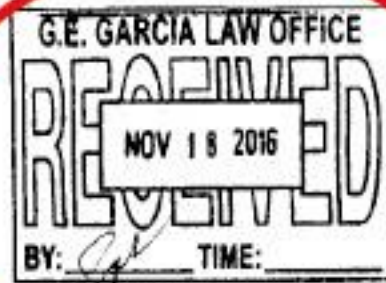




Republic of the Philippines  
Presidential Electoral Tribunal  
Manila



**NOTICE**

Sirs/Mesdames:

Please take notice that the Tribunal issued a Resolution dated **NOVEMBER 8, 2016**, which reads as follows:

**"PET Case No. 005 - FERDINAND 'BONGBONG' R. MARCOS, JR., protestant, versus MARIA LEONOR 'LENI DAANG MATUWID' G. ROBREDO, protestee.**

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**RESOLUTION**

On July 12, 2016, the Tribunal issued a Precautionary Protection Order ("**PPO**") directing the preservation and safeguarding of all documents, paraphernalia, automated election equipment and records, and other data storage devices of all 92,509 clustered precincts in the May 2016 elections for the position of Vice-President.

In reference to the PPO, the Commission on Elections ("**COMELEC**"), through Commissioner Robert S. Lim, wrote a letter dated August 10, 2016,<sup>1</sup> seeking clarification on whether the election paraphernalia that do not contain election results data are covered by the PPO. According to the COMELEC, the following do not contain election results data:

1. Broadband Global Area Network ("**BGAN**") Satellite Antennas;
2. External Back up Batteries;
3. Vote Counting Machine ("**VCM**") Kits containing:
  - a) VCM electric power supply and adaptor;
  - b) USB Modems and SIM Cards;
  - c) Headphones;
  - d) i-Buttons;
  - e) Unused Thermal Paper Rolls;
  - f) Battery Cable;
  - g) Marking Pens; and,

<sup>1</sup> *Rolls* (Vol. XX), pp. 16041-16110.

*[Handwritten signature]*

- h) Documents inside the Kit (e.g., BEI PINs, passwords, FTS ballots)
4. Canvassing and Consolidation System ("CCS") Kits containing:
- a) Printer and Toner;
  - b) Unused Bond Paper;
  - c) USB Modem and SIM cards;
  - d) USB Token; and,
  - e) Documents inside the Kit (e.g., BOC PINs, passwords).

The COMELEC sought authority to conduct closure/stripping activities wherein each VCM kit shall be opened and tested so that the equipment can be turned over to Smartmatic-TIM, Inc. ("*Smartmatic*"), while the consumables, such as SD-cards, i-Buttons, thermal paper and marking pens, which are considered as sold items, shall be turned over to the COMELEC. The CCS kits, the contents of which are already owned by the COMELEC, shall likewise undergo closure/stripping activities.

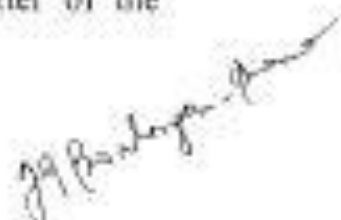
The COMELEC also sought authority to conduct backing-up activities of the VCM SD cards of all the 92,509 precincts, and the CCS laptops of all municipalities, cities, provinces covered by the PPO.

The COMELEC also recommended that, to ensure transparency during the project closure/stripping activities, as well as the backing up of election results data, the parties, including representatives of the Tribunal, may witness the activities and make observations thereon. The COMELEC also recommended that a preliminary discussion on the protocol to be observed during the activities may be set between COMELEC, the parties, representatives of the Tribunal, and an ocular inspection of COMELEC's warehouse in Laguna.

The COMELEC also sought confirmation of the closure activities that had been conducted on the BGANs prior to the issuance of the PPO.

More importantly, the COMELEC manifested that, in its Automated Election System (AES) Contract dated August 27, 2015 with Smartmatic, all equipment in the possession of the COMELEC as of December 1, 2016 because of any election contest or audit requirement shall be considered sold to the COMELEC pursuant to its option to purchase, and the COMELEC shall pay the corresponding price, without prejudice to the COMELEC requiring the protestant to shoulder such costs. Also, the lease contract for the COMELEC's warehouse in Sta. Rosa, Laguna, where the AES are stored would be expiring in November 2016.

In a Resolution dated August 16, 2016, the Tribunal directed the protestant and the protestee to file their comments on the letter of the COMELEC.



In his Comment,<sup>2</sup> the protestant stated that he is willing to waive the coverage of the PPO with respect to the following items: external back-up batteries, VCM electric power supply and adaptor, headphones, battery cable, marking pens, printer and toner, since these materials will not be included in the technical examination and forensic investigation requested by the protestant.<sup>3</sup>

The protestant, however, opposed the closure/stripping activities insofar as the servers, routers, transmission mediums, VCMs, CCS units, Secure Digital ("SD") cards (main, back up and such other Written Once Read Many ("WORM") cards) and other automated election paraphernalia containing election results data are concerned. According to the protestant, he intends to request for the technical examination and forensic investigation of the above automated election equipment, devices and records, which contain evidence of the conduct and the results of the elections, in all of the 92,509 clustered precincts that functioned during the May 2016 elections.<sup>4</sup>

The protestant further stated that, as regards the financial constraints in preserving the integrity and safety of these automated election equipment and paraphernalia, the same are "not valid and reasonable justifications to excuse the COMELEC from complying with the PPO issued by the Tribunal."<sup>5</sup>

With regard to the proposed manual backing-up activities to be undertaken by the Election Records and Statistics Department ("ERSD") of the COMELEC, the protestant did not interpose any objection thereto as long as all the files contained in the SD cards (main, back up and such other WORM cards) including the ballot images shall be included in the back-up copy of the COMELEC.<sup>6</sup>

The protestee, on the other hand, stated in her *Pagsunod sa Utos ng Tribunal na Maghain ng Komerito sa Liham ng COMELEC*<sup>7</sup> that she had no objections to the activities to be conducted by COMELEC, but suggested that all interested parties be informed of the activities to be conducted. The protestee likewise stated that the cost should be borne by the protestant as he initiated the protest.

In its Reply,<sup>8</sup> the COMELEC stated that closure/stripping activities, which involve only the physical dismantling of the 92,509 VCMs, 1,716 CCS laptops, their respective components, and other automated election

<sup>2</sup> *Rollo* (Vol. XXVIII), pp. 21673-21680.

<sup>3</sup> *Id.* at 21674.

<sup>4</sup> *Id.* at 21674-21675.

<sup>5</sup> *Id.* at 21675.

<sup>6</sup> *Id.* at 21675-21676.

<sup>7</sup> *Id.* at 21373-21378.

<sup>8</sup> *Id.* at 21990-21993.

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paraphernalia, is necessary for the COMELEC to comply with its obligations under Articles 6.9 and 6.10 of ABS Contract,<sup>9</sup> which state:

"6.9 All Goods still in the possession of the COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase under this Contract, and the COMELEC shall pay the corresponding price in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, without prejudice to COMELEC requiring the protestant to shoulder the costs".

"6.10 After 01 December 2016, any notice, request or order for the custody and use of the Equipment in any election contest or audit requirement shall be addressed and coursed through the COMELEC, without prejudice to the COMELEC requiring the protestant or requesting party to pay to the PROVIDER the cost of transportation and other related expenses."

The COMELEC also specified the status of the stripping/closure activities and the procedure to be followed for the foregoing items, thus:

*BGAN Antennas.* The COMELEC has completely turned over these items to Smartmatic. The antenna only serves to connect, for purposes of transmitting precinct results; the city/municipal CCS, central server, and transparency server with the VCMs in polling places that do not have regular data telecommunications facilities of PLDT, Smart and Globe. There are no election results data in these items.<sup>10</sup>

*External back-up batteries.* The COMELEC has prepared them for appropriate disposal due to hazards posed by improper storage. These do not contain election results data and the protestant has waived the coverage of the PPO over these items.<sup>11</sup>

*CCS Kits.* These contain printer, toner, unused bond paper, USB Modem and SIM cards, USB Token, and documents inside the kit (BOC PINs, passwords), all of which are considered sold to the COMELEC. There are no election results data, but will remain in the custody of the COMELEC.<sup>12</sup>

*VCM kits.* These contain non-consumable and consumable items. The non-consumable items are the VCM electric power supply and adaptor, USB

<sup>9</sup> *Id.* at 21907-21908.

<sup>10</sup> *Id.* at 21908.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 21909.

modems and SIM cards, headphones, and battery cable, which must be turned over to Smartmatic. These do not contain election results data. The consumable items, on the other hand, are the back-up SD cards, i-Buttons, unused thermal paper rolls, marking pens, and documents contained in the kit are considered sold to COMELEC. Among these consumable items, only the back-up SD cards contain election results data.<sup>13</sup>

According to the COMELEC, the VCMs used in the 2016 elections contain two SD cards – one Main SD card for each VCM, which was detached and is now in the custody of the COMELEC, and one Back-up SD card still mounted to the VCM terminals. Because the VCM terminals will be turned over to Smartmatic, the Back-up SD cards must be detached and turned over to the COMELEC.<sup>14</sup> Since the SD cards will only be physically removed from their slots in the VCMs, the COMELEC assured that there would be no alteration of the information contained therein.<sup>15</sup> Both the Main and Back-up SD cards contain election data/files, audit logs, statistics, ballot images, which may be used by the protestant and the protestee.<sup>16</sup>

Finally, as to the backing-up activity, the COMELEC stated that the activity is merely to collect the statistical data from the SD cards, such as, among others, the number of undervotes per position, the number of abstention per position, and the number of over-votes per position. These data are intended to be used for reference purposes in the next elections, and the COMELEC will make them available to the public for purposes of election research. The COMELEC finds no need to back-up the ballot images as these are already in the two SD cards.<sup>17</sup>

Given the foregoing, We resolve to grant the requests of the COMELEC.

The Tribunal relies on the COMELEC's assurance that the closure and stripping activities involve only the physical dismantling of the election paraphernalia so that their removable components may be tested, properly accounted for, and those components not purchased by the COMELEC may be completely turned over to Smartmatic. The Tribunal also relies on the COMELEC's assurance that the election results data will not be affected by the intended closure/stripping activities.

The Tribunal also gives consideration to the manifestation of the COMELEC that following its AES Contract with Smartmatic, the COMELEC has to return the goods covered by its AES Contract with Smartmatic by December 1, 2016, otherwise, any goods in the possession of

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<sup>13</sup> Id. at 21909-21910.

<sup>14</sup> Id. at 21909.

<sup>15</sup> Id.

<sup>16</sup> Id. at 21911.

<sup>17</sup> Id.

*Yes for the people*

the COMELEC as of December 1, 2016 shall be considered sold to it. This will cost COMELEC P2,017,563,198.44, or a portion thereof.<sup>18</sup>

Given this contractual obligation of the COMELEC, and the COMELEC's explanation as stated in the August 10, 2016 letter and in its Reply, its request for the conduct of closure/stripping activities is hereby granted.

As to the backing-up activities, there appears to be no need for the backing-up of the ballot images as these are already in the two SD cards from the VCMs. The Tribunal therefore approves the backing-up activities as intended by the COMELEC, especially in light of its representations as stated above.

It must be noted that the rights of the protestant and the protestee are safeguarded as there will be a discussion of the procedure to be followed, and they will be allowed to observe and comment during the closure/stripping and backing-up activities.

**IN VIEW OF THE FOREGOING**, the Tribunal resolves to:

- a. **MODIFY** the Precautionary Protection Order such that election materials and paraphernalia used in the May 2016 elections which do not contain election results data, as listed in the letter of the COMELEC dated August 10, 2016, are excluded from the coverage of the PPO;
- b. **APPROVE** the conduct of a preliminary discussion between the COMELEC and the counsel/watchers of the parties and the Tribunal on the protocol and procedures to be observed during the closure/stripping and backing-up activities, including an ocular inspection of the COMELEC's warehouse in Sta. Rosa, Laguna, where said activities will be conducted;
- c. **DIRECT** the COMELEC to allow the parties and representatives of the Tribunal to observe and comment during the conduct of the closure/stripping and backing-up activities;
- d. **AUTHORIZE** the COMELEC and Smartmatic to immediately conduct the 2016 Automated Election System Project closure/stripping activities for all the VCM and CCS Kits, including the immediate disposal of the VCM external batteries, with prior notice to this Tribunal, the protestant and protestee, and other interested parties;

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<sup>18</sup> Id.

*J. B. ...*

- e. **AUTHORIZE** the COMELEC's Election Records and Statistics Department to back-up the contents of the VCM SD Cards of all municipalities, cities, and provinces covered under the PPO;
- f. **CONFIRM** the closure/stripping activities of the BGANs which were conducted prior to the receipt of the PPO; and,
- g. **DIRECT** the COMELEC to inform the Tribunal within a period of ten (10) days from notice of the **ITEMIZED** cost that it may be required to pay should the automated election paraphernalia covered by Article 6.9 of the AES Contract still be in the possession of COMELEC by December 1, 2016 on account of the instant election protest.

The Tribunal **RESERVES** requiring the protestant to pay the cost to be submitted by the COMELEC in accordance with (g) above should he still object to the conduct of the closure/stripping and backing-up activities, which results in COMELEC becoming liable under Article 6.9 of the AES Contract.

The Tribunal further Resolves to

(a) **NOTE** the Manifestation and Compliance (with the resolution dated September 13, 2016), dated October 14, 2016 filed by counsel for protestee Maria Leonor G. Robredo;

(b) **NOTE** and **GRANT** the Letter dated October 17, 2016 of Atty. Liza T. Caintic, Clerk of Court VI, Regional Trial Court, Branch 23, Allen, Northern Samar, transmitting the Order issued by Executive Judge Emerenciana O. Manook, same court, requesting authority to open the ballot boxes and to conduct the revision of ballots used during the May 9, 2016 Elections in the twelve (12) clustered precincts of San Antonio, Northern Samar, which are subject of Election Protest Case No. A-162 entitled 'Marietta Lavin vs. Rudy Baguioso';

(c) **DIRECT** Executive Judge Manook to

(i) **INFORM** the Tribunal, the Commission on Elections (COMELEC), the protestant and the protestee of the schedule of the revision; and

(ii) **ALLOW** the parties to observe the proceedings;

*gfg for the protestant*

(d) **NOTE** and **GRANT** the Manifestation dated October 20, 2016 filed by counsel for protestee Robredo relative to the resolution dated October 11, 2016, informing the Tribunal that the Province of Antique is part of her counter-protest; and stating that, while protestee Robredo does not have any objection to the request for authority by the COMELEC, she would like to be (i) informed of the schedule of the printing of the Initialization Report, Precinct Audit Log Report and Precinct Statistical Report of the Vote Counting Machine (VCM); and (ii) allowed to send her authorized representative/s to the scheduled printing of the said Reports and secure copies thereof at her own expense, should she deem it necessary;

(e) **DENY** the Urgent Manifestation and Motion dated October 21, 2016 filed by counsel for protestant Ferdinand 'Bongbong' R. Marcos, Jr., praying, among others, that the COMELEC be prohibited from releasing the subject VCMs on October 26, 2016; that a preliminary discussion between the COMELEC, the parties and their counsel, watchers, technical teams and other representatives, and this Tribunal, be scheduled for the purpose of setting the protocol in conducting a technical examination of the subject VCMs to determine whether the same were not used during the May 9, 2016 Elections;

(f) **DIRECT** the COMELEC to **INFORM** the Tribunal of the status of the release of the VCMs within ten (10) days from notice hereof;

(g) **NOTE** the Comment (Re: Resolution dated September 20, 2016), dated October 16, 2016 filed by counsel for protestant Marcos, Jr., manifesting that (i) he will not interpose any opposition to the request of Hon. Corpus B. Alzate, Pairing Judge, Regional Trial Court, Branch 58, Bucay, Abra, for the decryption of the secure digital (SD) cards, printing of election returns and decryption of digital ballot images in all the contested precincts in the Municipality of Luba, Abra, in connection with Election Case No. 16-01 and (ii) he has likewise no objection to the request of Atty. Ramon B. Rosello, Election Officer IV, Muntinlupa City, for authority to open the ballot boxes of Clustered Precinct Nos. 229 and 300 and retrieve the main SD cards which were inadvertently deposited therein by the BEI of the said clustered precincts; and requesting that he be allowed to send his representatives to witness the aforesaid undertakings so that he can be assured that the integrity of these election documents will be preserved;



(h) **NOTE** and **GRANT** the Letter dated October 24, 2016 of Levi O. Doronila, ICO-City Treasurer, Office of the City Treasurer, City of Talisay, Province of Negros Occidental, requesting approval of the transfer of the ballot boxes of the City of Talisay to the secured place/office previously occupied by the Community Affairs Office and stating that they will be sending notices to all the political parties concerned, the Parish Pastoral Council for Responsible Voting (PPCRV), COMELEC-Talisay, the parties and their counsel in the electoral protest filed by Sheila Y. Saratan against Mayor Nilo Jesus Antonio Neil E. Lizares III regarding the results of the May 9, 2016 Elections;

(i) **NOTE** the Manifestation dated October 26, 2016 filed by counsel for protestant Marcos, Jr. in compliance with the resolution dated October 11, 2016, stating that he will not file a reply to the Comments and Oppositions (to the Motion to Admit Verification dated September 19, 2016 and the Motion to Strike-Out or Expunge Protestee's Verified Answer dated August 12, 2016) and praying that these pending incidents be immediately resolved on the basis of the pleadings previously submitted by the parties; and further informing the Tribunal that he already furnished the Solicitor General with a copy of protestant's Comment (on the Letter dated August 16, 2016 of Atty. Jose M. Tolentino) by personal service on October 24, 2016;

(j) **NOTE** the Letter dated November 2, 2016 of Commissioner Christian Robert S. Lim, Project Director, 2016-AES Project, reminding the Tribunal that the COMELEC has a contractual obligation with its supplier to return the leased VCMs; that the May 9, 2016 National, Local and ARMM Elections utilized ninety-two thousand five hundred nine (92,509) VCMs, their respective components and other automated elections paraphernalia which the COMELEC procured from Smartmatic-TIM (SMIT); that the Contracts entered into between the COMELEC and SMIT for these machines were in the nature of a lease with option to purchase; that the COMELEC has until December 1, 2016 to turn-over to SMIT those items which the COMELEC has not purchased, segregate them from the other components and retain those items which the COMELEC has purchased, otherwise, those items not turned over to SMIT shall be considered sold to COMELEC; that the COMELEC has categorically resolved that "(it) will not exercise the option to purchase" in COMELEC Resolution No. 9980 dated August 13, 2015 in *"In the Matter of the Lease of the 70,977 units of OMR machines for the 2016*

*M. Rodriguez*

*National & Local Elections*"; and that the perpetuation of the Precautionary Protection Order places the COMELEC in a precarious predicament;

(k) **NOTE** the Manifestation dated November 4, 2016 filed by counsel for protestee Robredo, stating that during the stripping activity for the one thousand three hundred fifty-six (1,356) VCMs on October 26, 2016, several SD cards were found to contain data; that protestee Robredo sought the decryption of the said SD cards so as to be fully informed of the contents thereof; and that there was no intention to pre-empt whatsoever any order and/or resolution that the Tribunal may later on issue with respect to this matter; and

(l) **DIRECT** the COMELEC to **INFORM** the Tribunal, within ten (10) days from notice hereof, of (i) what transpired during the stripping of the 1,356 VCMs on October 26, 2016 and (ii) the status of protestee's request for decryption." Velasco, Jr., J., on official leave. (adv1)

Very truly yours,



**FELIPA B. ANAMA**

Clerk of the Tribunal <sup>REG-144</sup>

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