 7. The paper based this data on a presentation of Ramon Casiple of the Institute for Political and Electoral Reform (IPER).

⁵ 19.1% of the population in 2013 according to the Philippine Statistics Authority.

⁶ This refers to the case of gubernatorial candidate for Laguna, E.R. Ejercito based on COMELEC En Banc decision on May 21, 2014 disqualifying Ejercito on account of campaign finance overspending. An election protest was filed by a political rival of Ejercito before Ejercito was officially proclaimed as governor-elect of Laguna for the 2013 elections. The COMELEC En Banc issued a unanimous decision on May 21, 2014 to disqualify Ejercito marking the first-ever concluded case of campaign finance overspending in the country.

⁷ Chavez vs. COMELEC. G.R. No. 162777, 31 Aug. 2004.

⁸ Philippine Constitution. Section 2 (7) Article IX (C).

⁹ Republic Act No. 7166, The Synchronized Election Law. Section 13.

¹⁰ Republic Act No. 7166, The Synchronized Election Law. Section 5.

¹¹ Omnibus Election Code, Section 102. Sections 100 and 101.

¹² Ibid. Article XI. Sec. 94 (a).

¹³ Ibid. Section 95.

¹⁴ Republic Act 9006 or Fair Elections Act, Section 11.

¹⁵ Omnibus Election Code, Section 261 (o).

¹⁶ Ibid, Section 261.

¹⁷ COMELEC Resolution No. 9585 on Dec. 18, 2012 and COMELEC Resolution no. 9660 on March 22, 2013.

¹⁸ Republic Act No. 7166. The Synchronized Elections Law, Section 14.

¹⁹ Fair Elections Act, Sections 6.2 and 6.3.

²⁰ Omnibus Election Code, Article XI, Section 98-99.

²¹ COMELEC Resolution No. 9476

²² See Endnote No. 10.

²³ COMELEC Memorandum 14-0374 dated September 29, 2014 indicates 9 overspending complaints involving officials who ran in the 2013 elections and 14 in the 2010 elections.

²⁴ Using 2007 voters statistics by COMELEC since the commonly known estimated cost is from 2008 report, which covers 2007 elections. Using Quezon City as an example for the city mayor post and Bulacan for governor post. Allowable cost per voter: Php 10/ voter for president, VP and Php 3/ voter for other posts multiplied by the number of voters in their constituency (place where they filed their candidacy).

²⁵ Percentage of difference between commonly known estimated cost and estimated allowable cost.

²⁶ Go, Miriam Grace. "A Season for Dirty Tricks." Newsbreak, May 9, 2001. Page 18.

²⁷ Peñaera vs. COMELEC. G.R. No. 181613. November 25, 2009.

²⁸ Rocamora, Joel. "Campaign Finance and the Future of Philippine Political Parties." Paper Prepared for presentation at a conference organized and cosponsored by the Sejong Institute, Sungnam, Korea, and the National Endowment for Democracy, Washington, D.C., U.S.A on Political Finance and Democracy in East Asia: The Use and Abuse of Money in Campaigns and Elections. June 28–30, 2001. Seoul, South Korea. Accessed through <http://www.scribd.com/doc/23599910/Campaign-Finance-and-the-Future-of-Philippine-Political-Parties#scribd>.

²⁹ Government Watch, Ateneo School of Government (2008). COMELEC BudgetWatch: The Tracking and Documentation of the COMELEC Budget Process. Unpublished paper.

³⁰ Arnaiz, Jani, et.al. "Far Too Much Work Far Too Few Personnel with Poor Provisions." The COMELEC: A Reality Check. Philippine Center for Investigative Journalism. April 17, 2013.

³¹ COMELEC Resolution No. 9476, or the Campaign Finance Rules, on Jan. 15, 2014.

³² Bernal, Buena. "'PH needs realistic spending caps'." Rappler. June 6, 2013.

³³ Interview with Ferdinand Rafanan, Head, Campaign Finance Unit/ Director IV, Planning Department, Commission on Elections, interview conducted October 15, 2014 for both this paper and a review of the Global Integrity's Money, Politics and Transparency Project - Philippines case.

³⁴ Adversario, Patricia, "Loopholes Leave Election Funding Rules Toothless." Business World, 24 April 2001. In Rocamora, Joel. "Campaign Finance and the Future of Philippine Political Parties." June 28–30, 2001.

³⁵ Casiple, Ramon, et.al. (2010). Ground War: A Campaign Finance Field Monitoring in the 2010 Philippine National and Local Elections. Consortium on Electoral Reform and Institute for Political and Electoral Reforms.

³⁶ Ilagan, Karol Anne. "Top bets for Prez, VP, party-lists in orgy of omissions, half-truths." PCIJ Audit of Election Expense Report. Philippine Center of Investigative Journalism. August 10, 2010.

³⁷ Interview with Ferdinand Rafanan, October 15, 2014.

³⁸ Adversario, Patricia, "Loopholes Leave Election Funding Rules Toothless." Business World, 24 April 2001. In Rocamora, Joel. "Campaign Finance and the Future of Philippine Political Parties." June 28–30, 2001.

³⁹ As observed during the interview with Ferdinand Rafanan, October 15, 2014.

⁴⁰ Rocamora, Joel. "Campaign Finance and the Future of Philippine Political Parties." June 28–30, 2001.

⁴¹ The Philippine Star. "Regulating Campaign Finance." Editorial, December 2012.

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