

The Non-Passage of the 1993 Proposed Election Code of the Philippines

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The Commission on Elections (COMELEC) is a creature of laws. Entrusted with the sanctity of the ballot, it has been unable to ensure free, honest and peaceful elections and has admitted that it cannot effectively eliminate fraud and violence, a testament to the institutionalization of electoral crime. Even so, it cannot be pinned for blame, at least not solely, for the sorry state of elections. The COMELEC has sought to improve the manner in which elections are held and its most recent efforts brought forth the 1993 Proposed Election Code. However, electoral reforms which would address perennial problems were not forthcoming as the Proposed Code ran into an immovable object - the legislature - which was not inclined to overhaul a system that has served its lawmaking members well, and found no support from its so-called supporters, which included no less than President Fidel V. Ramos. Without the political will to legislate electoral laws the Philippines is condemned to endure future political exercises that are neither free nor honest nor peaceful.

Background of the Case Study

The 1993 Proposed Election Code of the Philippines (hereinafter referred to as the Proposed Code) was crafted by the COMELEC and was thereafter submitted to the Ninth Congress in 1993. In December of the same year, the Proposed Code was certified by President Ramos as an urgent measure citing as its principal basis electoral reform in preparation for the forthcoming 1995 synchronized elections. In fact, the Proposed Code was certified urgent by the Chief Executive twice.

Despite the Ramos endorsement, the Proposed Code was not enacted into law. In its stead, four election-related measures were enacted by Congress and subsequently approved by Malacañang. These measures concerned the party-list system, computerization of elections, election of local legislative council members and the sample ballot.

The first election-related measure signed into law was Republic Act No. 7887 (February 20, 1995) which provides for the manner of election of local legislative council members and the indefinite deferment (subject to an enabling law) of the election of local sectoral representatives. Thereafter, Republic Act No. 7904 (February 23, 1995) was passed

directing the COMELEC to furnish every registered voter an official sample ballot and voters information sheet before every election.

Republic Act No. 7941 (March 3, 1995) was adopted afterwards establishing a party-list system of elections in the House of Representatives. Lastly, in Republic Act No. 8046 (June 7, 1995), Congress provided for the pilot-testing of a computerized elections and adopting the same for the election of regional elective officials of the Autonomous Region of Muslim Mindanao (ARMM).

The Philippine Electoral Landscape

The Philippine electoral system, or any electoral system for that matter, mirrors past and current socioeconomic, political and cultural realities. Numerous ballot box safeguards, a ceiling on campaign expenditures, a COMELEC composed almost entirely of Ramos appointees, patronage politics, an overabundance of political parties, and a rich history of cheating and violence among others, are some characteristics of the present electoral system.

The 1987 Philippine Constitution provides for a general, direct, free, equal and secret elections. Elections are general since every qualified voter possesses the right to participate regardless of religion, race, gender, education, and wealth; direct since elections do not involve delegates or electoral colleges; free since no one is obliged or compelled to vote and any form of coercion is penalized; equal since the vote of one is equal, in terms of weight and effect, to the vote of another; and secret since voting is done with confidentiality.

Pursuant to the Charter, all elective officials namely the president, vice-president, senators, congressmen and local government officials, are chosen by the people through elections by a plurality of votes. Voters cast their votes for individual candidates and the candidates who obtain the highest number of votes, not necessarily a majority of the votes cast, win. Thus, Philippine elections is of the majoritarian-plurality type. However, in the Eleventh Congress, a fifth of the members of the House of Representatives will be elected through the party-list system.

The 1993 Proposed Election Code of the Philippines

The Code

The Proposed Code includes provisions on political dynasties, candidacy, party-list system, absentee voting, continuous registration, electoral modernization, media ban, ecclesiastical influence, recall, and election of local sectoral representatives, among others.

Political dynasties

Section 26 of Article 11 of the 1987 Constitution provides for the prohibition of political dynasties and authorizes Congress to define and operationalize the same. The intent of the framers of the Constitution was 'open' elections and the elimination of the monopoly of political power. Up to now, more than a decade after the ratification of the 1987 Constitution, no prohibition has been legislated.

According to Section 116 of the Proposed Code, a political dynasty is established when persons related to each other within the third civil degree of consanguinity or affinity hold elective offices simultaneously or the same office indefinitely in a region, legislative district, province, city or municipality. Such persons will not be permitted to run for office.

As of this writing, Congress is still deliberating on separate versions of a bill on political dynasties although both chambers publicly declared the measure is part of their electoral reform agenda. Neither of the two measures is expected to be signed into law before the graduation of the Ramos administration.

The candidate

Under the Omnibus Election Code, a candidate is any person aspiring for or seeking an elective public office who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties. Under the Proposed Code, a candidate is any person aspiring for or seeking an elective office who has publicly announced the same or who has, through other analogous acts performed within 90 days prior to the start of the campaign period, openly manifested his desire to seek an elective public office, whether or not he has filed a certificate of candidacy.

The main difference between the two is the factor which determines one's candidacy - the filing of a certificate of candidacy. The framers of the Proposed Code sought to provide a definitional mechanism to curb rampant violations of election laws by those who have not filed their certificates of candidacy but are seeking public elective office.

The party-list system

Under the Constitution, a fifth of the total membership of the House of Representatives shall be elected through a party-list system where parties or organizations are voted upon and their representation shall be based on the total number of votes cast in their favor. This system is intended to encourage multi-parties and to create opportunities for participation for small or new parties. All parties or organizations whether national, regional or sectoral in character may participate. However, the first five parties on the basis of representation in the House of Representatives at the start of the Tenth Congress shall not be entitled to participate.

Absentee voting

The Constitution authorizes Congress to enact a law which will provide for the mechanics of absentee voting. A registered voter who is not in his place of registration on election day, either because of election duty or by reason of residence or employment abroad, may vote in national elections. This system intends to broaden the electoral base and allow all qualified voters, whether here or abroad, to exercise their right to vote.

Continuous registration

Section 154 of the Proposed Code provides for a continuing system of registration of voters where registration of voters shall be conducted daily. This was proposed to eliminate a padded or falsified list of voters which results in the disenfranchisement of qualified voters.

Modernization of the electoral process

The Proposed Code allows the COMELEC to computerize the permanent list of voters nationwide, assign a permanent serial number to every registered voter (Section 184) and adopt new systems for registration, voting, counting and canvassing utilizing the latest technological advances. This will be done by stages and its aim is to provide an efficient electoral system which is less susceptible to corruption.

On June 7, 1995, Republic Act No. 8046 was passed, authorizing the COMELEC to conduct a nationwide demonstration of a computerized election system beginning with the March 1996 elections in elections in the ARMM. However, further legislation is needed for the computerization of future national and local.

Undue ecclesiastical influence

Section 126 of the Proposed Code provides that “no head of any church hierarchy or religious sect, denomination, or grouping shall directly or indirectly influence the members of his flock, parish, or congregation to vote for or against any candidate or political party by means of any election propaganda.” Section 261 (d) of the Omnibus Election Code already penalizes any head, superior or administrator of any religious organization who coerces, intimidates or compels, or in any manner influences directly or indirectly any of his members, to campaign or vote for or against any candidate or any aspirant for the nomination or selection of candidates.

These provisions clearly emphasize that elections should be free from ecclesiastical influence although the two codes provide different opinions regarding “undue influence.” At present, there is no pending bill in Congress addressing this issue.

Media ban

Section 131 of the Proposed Code, which is a reiteration of Section 11 (b) of Republic Act No. 6646, states that “it shall be unlawful for any newspaper, radio broadcasting or television station, or any mass media, to sell or give free of charge print space or air time for campaign or other political purposes except to the Commission on Elections as provided for under the provisions on COMELEC Space and Time. It further states that: “Any mass media columnist, commentator, announcer, reporter, correspondent, or personality who is a candidate for any capacity by any candidate shall take a leave of absence from his work in media from the start of the campaign period until election day.” The proposal seeks to give financially well-off and poor candidates equal opportunities to address their constituents.

The media ban on political advertisements prevails after the recent Supreme Court ruling upholding the ban for the May 11, 1998 polls.

Recall and local sectoral representatives

The Proposed Code contains sections on recall and sectoral representation in local legislative bodies which are already embodied in Republic Act No. 7160 otherwise known as the Local Government Code of 1991.

Recall refers to the power of registered voters to remove from office any elective local official for loss of confidence. The process is initiated either by a resolution adopted by a preparatory recall assembly composed of local officials or a petition signed by at least 25% of the registered voters, and culminated in a special recall election. Under the Proposed Code and the Local Government Code, different sectors of society are to be represented in provincial, city and municipal councils and selected by way of election. At present, in the matter of recall, there is a pending bill lowering the required percentage of registered voters to initiate the process and eliminating the preparatory recall assembly.

Regarding local sectoral representation, no election was conducted in 1992 and 1995 despite the clear mandate of the Local Government Code and the Synchronized Elections Law of 1991. In July 1994, the issue on the propriety and legality of holding the election of sectoral representatives on the basis of the Local Government Code and the Synchronized Elections Law was elevated to the Supreme Court. Instead of handing down a definitive ruling, the highest court in the land decided to do the opposite, citing lack of a justiciable controversy.

On February 20, 1995, Republic Act No. 7887 was signed into law, indefinitely postponing the election of local sectoral representatives.

The Code advocates

In its advocacy campaign, the COMELEC publicly declared the threefold purpose of the Proposed Code i.e., to consolidate or codify existing and proposed electoral legislation, institute election reforms and implement provisions of the Constitution which need to be operationalized. Essentially, the Proposed Code seeks to institute electoral reform in order to democratize participation in elections by broadening the electoral base, and abbreviate and "cleanse" the electoral process.

Also addressing the issue of electoral reform in support of the COMELEC is a network representing the citizenry and non-government forces collectively known as Kilusang Mamamayan Para sa Repormang Elektoral (KUMARE-KUMPARE). The network is composed of 17 organizations and was active in the advocacy of electoral reforms leading to the 1995 elections. It held rallies before the Senate and the House of Representatives and carried out legal and policy research for the Proposed Code. As part of its drive for electoral reforms, KUMARE-KUMPARE launched a media campaign, sending press releases and statements to media institutions and newspaper editors. It published a primer on the Proposed Code as well as rally primers and updates on legislative developments.

The membership of the network included the Philippine Pastoral Council for Responsible Voting (PPCRV), National Movement for Free Elections (NAMFREL), Caucus of Development NGO Networks (CODENGO), National Consultative Council for Local Governance (IPC), Trade Union Congress of the Philippines (TUCP), Federation of Free Workers (FFW), National Movement for Young Legislators (NMYL), Partnership of Philippine Support Service Agencies (PHILSSA), National Peace Conference (NPC) and the Democratic Socialists-Women of the Philippines (DSWP).

To provide guidance and credibility to the organization, the Council of Advocates was established in 1994. It was composed of 10 prominent national personalities including Archbishop Jaime Cardinal Sin, former COMELEC Commissioner Haydee Yorac, former Secretary Vicente Jaime, Justice Cecilia Muñoz Palma, Justice Jose Feria, Fr. Romeo Intengan, S.J., and business leader Jose Concepcion, Jr.

KUMARE-KUMPARE made its presence felt through manifestos and position papers prepared by the network, pastoral letters by the Catholic Bishops Conference of the Philippines (CBCP), occasional delegations and representations with President Ramos and legislators by the members and the Council of Advocates, participation in congressional hearings, letter barrages and signature campaigns.

How the Code was Lost

After the 1992 elections, the COMELEC, on its own, drafted and prepared the Proposed Code. In 1993, the same was presented to Congress and thereafter certified urgent twice by President Ramos, first in

December 1993 and thereafter in 1994. Despite such certification, the congressional discussion of the Proposed Code as such did not go beyond the confines of the Electoral Reform Committees of each chamber. In mid-1994, Congress shifted the discussion of electoral reform from a codal approach to a specific/piecemeal approach, deliberating on eight bills. In the end, four election-related laws as above cited were passed.

Issues and problems

The non-passage of the Proposed Code may be attributed to a confluence and convergence of factors and issues. The study has identified several such factors and issues namely: lack of political will, controversial provisions, constitutional defects, tradition and status quo, non-acceptability of certain COMELEC personalities, lack of organized popular support, and the episodic nature of elections.

Lack of political will

To members of Congress, the problem was technical. They claimed that because the Proposed Code was structural in nature (as it pertains to elections) and voluminous (as it contains some 174 amendments to the present Omnibus Election Code), they had neither the time nor the expertise to enact legislation before the 1995 elections. Also, the shift from a codal to a piecemeal approach in legislation came too late in the day and did not therefore provide sufficient time for the passage of eight election-related bills.

The Senate Committee on Electoral Reform felt there was not enough at stake regarding the Proposed Code, arguing that since Congress did not participate in the crafting of the Proposed Code, members of Congress had no real, personal and compelling interest to have the same legislated.

This claim is disputed by the poll body. The Proposed Code was studied and crafted by the COMELEC as early as 1992, submitted to Congress in 1993, and certified by President Ramos in late 1993. Congress had almost two years to consider and pass the measure. They also claimed that the codal approach to enacting legislation cannot be used as an excuse since several other codes were passed into law this way. Congress, the COMELEC said, had it really intended to approve the Code, should have had no difficulty doing so.

Also, members of both chambers were not inclined or predisposed, despite their public pronouncements, to changing the contours of the electoral processor the rules under which they and their local government supporters succeeded into office. The fact that the Proposed Code was drafted in full by the COMELEC with no participation from the members of Congress did not mean that the solons had no interest in seeing it through. On the contrary, they had a real and personal interest in defeating it.

In the Senate Committee on Electoral Reform, no one openly took the cudgels for the COMELEC. In the House of Representatives, the Committee on Electoral Reform was divided on the merits of the provisions of the Proposed Code as well as on the codal approach to electoral reform.

The presidential certification of urgency, as it turned out, was no guarantee the Proposed Code will be passed. To the popular groups, the perception was that this was mere lip service, there being 30 or so other measures certified as “more urgent” than the Code. Consequently, neither President Ramos nor his liaison officers made any sustained effort to push for its passage.

Questionable aspects

Some members of Congress found certain aspects of the Proposed Code questionable. Among them were the lack of genuine safeguards for the system of absentee voting which may result in abuse or manipulation by the administration, the modernization of the electoral process which may result in computerized tampering of results and purchase of computers without the benefit of public bidding, and a definitional problem of political dynasties which excludes/includes certain sectors.

On the other hand, the four election-related laws which were passed were considered by many as innocuous if not beneficial to the present crop of elective officials. The law which provides for the pilot testing of computerized elections in the 1996 ARMM elections did not provide for the computerization of all future elections.

The party-list system allows national, regional and sectoral parties, organization and. coalitions as such to participate in the 1998 elections but restricts participation to the five major political parties. The law which

requires the COMELEC to furnish every registered voter an official sample ballot and voters' information sheet will neither cause any harm to nor prejudice those in power. However, the passage of the law which provides for the indefinite deferment of elections of local sectoral representatives and the election at-large in most of the local councils are seen as beneficial to those already in power and prejudicial to those outside government particularly the marginalized sectors of society.

Constitutional defects

The Constitution provides for specific mandates and authorizes Congress to define and operationalize the same. These include the party-list system, political dynasties, sectoral representation in local legislative councils, among others. Some sectors in Congress feel that the framers of the 1987 Constitution should have defined the foregoing instead of leaving it up to Congress. The result was the delay in implementation.

Tradition and status quo

Those who have won various elections particularly for the same position will naturally resist any move to alter the system which placed them in office. The long tradition of cheating, manipulation, and fraud forms part of the election culture that any improvements thereto making it truly free, clean, inclusive - will meet resistance, overt or otherwise. Protecting the status quo will benefit those in power. Most of them are wary of a system that they will not be able to control.

In fact, certain provisions of the Local Government Code passed (some say hastily) by the Eighth Congress have not been implemented. Some were even repealed or modified by law by the succeeding congresses. The provisions on the election of sectoral representatives in local legislative bodies have been indefinitely deferred subject to an enabling law.

Election of provincial, city and municipal sanggunian members which under the Local Government Code of 1991 is to be done by districts to broaden participation, provide proportional representation and allow registered voters in the rural areas who are effectively disenfranchised in elections, has been modified to provide election by districts in all provinces and particular cities and municipalities and election at large in the other cities and municipalities. This has been dubbed as a retrogression of statutory gains which have not been implemented.

Non-acceptability of COMELEC personalities

According to members of KUMARE-KUMPARE, one factor which brought about the demise of the Proposed Code was the presence of then COMELEC Chairman Christian Monsod and Commissioner Haydee Yorac. Monsod and Yorac were said to be at odds with Malacañang, the Senate and the House of Representatives.

Aside from being highly independent-minded and very outspoken, both were appointees of former President Corazon Aquino, and consequently (and understandably) less beholden to the current administration than the Ramos appointees. Also, some sectors claim that the COMELEC was hit by internal problems at that crucial time of the advocacy. A divided COMELEC contributed to the non-passage of the Proposed Code.

Lack of organized popular support

The leadership of the COMELEC recognized the invaluable support made by the KUMARE-KUMPARE and similar networks. However, despite the broad composition of the network, the fundamental requirements to effectively sustain a lobby campaign were not met. Firstly, the presence of the publicly-claimed mass membership was not felt by the national leaders, weakening the magnitude of the clamor for electoral reform. In five rallies, less than 2,000 were actually in attendance, further bringing down the network's stock as a force to be taken seriously.

Secondly, some network leaders were said to have kept their own personal agenda, particularly to gain media and political mileage for future elections. Thirdly, only a handful of personalities were active throughout the campaign. The rest of the member organizations remained visible in name only.

Episodic nature of elections

Unlike the Urban Development Housing Act (Republic Act No. 7279), where urban poor organizations conducted a programmed campaign for the passage of the law, the Proposed Code did not get the same support from the electorate simply because the issue was not relevant to many people. To the urban poor, the issues of security of tenure, socialized housing, conduct of demolitions, among others, were the more pressing concerns. To the electorate, voting is the dull episode that precedes the announcement of the official results.

Conclusion

Based on the foregoing, the dominant factor which caused the non-passage of the Proposed Code may be attributed to the lack of political will on the part of government, particularly the Executive and Legislative branches. This may be gleaned from the fact that President Ramos failed to exert pressure on Congress despite his pronouncements and constitutional imperative to do so, and that the lawmakers found no reason to alter a system which has served them well in previous elections.

Even if there existed a small degree of “open-mindedness” among the lawmakers, Congress could not “feel” a real urgency for electoral reforms. The civil society forces through KUMARE-KUMPARE failed to present themselves as a potent force with sufficient numbers to influence decisions during critical moments of the campaign despite the fact that the network was fully operational, organized and undertook all program modes of advocacy and lobbying. During the critical conjunctures of the advocacy campaign, KUMARE-KUMPARE was not able to challenge the government leadership in changing the status quo and heeding the former’s demand. They were not inclined to sacrifice their advantage seeing that they will not be prejudiced nor their political status jeopardized by not passing the Proposed Code.

Compared to other subject matters of legislation, elections occupy a unique position in the hierarchy of legislative priorities. This may be attributed to the fact that any change in the system will likewise alter the dimensions of participation and involvement in the political arena, an issue which is personal to those in power. This, to incumbents must remain exclusive. ❁

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