



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.¹ 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.²

The 2012 Comprehensive Agreement on the Bangsamoro between the government and the Moro Islamic Liberation Front (MILF) envisaged the passage of a Bangsamoro Basic Law (BBL), under which the Bangsamoro, a new political entity, would replace the existing Autonomous Republic in Muslim Mindanao (ARMM). Following the deaths of 44 members of the police force in an incident at Mamasapano in January 2015, congressional support for the law's passage evaporated. As a result, the 2016 general election included the election of new representatives to ARMM positions.

The issues of autonomy and identity in the areas where the majority of the population is Muslim are central to the political landscape of Mindanao, but are far from the only element within it. Many other issues also exist across the island, one of which is the marginalization of indigenous persons.

The Carter Center mission sought in particular to gather and analyze information about the wider context of the electoral process in Mindanao: violence around elections; freedom of expression, assembly and choice in the campaign environment; the role of money in elections and its regulation; the process for resolution of electoral disputes; and minority issues.

The small size and limited scope of the mission meant that it was not in a position to generate statistically robust quantitative information about the technical aspects of the electoral process or to assess in-depth the conduct of election day proceedings. The Center's observation work is conducted in accordance with the Declaration of Principles for International Election Observation.

¹ With a grant from the government of Australia, and in cooperation with The Asia Foundation (TAF). The findings, recommendations, and opinions, as well as any errors, are those of The Carter Center and do not necessarily reflect the views of the Australian Embassy or The Asia Foundation.

² The final report is available at www.cartercenter.org/news/publications/election_reports.html.

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.³ 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.⁴ 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.

³ See *Election Obligations and Standards: A Carter Center Assessment Manual*, 2014, available at www.cartercenter.org/resources/pdfs/peace/democracy/cc-OES-handbook-10172014.pdf.

⁴ Block vote is a majoritarian electoral system that uses multi-member electoral districts. The voter has as many votes as there are vacancies to fill, and can use as many or as few as she/he wishes. The candidates with the highest vote totals are the winners.

Some of the longer-established cities are free standing and are not part of any province. All elections for governor, vice governor, mayor, and vice mayor use the first-past-the-post system. All elections for councils use block vote.

The Autonomous Region in Muslim Mindanao consists of the five provinces of Basilan, Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi, which have the same governance structure as other provinces. In addition, the ARMM as an entity has a governor and vice governor elected by first-past-the-post, and a 24-member regional assembly elected from eight districts by block vote. The ARMM bodies and positions form an additional tier of government; they do not replace provincial-, city-, and municipal-level government.

Legal framework

The legal framework relating to elections is found across a number of legal instruments. These include the 1987 constitution, the Omnibus Election Code 1985, the Synchronized National and Local Elections Act 1991, the Party-List System Act 1995, the Fair Election Act 2001, and the Automated Election Act 2007. Provision for out-of-country voting is made under the Overseas Voting Act 2013. In addition, COMELEC has extensive powers to introduce delegated legislation in the form of resolutions, rules, regulations, and orders.

This sheer volume of electoral law is unhelpful for electoral stakeholders. It is difficult to ascertain what provision applies at any particular time. In this context, one national presidential campaign cited the permitted size of posters; another example is the continuing legal debate surrounding the prohibition of campaigning before the start of the official campaign period. A candidate seeking practical information on what is and is not allowable under electoral law needs to check and interpret both the laws and regulations and the specific content of potentially relevant Supreme Court judgments, which requires detailed legal advice.

In the runup to the 2016 election, COMELEC issued many new resolutions, often on a daily basis.⁵ Transmission of new rules to regional and district levels was often slow, with attendant confusion at local levels. The hacking of the COMELEC website in late March 2016, and its consequent withdrawal from service for several weeks, meant that information on electoral law and other aspects of the election process was unavailable to stakeholders at a critical period.

There is a high level of litigation on electoral law in the Philippines. This has a further negative impact on the accessibility of electoral law. Supreme Court rulings have interpreted many provisions of electoral law and directed COMELEC to amend practice accordingly. Specialised legal advice is thus necessary to ensure clarity on simple electoral questions. There are numerous examples of where the law is piecemeal, one being the regulation of the party-list system. Electoral law is in urgent need of revision and consolidation. This has been proposed on several previous occasions but has never been implemented.

⁵ Many of these resolutions were necessary to implement the requirement to issue a paper receipt to voters, which was introduced at a late stage in the 2016 election preparations following a Supreme Court ruling. This had been opposed by COMELEC on the grounds that receipts could be used as a tool to support vote buying.

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, unopposed elections are “bad for democracy, but good for peace.”

Violence around elections⁶

In the Philippine context, violence around election time may or may not be related to elections themselves, and often has multiple causes. A significant volume of violence relates to clan feuds (known as *rido* among the Moro and *pangayaw* among the indigenous people in Mindanao), arguments over business or commerce, or kidnapping for ransom undertaken as a fundraising exercise. The base level of general criminality and violence – much of which is not related to elections – appears to be fairly even across the Philippines, and is not a primarily Mindanao phenomenon.

In the ARMM, recent trends in violence show two distinct components: 1) a significant increase in common crime and in shadow economy-related crime (illegal drugs, smuggling, gambling, kidnapping), which has led to a limited number of people becoming victims of violence; and 2) a relatively small number of incidents that are much more likely to result in deaths and/or serious injuries, the majority of which are politically linked, but which also include some *rido*-related events.⁷

Security was scaled up across the country in advance of the elections, with particular concentrations in the areas identified as election watch-lists. The authorities categorized election day as “generally peaceful” across the country, with violent events taking place in less than one percent of precincts nationwide. Still, violence remains a significant problem. The Armed Forces of the Philippines (AFP) reported 22 incidents of election-related gun battles, ambushes, and bombings across the country on polling day. The worst incident took place in Cavite province, Luzon, where seven people were killed in an ambush.

Altogether, according to the Carter Center’s analysis, there were 17 election-related killings in Mindanao from the beginning of April through the end of the election period on June 8.⁸ Eleven of the election-related killings took place in the ARMM, where despite the relatively

⁶ICCPR General Comment 25, para. 12: “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote...” ICCPR General Comment 25, para. 19: “Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”

⁷Detailed data and analysis regarding violence in the ARMM can be accessed through the Bangsamoro Conflict Monitoring System at <http://bcms-philippines.info>.

⁸Data on violent incidents is compiled from media reporting.

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,⁹ 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.

⁹ 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.¹⁰ 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. Based on the small number of polling stations they visited, Carter Center observers noted that there were considerable procedural demands on polling staff and that three polling staff may be insufficient.

The conduct of polling for the most part proceeded smoothly in polling stations visited in Cagayan de Oro and Davao del Norte. However, in Cotabato City and in Maguindanao, the mission observed instances of significant irregularities.¹¹ PPCRV pulled its observers out of Cotabato City on the morning of polling day citing rampant voting fraud.

More generally, the mission noted that the polling procedures used in the Philippines can easily give rise to issues with secrecy of the ballot even where no intention of malpractice exists. There are no polling booths, and the voter is given a cardboard folder to safeguard ballot secrecy — a system that has its roots in an electoral management economy drive of some years back. Especially in polling stations in small rooms, it appeared almost inevitable that the marking of ballot papers could be seen and thus open to potential coercion or vote-buying.¹²

Elections were not conducted at all, or had to be abandoned, in 55 polling stations, affecting almost 20,000 registered voters in more than a dozen towns. Of these failed elections, seven related to COMELEC's delivery of the wrong ballot papers or an insufficient number of ballot papers. The other failures related to security problems, more than 40 of those in the ARMM. In Sultan Kudarat in Maguindanao, for example, a group of 20 men stole a ballot box and other election materials. The vast majority of incidents involved harassment of teachers serving as polling officials, causing them to withdraw their services. Special elections were subsequently conducted on May 14 and 16 in all affected precincts.

The total number of registered voters was 54,363,844, and voter turnout was announced as 81.62 percent. This represented an increase over recent elections; turnout in 2013 was 77.31 percent, and in 2010 it was 74.98 percent.

Tabulation, declaration of results, and random manual audits¹³

The process of aggregation and tabulation of votes from the VCMs is referred to as *canvassing* in the Philippines. Boards of Canvassers (BoCs) are created to receive and

¹⁰ See preceding note 5.

¹¹ Carter Center observers saw local officials or party agents filling in ballot papers at polling stations in Maguindanao, close to Cotabato. At a station in Cotabato where all ballot papers had been issued before noon, a party agent was feeding marked papers into the VCM. While security personnel were present at these locations, their task does not extend to following up electoral process violations unless requested to do so by polling staff.

¹² The secrecy of the vote is a fundamental right of citizens, as expressed in Article 25 of the ICCPR.

¹³ ICCPR Article 25: "Every citizen shall have the right and the opportunity... (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."

canvass the electronically transmitted results at each level.¹⁴ Congress has the final responsibility to canvass the votes for president and vice president.

Observers as well as political party and candidate representatives are entitled to be present during all phases of the voting, canvassing, and transmission procedures. Representatives of political parties and of the election observation organization that is recognized for the purpose (currently PPCRV) receive copies of election returns and of the results (known as certificates of canvass).

Results were transmitted electronically by each VCM, with printed copies and secure digital cards physically conveyed to BoCs to serve as a back-up in case of non-transmission. Upon conclusion of voting, an initial eight copies of the election returns were printed, one of which was displayed prominently inside most polling places observed. VCMs were then connected to the internet to transmit the results, using various types of device, including BGANs (satellite transmission), depending upon local conditions. The results were transmitted to three servers, firstly to the transparency server, secondly to the central server, and thirdly to the municipal or city BoC server. A further 22 copies of the results were then printed, to be distributed to candidate and party representatives and observers according to a prescribed order. Printed copies were also delivered to the BoC, along with one secure digital card from the VCM.

Direct transmission from polling stations worked well in some of the locations observed by the mission: in others, notably in Cotabato City, the local weakness of the internet infrastructure meant that transmission was not possible. As a result, polling staff had to bring the VCMs to a central point. Ultimately, 96.7 percent of polling stations successfully transmitted results to the central server, and 96.1 percent of stations transmitted results to the transparency server, according to COMELEC — a notable improvement over the previous automated elections. However, to continue to promote public confidence, further reduction of the failure rate of 3.9 percent/3.3 percent should be a priority.

When BoCs had complete results for an election, they publicly announced the total number of votes received by each successful candidate, proclaimed the winners, and posted the results within the premises of the canvassing area. For elections determined at a higher level, the BoC electronically transmitted the results upwards, from municipality/city level to the provincial and district levels, and from the provincial and district levels to the national level. Candidates and their legal counsel were entitled to be present during canvassing.

While the process of canvassing and onward transmission was completed in Davao and Cagayan de Oro rapidly and without trouble, there was a delay in Cotabato caused by a standoff between political factions over the venue at which provincial canvassing for Maguindanao would take place. In the course of this, supporters of one of the factions attacked a COMELEC vehicle on the suspicion that it was carrying fraudulent secure digital cards, and at least one of its occupants was injured.

Proclamation of results at the national level was withheld by COMELEC until 100 percent of votes were canvassed. PPCRV, however, carried out an unofficial count in the interim period, drawing results from the COMELEC transparency server and from the hard copy election returns received by their volunteers. The fast public availability of vote tallies through the

¹⁴ Carter Center observers visited a limited number of Boards of Canvassers and random manual audits.

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 having been illegal and as opening the door to fraud. While COMELEC has expressed willingness to allow an independent institution to conduct a systems audit, no specific action has yet been undertaken.

In 715 of the 92,509 polling stations throughout the country, a random manual audit of the election was conducted by COMELEC, with the assistance of the Philippine Statistics Authority and the National Citizens’ Movement for Free Elections (NAMFREL), after the conclusion of voting.¹⁵ Paper ballots read by the VCM were counted and compared with the results transmitted by the VCM. The aim was to compare machine and manual counting, in particular the effect of differing interpretations of the marks made by voters on the ballots.

The determination of which polling stations would be audited was made by the Philippine Statistics Authority. The random manual audit began on May 10 and was open to party agents, observers, and the public. Ballot papers that had been read by a VCM were manually tallied for some of the contests that involved just one vacancy: president, vice president, member of the House of Representatives, governor (where relevant), and mayor. In the limited observations of the mission, there were no instances in which the overall total margin of difference between the hand count and the machine count exceeded the specified margin of 10 votes in the four or five contests combined. Nationwide, however, the 10-vote margin was exceeded in a majority of locations. Initially, ballots from these locations were dispatched to Manila for analysis by the central random manual audit team; as the process continued, analysis was itself decentralized. A final report on the variations between machine and manual counting had not been released at the time of writing. The findings of the random manual audit do not affect the election results.

Analysis of results

The innovation of online publication of polling-station-level results can assist in the identification and investigation of polling trouble spots. There were, for example, 116 stations nationwide where 100 percent turnout was recorded.

¹⁵ Within this sample, random manual audit results were in practice not received from three stations in Lanao del Sur.

At the Maguindanao polling station where Carter Center observers saw ballot papers being completed for voters, the turnout exceeded 99 percent. In another Maguindanao municipality, observers visited two polling stations where they noted the presence of intimidatory groups of men. All voter signatures appeared to be in the same hand – even though the mayoral and council elections were unopposed. The turnout was 91 percent at the first and 98 percent at the second.

At all three of these stations, for every one of the single-position, local-level elections being contested, the leading candidate at the station polled over 90 percent. The motivation for the apparent irregularities, as reflected in the improbably high turnout and the lopsided results, appears to have been the active contest for House representative in this district. In the first locality, the losing candidate in the district received 94 percent of the vote. In the second locality, the winner overall received 99.3 percent in one station and 100 percent in the other. This pattern was reflected elsewhere: Half of all polling stations in the Philippines where one candidate for House representative received in excess of 95 percent of the vote were in the ARMM.

These examples reflect the general finding from mission discussions that local, rather than national, competition is the primary motor for electoral malpractice.¹⁶ Other results strongly appear to point to local-level irregularities, a significant proportion of which are in the ARMM.¹⁷ However, these irregularities do not appear to be in a consistent direction and on a scale sufficient to cast doubt on the national-level results.¹⁸

Electoral disputes¹⁹

While COMELEC has extensive power to adjudicate electoral disputes, some matters were settled through the court system. The most significant legal interpretation from the Supreme Court was its determination that the provisions of the Automated Election Act require the production of a voter receipt. This had important practical consequences for the conduct of polling. Otherwise, few disputes between candidates during the campaign period were brought before the courts or COMELEC. This underlines the perceived ineffectiveness of the law as a tool to resolve disputes, and the resort to extra-judicial methods of dispute resolution.

During the mission's limited observations, only a single formal complaint was noted, relating to a voter receipt. Results were also canvassed largely without complaints, despite the presence of legal representatives of various candidates. Under the revised canvassing procedures introduced with automation, the only legal arguments that may be raised during canvassing concern allegations of illegality in the composition or operations of the boards of canvassers, arguments that are extremely unlikely to be sustained. Canvassing is thus much faster in automated elections than it was in the manual process they replaced.

¹⁶ Including the first-past-the-post elections to the House of Representatives, which in this sense are local in nature.

¹⁷ For example, two-thirds of polling stations with turnout higher than 95 percent were in the ARMM.

¹⁸ There were, for example, 179 polling stations in which zero votes were cast for vice-presidential candidate Robredo, and 133 polling stations in which zero votes were cast for vice-presidential candidate Marcos.

¹⁹ ICCPR, Article 2.3: "Each State Party ... undertakes (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."

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.²⁰

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 regulation²¹

There is no public finance for participants in Philippine elections. Campaign income must be declared, and there is a list of prohibited sources of funds, including financial institutions, government contractors, civil servants, the military, and foreigners. Similarly, campaign expenditure must be declared, and there is a list of lawful expenditure categories.

All mission interlocutors agree that the spending limits imposed on election campaigns are unrealistically low, and that candidates are in effect forced to file false declarations of expenses as a result. Candidates are currently permitted to spend 10 pesos (less than 20 cents) for each registered voter in the presidential and vice-presidential contests; for other contests, political party candidates may spend three pesos per registered voter, while independent candidates may spend five pesos. Political parties and party-list groups may spend five pesos per registered voter in the constituencies where they have candidates.

²⁰ ICCPR, Article 2: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...” International Parliamentary Union, Declaration on Criteria for Free and Fair Elections, Article 3(6): “Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.”

²¹ ICCPR, Article 25, General Comment 25, para. 19: “Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”

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. Nonetheless, the CFO produced a detailed and comprehensive set of computerized documentation and forms on campaign finance regulation, and undertook a substantial training program for COMELEC staff. Information on campaign finance was distributed to parties and candidates by COMELEC shortly after the election. These forms and documentation are designed to be filled in online, although hard copy supporting documentation is also required. Issues may well arise in more remote areas because of the limited computer literacy of candidates. Private support from accountants may be required to meet the requirements of the law.

All candidates and political parties are obliged to file detailed statements within 30 days of election day of all election-related contributions received and expenditure made, making the deadline June 8, 2016. In the case of elections to national positions, these statements are submitted directly to the CFO. For local positions, the statements are submitted to the same office that received the nomination. Every person who made a donation to a candidate or to a political party during the election period is also required to submit a report of their donation to either the CFO (for national posts) or to the relevant local COMELEC office within 30 days of election day. COMELEC is required to make the information from these financial statements public, and copies are available on payment of a fee.

There has up to now been only one case of disqualification for campaign spending in excess of statutory limits, when E.R. Ejercito was ousted as governor of Laguna in May 2013. Failure to submit statements of expenditure has been subject to a slightly higher level of enforcement than overspending, principally by way of fines, but many cases still remain pending from the 2013 election. The law provides that a candidate may be perpetually disqualified from standing for public office for two successive offenses of failing to file expenditure returns. While many hundreds of candidates have been disqualified in recent decades, only one individual, Nur Misuari, was a figure with national status. In addition, the enforcement of this provision in relation to acceptance of 2016 nominations appears to have been less than perfect.

The new regulatory framework for campaign finance includes extensive agreements and requirements for cooperation between government agencies. Winning candidates for local office must submit the certification of receipt of their campaign finance declaration by COMELEC to the Department of Local Government by June 17, and may not assume office if they have not done so. Media houses, including print, television, and radio enterprises, must report on their contractual relations with election candidates to the Bureau of Internal Revenue (BIR) so that the taxation aspects of the candidates' campaign spending can be assessed. Non-compliance on the part of the media can attract fines and the risk of a tax audit. There is a cooperation agreement between COMELEC and the BIR that envisages crosschecking of individual political donations against tax deductions; an information-sharing

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, however, believed that the fear of the consequences of non-compliance is growing. The level of prosecution of non-compliance following the 2016 elections will be important in maintaining the credibility of this growth.

There remain some particular pockets of resistance to the strengthening of campaign-finance regulation; it appears, for example, that many traditionalist leaders in the ARMM are particularly unwilling to include in their declaration the spending of their own money (as distinct from contributions raised for the election). Continued progress on establishing transparency in the regulation of campaign income and expenditure is very much a work in progress. It will be dependent upon ensuring that the legal rules are relevant to contemporary patterns of electoral expenditure, that the management systems and resources to support effective implementation are in place, and that the rules are effectively enforced. It will also be dependent upon COMELEC maintaining its institutional commitment.

Vote buying

The work of the CFO relates to the income and expenditure of candidates, which is within the law. There is, however, a second major component of the political-finance discussion in the Philippines — the extent to which flows of money take place outside the law.

Public belief that extensive vote-buying takes place is deep rooted, although what people mean by “vote-buying” varies. Some regard it as meaning primarily the handing out of cash, in small denominations, to individual voters, on or close to polling day. Others use it also to encompass financial handouts and support between elections, through “pork barrel” projects for particular communities (which in other contexts is usually known as patronage), or even the delivery or promised delivery of more general public sector programs in, for example, health or education (which might also be regarded as part of the process of democratic politics).

It is difficult to obtain a consistent picture of the processes that may be involved in the service delivery and “pork barrel” categories. Local authorities gain most of their funding from the central government through the internal revenue allotment (IRA) under a formula laid down in the local government code. The additional direct provision of public funds by elected members of congress was struck down by the Supreme Court in its 2013 judgment on the priority development assistance fund. It is widely believed, however, that although the IRA funding formula is based on independently verifiable statistical factors, additional project funding support for provincial, city, and municipal authorities will not be forthcoming unless the local victors have pledged support to the winning national candidates.

For basic “retail” vote-buying in local campaigns, interlocutors claim that in the days before polling day, local candidates, businesses, and supporters distribute substantial amounts of money to local-level leaders within *barangays* to use at the ground level for vote-buying purposes. For national campaigns, the process is similar, with the funds originating from central campaign sources and channeled through sympathetic governors and mayors. The

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 develop additional vote-buying verification methods.

*Civil society engagement*²²

The Omnibus Election Code allows COMELEC to enlist the assistance of nonpartisan groups or organizations of citizens from the civic, youth, professional, and other sectors to assist in the implementation of electoral law, for the purposes of “ensuring free, orderly and honest elections.” These organizations, acting “under the immediate control and supervision” of

²² ICCPR, Article 25: “Every citizen shall have the right and the opportunity ... a) to take part in the conduct of public affairs.” ICCPR General Comment 25, para. 8: “Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”

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* (BKH), which aimed to document violations of human rights through an extensive network of civil society partners, using social media and other reporting platforms, and to publish details weekly. Their principal partners were the Legal Network for Truthful Elections (LENTE) and the Philippines Alliance of Human Rights Advocates (PAHRA). Under a memorandum of agreement, the BKH partners provided information to support COMELEC, which has the legal jurisdiction to instigate prosecutions for election offenses.

Gender issues

The Philippines is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The constitution recognizes the role of women in nation-building and undertakes to ensure the fundamental equality before the law of women and men. Provisions on suffrage are silent on the matter of gender, with the exception of the party-list system, which includes women among the sectors from which members of the House of Representatives are to be drawn.

Republic Act 9710, the “Magna Carta of Women,” was enacted in 2008. It commits the state to temporary special measures to accelerate the participation and equitable representation of women in all spheres of society, including in decision-making and policy-making processes in government. Implementing regulations call for COMELEC to require integration of women within political parties in the leadership hierarchy, in internal policy-making structures, and in appointive and electoral nomination processes. Political parties are urged to create programs whereby female members can meaningfully participate within parties. However, the Women Participation and Representation in Political Parties Bill, which was introduced to congress in 2013 in order to provide incentives to political parties to promote women, has not been passed. The draft BBL provides for a single reserved seat for women in the Bangsamoro parliament.

Vice President-elect Maria Leonor (Leni) Robredo is a woman, and two of the six presidential candidates were women. In the congress whose term is now ending, six of the 24 members of the Senate and 65 members of the House of Representatives are women. Fourteen of the representatives of party-lists are female, including two who represent a women’s party-list, Gabriela. The number of women in the Senate remains at six, alongside

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 peoples²³

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

²³ICCPR, Art. 2.1: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Convention on the Elimination of Racial Discrimination Art. 5: "...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:.. c) Political rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service."

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.²⁴ 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 conflict between the government and the New People's Army,²⁵ with cycles of violence and displacement inflicting continuing harm. The interests of extractive industries and large-scale agrarian development have also been antithetical to the protection of indigenous communities and their ancestral domain. Indigenous peoples' rights were treated as peripheral to the Bangsamoro peace process and the drafting of the BBL, and indigenous activists, concerned that their interests may continue to be neglected, are lobbying for the inclusion of a voice at the cabinet level.

*Participation of persons with disabilities*²⁶

Ratification of the Convention on the Rights of Persons with Disabilities in 2008 represented a significant milestone in the promotion of equality for persons with disabilities in the Philippines. The constitution is silent on guarantees of equality in general and lacks any provision prohibiting discrimination on the grounds of disability. The "Magna Carta for Disabled Persons," Republic Act 7277, which came into effect in 1992, filled in many of the constitutional gaps, providing several specific guarantees of non-discrimination in the areas of employment, education, and access to services.

While the constitution was silent on disability in general, it addresses explicitly the suffrage rights to include persons with disabilities, stating that congress should "design a procedure for the disabled... to vote without the assistance of other persons." This has yet to be achieved. The Magna Carta provided that persons with disabilities should be allowed to vote with the assistance of a person of their choice. The person assisting must take an oath in writing to follow the instructions of the voter and to maintain secrecy, any violation of which would amount to an electoral offense.

²⁴ COMELEC stated that it had issued an exemption for indigenous persons that allowed attestation by a village elder in place of documentation.

²⁵ The New People's Army is the armed wing of the Communist Party of the Philippines.

²⁶ The Convention on the Rights of Persons with Disabilities guarantees in Article 29 a broad range of political and electoral rights, including that states parties "shall undertake: (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected..."

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 disabilities to participate, including issuing general instructions on voting for persons with disabilities and increasing public outreach. COMELEC also intended to introduce voting in shopping malls. It was believed that this would offer more accessible physical space and air-conditioning, which would facilitate greater participation by persons with disabilities. This idea had to be abandoned at a late stage because COMELEC had not complied with the legal requirements for changing voters' polling precincts in advance of the election. Instead, where polling precincts were located in places inaccessible to those with physical disabilities, "emergency accessible polling places" in tents at street level were permitted, where ballot papers would be completed by the voter and subsequently taken and entered into a vote counting machine by polling station staff.

The reality is that low numbers of persons with disabilities register to vote, and low numbers of those registered actually vote. The National Census of Population and Housing 2010 established that persons with a disability make up about 1.6 percent of the population. During the 2013 elections, around 365,000 voters were registered as persons with disability, about 0.7 percent of the total of just under 53 million voters; and only 22.4 percent (82,000 people) voted, compared with 75.8 percent of the electorate as a whole. In 2016, COMELEC at the national level stated that just 318,013 currently registered voters indicated a disability upon registration. The figures for those who voted are not yet available.

"Handicapped" has been accepted as an advocacy group that can compete in the party-list elections. The party "DISABLED/PWD" fielded a party-list in 2016, having been accredited by COMELEC in 2012. However, neither it nor any of its predecessors (first established in 1998) have ever won a seat in the House of Representatives. Four other party-lists contesting in 2016 also included concerns for various sectors of health and disability in their campaign platforms. Ang Mata'y Alagaan, a party-list dealing with visual impairment, won a seat.

Forthcoming elections for barangay councils and youth council representatives

Elections to *barangay* councils did not take place as scheduled in October 2013; instead, the term of incumbent members was extended until October 2016. Elections for youth council representatives scheduled on the same day in 2013 were also cancelled, but the tenure of sitting members was not extended.²⁷ These elections are both now due to take place at the end of October 2016. There have been calls for further postponement, which would require legislative intervention on the part of congress.

Barangay and youth council elections are not included within the automated election legislation. They will thus be counted manually and may be subject to the kind of malpractice

²⁷ Youth councils, *Sangguniang Kabataan*, will be elected by *barangay* residents between ages 15 and 30. Each youth council will elect a chair, who will also be a member of the *barangay* council. These chairs will then come together to elect a president who will represent them on the city/municipality council, and these presidents will then assemble to elect a representative on the provincial council.

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 twice that recorded at the major elections. When viewed alongside the observations of the current mission that electoral violence and malpractice in 2016 have been much more likely to be linked to conflict and competition at the local level, the importance of advance planning and consideration of security and management issues for these elections is apparent.

Post-election political landscape

Overall, Carter Center interlocutors assessed the election process positively, although often with caveats regarding specific aspects of the process. The citizen observation group NAMFREL assessed the 2016 elections as having “been managed far better than the past two automated elections held in 2010 and 2013... and the electorate seems to have more confidence in the election system this year compared to the past. While there are still some problem areas to look into and to correct, these do not detract from the generally perceived credible and orderly conduct of the May 9 elections.”²⁸

Rodrigo Duterte’s victory margin in the presidential election was emphatic enough to provide a clear and legitimate outcome. The three leading challengers made rapid formal concession announcements, apparently the first time this has happened in Philippine electoral history and a potentially valuable precedent for future post-election transitions.

The future relationship between President Duterte and the legislature will be of great importance. Despite the small representation in congress won by the party with which he is associated, it is already clear that a substantial legislative majority has been assembled as elected members have moved to associate themselves with the incoming administration. The president-elect has reiterated his intention to promote constitutional reform, leading to the establishment of a federal form of government, in the course of his six-year term of office, and has presented this as one of his three immediate priorities for the legislature.

Although a former Senate president published a detailed proposal for federalism over 10 years ago, previous political discourse in the Philippines regarding federalism has remained limited. There is currently a degree of confusion between federalism and parliamentarism in the public debate. A discussion on the relative merits of presidentialism and parliamentarism may emerge alongside the federalism discussion, posing a range of issues separate and additional to the potential move from a unitary to a federal state.

There are several major questions that will need to be addressed in the course of the federalism discussion. The division between federal government and state government responsibilities, and the question of where residual powers will lie, is one. The division of the state budget between federal and state levels is another: While federalism is often associated with central authorities undertaking lower proportions of total public spending, this is not always the case. The potential need for a financial equalization mechanism between richer and poorer federal states will need to be explored. A move toward federalism could also have implications for the judicial system – and for the structure and operation of constitutional bodies like COMELEC. It will, for example, be necessary to consider whether electoral

²⁸ NAMFREL Assessment of the May 9, 2016, Elections, Press Statement May 25, 2016, available at www.namfrel.com.ph.

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, “needs to be immediately passed into law... because it effectively addresses the peculiarities unique to the Bangsamoro that are not necessarily found in other prospective federal states.” MILF-associated interlocutors indicate that the MILF continues to see the Comprehensive Agreement on the Bangsamoro as the foundation upon which future Bangsamoro initiatives must build and regards the peace process as an obligation of government that cannot be set aside unilaterally. Resolution of the Bangsamoro question requires specific recognition of historical injustices and the long struggle of the Moro people; it is not solely an issue of inequality and access to resources that can be subsumed within a wider federal settlement. While this recognition could perhaps be reflected through special autonomy within a federal framework, there is no desire within the MILF to see the Bangsamoro issue parked while the wider federal debate takes place.

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 campaign period. Media have reported at least five vigilante killings since the elections. Such statements create an environment of impunity and an erosion of respect for basic human rights. The Carter Center takes this opportunity to urge the president-elect and the incoming administration to reaffirm the commitment of the government of the Philippines to fundamental human rights as set forth in international instruments and to take measures to safeguard respect for human rights.