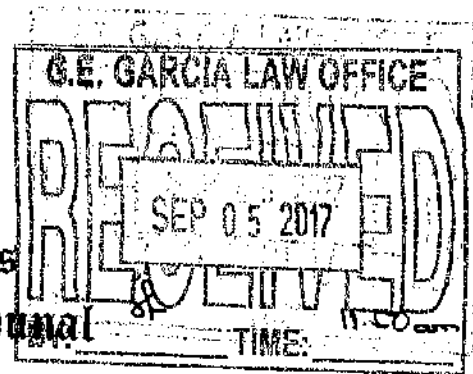




Republic of the Philippines
Presidential Electoral Tribunal
Manila



NOTICE

Sirs/Mesdames:

Please take notice that the Tribunal issued a Resolution dated AUGUST 29, 2017, 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

During the Preliminary Conference held on July 11, 2017 at 2:30 p.m., the Tribunal, for clarity, and with protestant's agreement, categorized protestant's causes of action into the following:

First Cause of Action - Annulment of Proclamation

The proclamation of protestee Robredo as the duly elected Vice President is null and void because the Certificates of Canvass (COCs) generated by the Consolidation and Canvass System (CCS) are not authentic, and may not be used as basis to determine the number of votes that the candidates for Vice President received.

Second Cause of Action - Revision and Recount

Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and voters registration records (VRRs), the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the Vote Counting Machines (VCMs), CCS units, Secure Digital (SD) cards (main and backup), and the other data storage devices

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containing electronic data and ballot images in ALL of the thirty-six thousand four hundred sixty-five (36,465) protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and

Third Cause of Action - Annulment of Elections

Annulment of election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur and Basilan, on the ground of terrorism, intimidation and harassment of voters as well as pre-shading of ballots in all of the two thousand seven hundred fifty-six (2,756) protested clustered precincts that functioned in the aforesaid areas.

During the Preliminary Conference, lead counsel for protestant, Atty. George Erwin Garcia, was asked clarificatory questions regarding the different causes of action put forth in the protest.

In the First Cause of Action, protestant seeks to annul the proclamation of protestee as Vice President. Protestant alleges that the COCs generated by the CCS are "unauthentic" due to several violations of Republic Act No. 8436 or the Automated Election System (AES) Law which rendered the whole automated election system unreliable, and consequently, the election results as well.

In this regard, Atty. Garcia candidly admitted that even if protestant would be successful in proving the First Cause of Action, this would not mean that protestant would already have proven to be entitled to be proclaimed as Vice President, as there would now be a need to do a manual recount of all the votes to ascertain who obtained the highest votes for the position of Vice President. However, when asked whether the manual recount would, in fact, be expanded to include all precincts in the entire Philippines, on the assumption that protestant is able to prove the allegations for the First Cause of Action, Atty. Garcia answered in the negative. He categorically emphasized that protestant would still limit the request for collection, revision, and manual recount of the ballots to only the 39,221 clustered precincts mentioned in the Second and Third Causes of Action.¹

Among the purposes of conducting a preliminary conference are the simplification of issues and consideration of such other matters which may aid in the prompt disposition of the election protest, with the end in view that proceedings may be expedited.² This being the case, the Tribunal is now called upon to dismiss, as it hereby dismisses, the First Cause of Action as

¹ Transcript of Stenographic Notes of the Preliminary Conference held on July 11, 2017 (TSN), pp. 11-12.

² 2010 PET RULES, Rule 29(a)(2) and (5).

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the relief prayed for is meaningless and pointless. Even as protestant avers in the First Cause of Action that the automated election system used in the 2016 National and Local Elections was unreliable rendering the COCs null and void, he, however, does not seek the manual recount of all the votes in all the precincts — which is necessary in order to determine who won the post of Vice President.

Stated otherwise, even if protestant succeeds in proving his First Cause of Action, this will not mean that he has already won the position of Vice President as this can only be determined by a manual recount of all votes in all precincts. And if this is a relief protestant has clearly stated he is not praying for, then, allowing the First Cause of Action to continue would be an exercise in futility and would have no practical effect. To be sure, the Tribunal cannot allow this exercise to even begin especially if it were to consider the amount of resources and time it will demand from the Tribunal.

Thus, the First Cause of Action may be dispensed with for judicial economy and for the prompt disposition of this case. Judicial economy refers to “efficiency in the operation of the courts and the judicial system; especially the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary’s time and resources.”³ This would also do away with the question of whether or not the Commission on Elections (COMELEC) should be impleaded as a party, being the government body mandated with the conduct of clean, fair, and honest elections. As well, this dispenses with the need to determine if the other nationally and locally elected officials who won in the 2016 elections would need to be impleaded as indispensable parties.

As admitted by Atty. Garcia during the preliminary conference, the First Cause of Action is merely “complementary” to the Second and Third Causes of Action.⁴ How this is so has not been adequately explained by Atty. Garcia. More importantly, however, it should be noted that the Second Cause of Action requires the revision or manual recount of the actual ballots to determine the votes cast; whereas the Third Cause of Action primarily requires the presentation of evidence *aliunde*. **In other words, both these causes of action remain intact independent of the First Cause of Action.** Thus, the Tribunal is left with no option but to already dismiss the First Cause of Action as indeed, this will not prevent the Protest from continuing because protestant can still prove his case through the Second and Third Causes of Action.

The causes of action for the Protest are now limited to the Second and Third Causes of Action as mentioned above.

³ *Ren Transport Corp. v. National Labor Relations Commission (2nd Division)*, G.R. Nos. 188020 & 188252, June 27, 2016, 794 SCRA 498, 509, citing Black’s Law Dictionary, Eighth edition, p. 863.

⁴ TSN, p. 10.

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I.
PRELIMINARY CONFERENCE ORDER

To expedite the conduct of the preliminary conference, the parties were given copies of Preliminary Conference Guides (PC Guides) numbered one (1) to eight (8) which consolidated and summarized the parties' respective preliminary conference briefs:

PC Guide 1	Common Admissions
PC Guide 2	Protestant's Admissions
PC Guide 3	Protestee's Admissions
PC Guide 4	Protestant's Proposals for Stipulations
PC Guide 5	Protestee's Proposals for Stipulations
PC Guide 6	Proposed Issues
PC Guide 7	Proposed Witnesses
PC Guide 8	Preliminary Conference Brief for Counter Protest

Both lead counsels for protestant and protestee, Atty. Garcia and Atty. Romulo B. Macalintal, respectively, requested time to study the PC Guides and submit their comments thereto.⁵ Granting their request, the Tribunal directed the parties to submit their comments within five (5) working days from the date of the preliminary conference or until July 18, 2017.⁶

In compliance with the foregoing directive, both parties filed, on July 18, 2017, their respective Comments on the PC Guides.⁷ Hence, this Preliminary Conference Order.

PROTEST

I. Admissions

A. Common Admissions

Protestant and protestee jointly admit the following:

1. Protestant and protestee were candidates for Vice President during the May 9, 2016 National and Local Elections, having filed their respective Certificates of Candidacy.⁸

2. The Joint Committee on the Canvass of Votes for the Presidential and Vice-Presidential Candidates (Joint

⁵ Id. at 40-43.

⁶ See id.

⁷ *Rollo* (Vol. XXXII), pp. 24089-24155 for protestee (inclusive of Annexes); id. at 24324-24341 for protestant.

⁸ *Rollo* (Vol. XXXI), pp. 23413-23414, 23563.

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Committee) canvassed a total of one hundred sixty-seven (167) COCs wherein:

(a) One hundred twenty-three (123) were electronically transmitted;

(b) Forty-two (42) were physically delivered to the Senate of the Philippines;

(c) The COC for Taiwan was included in the special electoral diplomatic pouch from the People's Republic of China; and

(d) The COC for Russia was delivered to the House of Representatives after the Joint Committee has already convened.⁹

3. On the first day of canvassing, canvass of three (3) COCs from Laguna, Ilocos Sur and Davao del Norte was deferred due to multiple transmissions of results, including Pre-Logic and Accuracy Test (Pre-LAT) results.¹⁰

4. The COCs from the Province of Davao del Sur, Kingdom of Bahrain and Malaysia were canvassed, despite the multiple electronic transmissions of COCs from Davao del Sur and the lack of physically delivered COCs from Bahrain and Malaysia.¹¹

5. The canvass of the four (4) COCs from the Province of Antique, State of Kuwait, Iloilo City, and Canada was deferred for the following reasons:

a) Antique – The Provincial Board of Canvassers (PBOC) was ordered to appear and explain the discrepancy between the electronically transmitted COCs vis-à-vis the manually counted/physically delivered COCs;

b) State of Kuwait – COMELEC was required to submit a written explanation for the absence of the special diplomatic electoral pouch containing the COC;

⁹ Id. at 23414-23415, 23564.

¹⁰ Id. at 23415, 23564.

¹¹ Id.

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c) Iloilo City – The City Board of Canvassers (CBOC) was required to personally deliver the manually counted COC which could not be found inside the ballot box; and

d) Canada – the COMELEC was required to submit a written explanation for the absence of the special diplomatic electoral pouch containing the COC.¹²

6. Based on the canvass of the COCs of the National Board of Canvassers (NBOC) and the Report of the Joint National Committee and the Resolution of Both Houses No. 1, the parties received the following votes:¹³

Maria Leonor G. Robredo	14,418,817
Ferdinand R. Marcos, Jr.	14,155,344

7. On May 30, 2016, protestee was proclaimed as the winning candidate for Vice President by the NBOC.¹⁴

B. Protestant's Admissions

Protestant adopted the following admissions as expressed in his Preliminary Conference Brief ("Brief") and reflected in PC Guide 2:

1. Jurisdiction of the Tribunal.¹⁵
2. Personal circumstances of protestee.¹⁶

3. The Joint Committee, having been informed by the COMELEC of the discrepancies in the electronically transmitted COCs from Lanao del Sur and Northern Samar, issued *subpoenas ad testificandum* to the Chairpersons of the PBOC of these provinces, to appear before the Joint Committee on May 27, 2016 and explain the discrepancies.¹⁷

4. That protestant filed an Election Protest on June 29, 2016.¹⁸

C. Protestee's Admissions

¹² Id at 23416, 23564-23565.

¹³ *Id.* at 23417, 23565.

¹⁴ *Id.* at 23418, 23566.

15 *Id.* at 23563.

16 *Id.*

¹⁷ *Id.* at 23565.

18 *Id.* at 23566.

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Protestee adopted the following admissions as expressed in her Brief and reflected in PC Guide 3:

1. The Joint Committee convened on May 25, 2016.¹⁹
2. The Joint Committee held three (3) meetings where the COMELEC was required to be present to assist the former in its mandate to determine the authenticity and due execution of the COCs.²⁰
3. During the canvassing, candidates were represented by their counsels.²¹
4. The counsels of the candidates were afforded the opportunity to examine the COCs.²²
5. The counsels of the candidates were afforded the opportunity to register their objections/manifestations.²³
6. On the first day, forty-eight (48) COCs were considered for canvass, but only forty-five (45) COCs were actually canvassed.²⁴
7. On the second day, a total of seventy-three (73) COCs were considered for canvass but only sixty-nine (69) were canvassed, which included the COCs for the Provinces of Laguna, Ilocos Sur and Davao del Norte after the concerned PBOC Chairpersons appeared and explained the discrepancies between the electronically transmitted COCs vis-à-vis those physically delivered.²⁵
8. For the Kingdom of Bahrain and Canada, Director Maria Juana Valeza, Office for the Overseas Absentee Voting, COMELEC submitted the written explanation for the absence of the physically delivered COCs.²⁶
9. The special electronic diplomatic pouch from the People's Republic of China also contained the manually counted COC for Taiwan but both COCs were nonetheless

¹⁹ Id. at 23414.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 23415.

²⁵ Id.

²⁶ Id.

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canvassed after finding both to be authentic and duly executed.²⁷

10. After being informed of the discrepancies in the electronically transmitted COCs from the Provinces of Lanao del Sur and Northern Samar, the Chairpersons of the PBOC were ordered to appear and explain to the Joint Committee.²⁸

11. On the third day, a total of fifty-three (53) COCs were considered for canvass.²⁹

12. After finding the explanation of the PBOC, CBOC, and Director for Office of Overseas Absentee Voting of the COMELEC satisfactory, the COCs for the Province of Antique, Iloilo City, State of Kuwait and Canada were canvassed.³⁰

13. Based on the canvass of the COCs, the candidates for Vice President received the following votes:

Cayetano, Allan Peter S.	5,903,379
Escudero, Francis Joseph	4,931,962
Honasan, Gregorio II B.	788,881
Marcos, Ferdinand Jr. R.	14,155,344
Robredo, Maria Leonor G.	14,418,817
Trillanes, Antonio IV F.	868,501 ³¹

14. As a consequence thereof, the Joint Committee recommended that Congress, in joint public session and acting as the NBOC, approve and adopt the Report of the Joint Committee and the Resolution of Both Houses No. 1 entitled *"Resolution Approving the Report of the Joint Committee Declaring the Results of the National Elections held on May 9, 2016 for the Office of the President and Vice-President and proclaiming **RODRIGO ROA DUTERTE** and **MARIA LEONOR GERONA-ROBREDO** as the duly elected President and Vice-President[, respectively.] of the Republic of the Philippines."*³²

15. For the May 9, 2016 National and Local Elections, a total of thirty-nine thousand two hundred twenty-one (39,221) clustered precincts functioned in the following protested areas:

²⁷ Id.
²⁸ Id. at 23416-23417.
²⁹ Id. at 23417.
³⁰ Id.
³¹ Id.
³² Id. at 23417-23418.

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PROVINCE	TOTAL CLUSTERED PRECINCTS
Lanao del Sur	1,251
Maguindanao	1,083
Basilan	422
Cebu Province	2,968
Leyte	2,305
Negros Occidental	2,164
Negros Oriental	1,284
Masbate	867
Zamboanga del Sur	1,053
Zamboanga del Norte	1,099
Bukidnon	1,244
Iloilo Province	2,318
Bohol	1,546
Quezon	2,095
Batangas	2,499
Western Samar	1,165
Misamis Oriental	934
Camarines Sur	1,816
Second District, Northern Samar	384
Palawan	1,007
Albay	1,312
Zamboanga Sibugay	641
Misamis Occidental	707
Pangasinan	2,842
Isabela	1,678
Iloilo City	430
Bacolod City	392
Cebu City	837
Lapu-Lapu City	261
Zamboanga City	617 ³³

16. Based on the Provincial Certificates of Canvass, the parties received the following votes:

PROVINCE	ROBREDO	MARCOS
Lanao del Sur	180,539	56,243
Maguindanao	220,125	80,591
Basilan	77,321	32,326
Cebu Province	590,777	196,943
Leyte	241,960	406,815
Negros Occidental	614,440	119,149

³³ Id. at 23418-23420.

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Negros Oriental	255,598	66,506
Masbate	169,297	47,220
Zamboanga del Sur	100,188	145,455
Zamboanga del Norte	209,491	72,255
Bukidnon	218,585	131,468
Iloilo Province	573,729	94,411
Bohol	272,649	79,514
Quezon	385,164	173,394
Batangas	514,608	261,499
Western Samar	132,775	128,401
Misamis Oriental	147,884	102,911
Camarines Sur	664,190	21,219 ³⁴
Second District, Northern Samar	111,461	73,214
Palawan	183,384	93,647
Albay	380,745	42,324
Zamboanga Sibugay	101,141	42,336
Misamis Occidental	143,402	36,912
Pangasinan	265,016	832,711
Isabela	88,317	516,926 ³⁵

17. Based on the Project of Precincts, protestee is assailing, impugning and contesting the results of the elections in seven thousand five hundred forty-seven (7,547) clustered precincts which functioned in the following provinces:

PROVINCE	TOTAL CLUSTERED PRECINCTS
APAYAO	
Municipality of Calanasan	20
Municipality of Conner	29
Municipality of Flora	19
Municipality of Kabugao	27
Municipality of Luna	23
Municipality of Pudtol	22
Municipality of Santa Marcela	14
TOTAL	154
MOUNTAIN PROVINCE	
Municipality of Barlig	11
Municipality of Bauko	44
Municipality of Besao	17

³⁴ The figure should be 41,219, per Protestant's Comment to the PC Guides, p. 2; rollo (Vol. XXXII); p. 24325.

³⁵ Rollo (Vol. XXXI), pp. 23420-23421.

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Municipality of Bontoc	29
Municipality of Nantonin	16
Municipality of Paracelis	43
Municipality of Sabangan	19
Municipality of Sadanga	10
Municipality of Sagada	23
Municipality of Tadian	25
TOTAL	237
ABRA	
Municipality of Bangued	47
Municipality of Boliney	9
Municipality of Bucay	24
Municipality of Bucloc	4
Municipality of Daguioman	4
Municipality of Danglas	7
Municipality of Dolores	17
Municipality of La Paz	17
Municipality of Lacub	9
Municipality of Lagayan	6
Municipality of Lagangilang	21
Municipality of Langiden	6
Municipality of Licuan-Baay (Licuan)	11
Municipality of Luba	12
Municipality of Malibcong	12
Municipality of Manabo	14
Municipality of Penarrubia	9
Municipality of Pidigan	16
Municipality of Pilar	20
Municipality of Sallapadan	10
Municipality of San Isidro	9
Municipality of San Juan	19
Municipality of San Quintin	7
Municipality of Tayum	16
Municipality of Tineg	13
Municipality of Tubo	12
Municipality of Villaciosa	9
TOTAL	360
KALINGA	
Municipality of Balbalan	28
Municipality of Lubuagan	17
Municipality of Pasil	16
Municipality of Pinukpuk	36
Municipality of Rizal (Liwan)	22
City of Tabuk	106
Municipality of Tanudan	22

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Municipality of Tinglayan	20
TOTAL	267
BATAAN	
Municipality of Abucay	39
Municipality of Bagac	36
City of Balanga	99
Municipality of Dinalupihan	104
Municipality of Hermosa	62
Municipality of Limay	71
Municipality of Mariveles	112
Municipality of Morong	30
Municipality of Orani	72
Municipality of Orion	60
Municipality of Pilar	47
Municipality of Samal	41
TOTAL	773
CAPIZ	
Municipality of Cuartero	31
Municipality of Dao	35
Municipality of Dumalag	39
Municipality of Dumarao	49
Municipality of Ivisan	31
Municipality of Jamindan	42
Municipality of Ma-ayon	45
Municipality of Mambusao	45
Municipality of Panay	58
Municipality of Panitan	39
Municipality of Pilar	43
Municipality of Pontevedra	47
Municipality of President Roxas	34
City of Roxas	153
Municipality of Sapi-An	27
Municipality of Sigma	35
Municipality of Tapaz	68
TOTAL	821
AKLAN	
Municipality of Altavas	29
Municipality of Batan	40
Municipality of Balete	26
Municipality of Banga	49
Municipality of Buruanga	21
Municipality of Ibayay	52
Municipality of Kalibo	67
Municipality of Lezo	17
Municipality of Libacao	33

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Municipality of Madalag	27
Municipality of Makato	30
Municipality of Malay	53
Municipality of Malinao	29
Municipality of Nabas	33
Municipality of New Washington	41
Municipality of Numancia	34
Municipality of Tangalan	25
TOTAL	606
ANTIQUE	
Municipality of Anini-y	24
Municipality of Barbaza	43
Municipality of Belison	16
Municipality of Bugasong	37
Municipality of Caluya	34
Municipality of Culasi	55
Municipality of Hamtic	58
Municipality of Laua-an	46
Municipality of Libertad	21
Municipality of Pandan	45
Municipality of Patnongon	47
Municipality of San Jose	54
Municipality of San Remigio	48
Municipality of Sebaste	20
Municipality of Sibalom	84
Municipality of Tibiao	31
Municipality of Tobias Fornier (Dao)	52
Municipality of Valderrama	27
TOTAL	742
SARANGGANI	
Municipality of Alabel	71
Municipality of Glan	102
Municipality of Kiamba	56
Municipality of Maasim	53
Municipality of Maitum	55
Municipality of Malapatan	55
Municipality of Malungon	103
TOTAL	495
SULU	
Municipality of Hadji Panglima Tahil (Marunggas)	8
Municipality of Indanan	55
Municipality of Jolo	64
Municipality of Kalingan	22

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Caluang	
Municipality of Lugus	25
Municipality of Luuk	33
Municipality of Maimbung	49
Municipality of Omar	21
Municipality of Old Panamao	37
Municipality of Pandami	23
Municipality of Panglima Estino	17
Municipality of Pangutaran	28
Municipality of Parang	47
Municipality of Pata	15
Municipality of Patikul	50
Municipality of Siasi	58
Municipality of Talipao	53
Municipality of Tapul	19
Municipality of Tongkil	20
TOTAL	644
SULTAN KUDARAT	
Municipality of Bagumbayan	65
Municipality of Columbio	30
Municipality of Esperanza	51
Municipality of Isulan	78
Municipality of Kalamansig	41
Municipality of Lambayong (Mariano Marcos)	60
Municipality of Lebak	74
Municipality of Lutayan	50
Municipality of Palimbang	57
Municipality of President Quirino	38
Municipality of Sen Ninoy Aquino	44
City of Tacurong	76
TOTAL	664
SOUTH COTABATO	
Municipality of Banga	70
City of General Santos (Dadiangas)	363
City of Koronadal	141
Municipality of Lake Sebu	59
Municipality of Norala	40
Municipality of Polomok	130
Municipality of Santo Nino	35
Municipality of Surallah	73
Municipality of Tampakan	37

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Municipality of Tandingan	37
Municipality of T'boli	78
Municipality of Tupi	64
TOTAL	1127
NORTH COTABATO	
Municipality of Alamada	53
Municipality of Aleosan	33
Municipality of Antipas	25
Municipality of Arakan	47
Municipality of Banisilan	39
Municipality of Carmen	58
Municipality of Kabakan	71
City of Kidapawan	119
Municipality of Libungan	46
Municipality of Magpet	53
Municipality of Makilala	76
Municipality of Matalam	77
Municipality of Midsayap	123
Municipality of M'lang	84
Municipality of Pigkawayan	57
Municipality of Pikit	87
Municipality of President Roxas	50
Municipality of Tulunan	54
TOTAL	1152³⁶

18. Based on the Provincial COCs, the parties received the following votes:³⁷

PROVINCE	MARCOS	ROBREDO
Apayao	40846	2762
Abra	112734 ³⁸	5457
Mountain Province	34286	17653
Kalinga	64023	11636
Bataan	184760 ³⁹	84241
Capiz	43684	253110 ⁴⁰
Aklan	51395	148280
Antique	44640 ⁴¹	118960 ⁴²

³⁶ Id. at 23421-23432.

³⁷ Id. at 23432-23433.

³⁸ The figure should be 112,694, per Protestant's Comment to the PC Guides, p. 2; *rollo* (Vol. XXXII), p. 24325.

³⁹ The figure should be 184,670, id; id.

⁴⁰ The figure should be 253,290, id; id.

⁴¹ The figure should be 44,663, id; id.

⁴² The figure should be 119,055, id.; id.

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Saranggani	66484	47803
Sulu	127437	46218
Sultan Kudarat	104592	84225
South Cotabato	191461	176766 ⁴³
North Cotabato	169109 ⁴⁴	128896 ⁴⁵
TOTAL	1235451	1126007

II. *Stipulations*

A. Protestant's stipulations admitted by protestee

1. That by a vote of 7-0 the COMELEC decided not to implement the Voter Verified Paper Audit Trail (VVPAT) function of the 2016 elections.⁴⁶

2. The existence of COMELEC Resolution No. 10103⁴⁷ dated April 26, 2016 and COMELEC Resolution No. 10114⁴⁸ dated May 3, 2016.

3. That Resolution No. 10101 provides for Contingency Procedures for the 2016 Elections.⁴⁹

4. The existence and issuance by SLI Global Solutions of the Final Certification Test Report dated April 14, 2016 which is attached as Annex "FF" of the Election Protest.⁵⁰

B. Protestee's stipulations admitted by protestant

1. The existence and issuance of TEC Resolution No. 2016-001 dated April 30, 2016 since this is a common exhibit⁵¹;

2. The existence and issuance by the SLI Global Solutions of the Final Certification Test Report dated April 14, 2016 since this is a common exhibit⁵²;

3. The transparency server is located in Pope Pius XII Center, Manila;⁵³

⁴³ The figure should be 177,396, id.; id.

⁴⁴ The figure should be 169,177, id.; id.

⁴⁵ The figure should be 129,141, id.; id.

⁴⁶ *Rollo* (Vol. XXXII), p. 24097.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 24098.

⁵⁰ Id.

⁵¹ Id. at 24326.

⁵² Id.

⁵³ Id.

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4. The Province of Lanao del Sur is composed of thirty-nine (39) municipalities and one (1) city;⁵⁴

5. Based on the Project of Precincts for the May 9, 2016 National and Local Elections, the Province of Lanao del Sur had a total of four hundred eighty-four thousand four hundred thirty-five (484,435) registered voters;⁵⁵

6. A total of four hundred twenty-one thousand fifty-seven (421,057) registered voters actually voted based on the Provincial Certificate of Canvass;⁵⁶

7. The Province of Maguindanao is composed of thirty-six (36) municipalities;⁵⁷

8. Based on the Project of Precincts for the May 9, 2016 National and Local Elections, the Province of Maguindanao had a total of six hundred thirty-four thousand three hundred twenty-three (634,323) registered voters and not five hundred thirty thousand seven hundred ninety-three (530,793) registered voters as reflected in protestee's Preliminary Conference Brief dated June 16, 2017 and PC Guide No. 5;⁵⁸

9. A total of four hundred ninety-six thousand three hundred nineteen (496,319) registered voters actually voted based on the Provincial COC of Maguindanao and not five hundred thirty thousand seven hundred ninety-three (530,793) actual voters as reflected in protestee's Preliminary Conference Brief dated June 16, 2017 and PC Guide No. 5;⁵⁹

10. The Province of Basilan is composed of eleven (11) municipalities and two (2) cities and not one (1) city as reflected in protestee's Brief and PC Guide No. 5;⁶⁰

11. Based on the Project of Precincts for the May 9, 2016 National and Local Elections, the Province of Basilan had a total of two hundred thirty-six thousand fifty (236,050) registered voters and four hundred twenty-two (422) clustered precincts which functioned;⁶¹

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id. at 24326-24327.

⁶⁰ Id. at 24327.

⁶¹ Id.

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12. A total of one hundred ninety thousand seven hundred four (190,704) registered voters actually voted in the Province of Basilan based on the Provincial COC.⁶²

III. Issues

Protestant and protestee adopted the issues enumerated in PC Guide 6. However, in view of the dismissal of the First Cause of Action and the denial of protestee's Motion for Reconsideration, *Pro Tanto*, with Prayer to Set for Hearing dated February 24, 2017 (Motion for Reconsideration) as this will be discussed below, the issues are limited to the following:

A. For protestant

Second and Third Causes of Action - Judicial Recount and Revision and Annulment of Election Results

1. Whether there existed massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, intimidation, pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant, malfunctioning VCM, and abnormally high unaccounted votes/undervotes for the position of Vice President, that compromised and corrupted the conduct of the elections and the election results for the position of Vice President in the protested precincts;⁶³
2. Whether the election results in the provinces of Lanao del Sur, Basilan and Maguindanao should be annulled due to widespread terrorism, violence, force, threats, intimidation, pre-shading of ballots, and substitution of voters thereat;⁶⁴ and
3. Whether protestant should be proclaimed as the duly elected and rightful Vice President of the Republic of the Philippines for having obtained the highest number of valid votes cast for the said office during the May 9, 2016 National and Local Elections.⁶⁵

⁶² Id.

⁶³ *Rollo* (Vol. XXXI), p. 23578.

⁶⁴ Id.

⁶⁵ Id.

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B. For Protestee

Second Cause of Action (Judicial Recount of Ballots)

1. Whether the “protest all the clustered precincts” type of election protest, contesting ALL the clustered precincts of the Provinces of Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga del Sur, Zamboanga del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabel, Lanao del Sur, Maguindanao and Basilan and the highly urbanized cities of Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City and Zamboanga City, is a petition to declare a failure of election and hence beyond the jurisdiction of the Tribunal; or in alternative:
 - a. Whether the recount, revision and re-appreciation of the ballots will confirm the victory of protestee as the winning candidate for Vice President;
 - b. Whether the alleged electoral frauds, anomalies and irregularities affected the results of the elections for Vice President during the May 9, 2016 National and Local Elections;
 - c. Whether undervotes or overvotes are valid votes that could be a ground to contest the results of the elections; or, whether the presence of undervotes or overvotes are badges or signs of electoral frauds, anomalies and irregularities;
 - d. Whether the alleged unaccounted votes contain valid votes for protestant;
 - e. Whether there is a discrepancy in the voter’s receipt vis-à-vis the votes contained in the official ballots; and
 - f. Whether there is a discrepancy in the voter’s receipt vis-à-vis the votes received by the parties.⁶⁶

⁶⁶ Id. at 23465-23466.

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Third Cause of Action (Annulment of the Results of the Elections)

1. Whether there is sufficient evidence to support the protest for annulment of elections.
 - a. Whether more than fifty percent (50%) of the votes cast in the Province of Lanao del Sur were affected by the alleged electoral frauds, anomalies and irregularities.
 - b. Whether more than fifty percent (50%) of the votes cast in the Province of Maguindanao were affected by the alleged electoral frauds, anomalies and irregularities.
 - c. Whether more than fifty percent (50%) of the votes cast in the Province of Basilan were affected by the alleged electoral frauds, anomalies and irregularities.⁶⁷

IV. Witnesses

A. For protestant

The parties, during the Preliminary Conference, were directed to limit their number of witnesses for the Second and Third Causes of Action to three (3) witnesses per clustered precinct and to submit a new list of witnesses in compliance thereto. They were likewise directed to specify in the list the corresponding precinct per witness. However, to date, protestant has yet to submit such list in compliance with the Tribunal's directive.

In his Comment (to the Preliminary Conference Guides),⁶⁸ as to the Third Cause of Action, protestant reiterated his reservation for the presentation of handwriting, technology, and other technical experts, and forensic investigators as additional witnesses to testify on the result of the technical examination and forensic investigation of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the EDCVL, and VRRs, the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCMs, CCS units, SD cards (main and back-up), and other data storage devices containing electronic data and ballot images in each of the two thousand seven hundred fifty-six (2,756) protested clustered

⁶⁷ Id. at 23464.

⁶⁸ Rollo (Vol. XXXII), pp. 24324-24341.

Maguindanao

precincts of Lanao del Sur, Maguindanao and Basilan that functioned during the May 9, 2016 National and Local Elections.⁶⁹

Protestant also reserved the presentation of three (3) registered voters and/or members of the Board of Election Inspectors to identify paper ballots and/or ballot images, voter's receipts, and signatures on the lists of voters, particularly the EDCVL, VRRs, and the books of voters used during the May 9, 2016 National and Local Elections in each of the two thousand seven hundred fifty-six (2,756) protested clustered precincts of Lanao del Sur, Maguindanao and Basilan during said elections.⁷⁰

Protestant further stated that he intends to file a formal request for the issuance of *subpoenas ad testificandum* (and *subpoenas duces tecum*, if necessary) to secure the appearance of the above-mentioned witnesses for the purpose of executing their respective judicial affidavits and their attendance during the trial of this Protest.⁷¹

For the Second Cause of Action, protestant maintains his position that he will no longer present any testimonial evidence to prove the material allegations in so far as the thirty-six thousand four hundred sixty-five (36,465) protested clustered precincts which functioned in the following protested areas of Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga del Sur, Zamboanga del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City are concerned.⁷²

In view of protestant's clear and unequivocal declaration that he will no longer present any testimonial evidence on his Second Cause of Action,⁷³ the Tribunal reiterates its directive to protestant to submit a new list of witnesses **for the Third Cause of Action** by limiting the number of witnesses to three (3) per clustered precinct, and already identifying the concerned clustered precinct, within a non-extendible period of five (5) days from receipt hereof. **Protestant's failure to do so will be deemed a waiver of his right to name and identify his witnesses, and to present them during the reception of evidence.**

B. For protestee

⁶⁹ Id. at 24328.

⁷⁰ Id. at 24328-24329.

⁷¹ Id. at 24329.

⁷² Id.

⁷³ Id.

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In compliance with the Order of the Tribunal, protestee submitted a new list of witnesses attached hereto as Annex A, and made an integral part of this Preliminary Conference Order.

V. Pilot Provinces

The pilot provinces for the protest are: Camarines Sur, Iloilo, and Negros Oriental.⁷⁴

COUNTER-PROTEST

Protestee manifested that she has no further comments to PC Guide 8 which summarized her Counter-Protest.

A. Proposed issues for Counter-Protest

Whether counter-protestee, his supporters and cohorts committed massive electoral frauds, anomalies and irregularities during the May 9, 2016 National and Local Elections in the counter-protested clustered precincts.

1. Whether counter-protestant, in view of the massive electoral frauds, anomalies and irregularities in the counter-protested precincts, should have garnered more votes.
2. Whether counter-protestant should have been credited with more votes had the VCMs not misread, miscounted and misappreciated the reading of the ballots in the counter-protested precincts.
3. Whether the revision, recount and re-appreciation of the ballots from the counter-protested clustered precincts will show a systematic decrease in the votes received by counter-protestant.
4. Whether the proclamation of counter-protestant as the winning candidate for Vice President during the May 9, 2016 National and Local Elections should be affirmed.⁷⁵

B. Witnesses

⁷⁴ *Rollo* (Vol. XXXI), p. 23636.

⁷⁵ *Id.* at 23466.

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In compliance with the directive of the Tribunal, counter-protestant submitted the new list of witnesses attached hereto as Annex B.

C. Pilot Provinces

The pilot provinces for the Counter-Protest are: Capiz, Sulu, and North Cotabato.⁷⁶

D. Counter-protestee's comment to Counter-Protest

Counter-protestee affirms that there are no admissions pertaining to the Counter-Protest.⁷⁷

Counter-protestee denies counter-protestant's proposed stipulations for the Counter-Protest.⁷⁸

Counter-protestee acknowledges the proposed issues and proposed witnesses of the counter-protestant in connection with the Counter-Protest.⁷⁹

II. PENDING INCIDENTS

The Tribunal now resolves the following pending incidents:

A. Motion for Reconsideration

In the Resolution dated January 24, 2017, the Tribunal denied protestee's motion to set a preliminary hearing on her special and affirmative defenses.⁸⁰

On February 27, 2017, protestee filed her Motion for Reconsideration,⁸¹ claiming that the Tribunal erred in finding the Protest sufficient in form and substance.

On March 27, 2017, protestant filed his "Comment/Opposition [To the Motion for Reconsideration, *Pro Tanto* with Prayer to Set for Hearing dated 24 February 2017]," in compliance with the Resolution dated March 7, 2017 requiring the same.

⁷⁶ Id. at 23556.

⁷⁷ *Rollo* (Vol. XXXII), p. 24335.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ *Rollo* (Vol. XXIX), pp. 22459-D-22459-F.

⁸¹ Id. at 22674-22698.

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Thereafter, on April 11, 2017, protestee filed a "Reply to Protestant's Comment/Opposition."

On July 5, 2017, protestee filed a "Motion for Leave of Court to File and Admit Supplement to the Motion for Reconsideration *Pro Tanto*" dated June 28, 2017, reiterating her prayer for the dismissal of the Protest.

In the Resolution dated June 6, 2017, the Tribunal deferred action on the Motion for Reconsideration.

In fine, protestee claims that the Tribunal erred in finding the Protest sufficient in form and substance. Allegedly, protestant failed to comply with the "strict requirement" of Rule 17(C)(d) of the 2010 PET Rules requiring "a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts" in election protests.⁸² More specifically, protestee argues that the Protest did not contain ultimate facts of alleged irregularities or anomalies for the entire protested provinces and cities, which rendered the same defective and, therefore, dismissible. Protestee likewise insists that the Protest should "mathematically demonstrate" how protestant can overcome the vote-lead of protestee and that it should allege what specific acts were committed in a specific precinct that would justify the recovery or exclusion of a ballot in his favor.⁸³ Protestee further posits that the Rule 17(C)(d) requirement is a new provision and therefore protestant's reliance in his Comment/Opposition on cases decided prior to the 2010 PET Rules was erroneous.⁸⁴

In view of the foregoing, protestee prays for a partial dismissal of the Protest with respect to the cities or municipalities where protestant failed to include specific allegations or narrations of ultimate facts on poll irregularities and anomalies or those with no accompanying affidavits. Meanwhile, for those with supporting affidavits, protestee prays that protestant be directed to specifically identify the clustered precincts where the alleged poll irregularities occurred, and depending upon the nature of the irregularity, the affected clustered precincts could properly be the subject of either annulment of election results or revision of ballots.⁸⁵

After careful examination of the issues raised by the parties in their submissions, the Tribunal resolves to DENY the Motion for Reconsideration for lack of merit.

The Tribunal is guided by its previous ruling in *Roxas v. Binay*.⁸⁶ In

⁸² *Rollo* (Vol. XXX), p. 22992.

⁸³ *Id.* at 22997.

⁸⁴ *Id.* at 22992-22995.

⁸⁵ *Id.* at 22999-23000.

⁸⁶ P.E.T. Case No. 004, September 28, 2010 Resolution.

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Roxas, the protestee moved to dismiss the election protest because it purportedly failed to specifically state the precincts protested and contested and provide a detailed specification of the acts or omissions complained of showing the alleged electoral fraud, anomaly, or irregularity. In denying the motion to dismiss, the Tribunal ruled as follows:

Moreover, contrary to the complaint of Binay that the protest failed to provide a detailed specification of the acts or omissions complained of showing the alleged electoral fraud, anomaly or irregularity, the protest contained narrations of irregularities and ultimate facts that need to be proved in due time.

Considering the foregoing, the Tribunal finds the protest sufficient in form and substance, that is, the protest can sufficiently apprise Binay of the issues which he has to meet, and the Tribunal of the ballot boxes that have to be collected.

But even if the instant protest is found to be sufficient in form and substance, it must be emphasized that nothing as yet has been proved as to the veracity of the allegations. **The protest is only sufficient for the initial determination by the Tribunal of the grounds for the protest and give Roxas the opportunity to prove his case, both pursuant to Rule 65 of the P.E.T. Rules.**⁸⁷ (Emphasis supplied)

Following *Roxas*, in determining the sufficiency of the allegations of an election protest, what is merely required is a statement of the ultimate facts forming the basis of the Protest. At this stage, the consideration of evidentiary matters would be premature. Moreover, as applied to this case, the Tribunal finds that the allegations in the Protest are sufficient to apprise protestee of the issues that she has to meet and this Tribunal of the ballot boxes that have to be collected.

Finally, it is well to stress that the Motion for Reconsideration essentially restates the arguments contained in protestee's Verified Answer and Counter-Protest, and these have all already been duly considered and passed upon by the Tribunal in the Resolution dated January 24, 2017. The Tribunal finds no cogent reason to discuss these matters any further.

B. Protestee's Manifestation with Omnibus Motion (1) for Clarification; and (2) to be Furnished Copy of the Annexes Attached to the Manifestation/Compliance dated May 25, 2017 dated June 20, 2017 (Motion for Clarification)

On April 7, 2017, protestee filed a Manifestation⁸⁸ of even date, seeking clarification on several matters relating to stripping and backing-up activities of the COMELEC, including the cost of the lease of the warehouse in Sta. Rosa, Laguna where the said activities were being held.

⁸⁷ Id. at 2.

⁸⁸ *Rollo* (Vol. XXX), pp. 22979-22984.

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In a Resolution⁸⁹ dated April 18, 2017, the Tribunal required the COMELEC to clarify the matters raised by protestee in her Manifestation dated April 7, 2017. In compliance therewith, the COMELEC filed a Manifestation dated May 25, 2017 informing the Tribunal of its rental expenses for the lease of the warehouse, the total of which is Five Million Six Hundred Nine Thousand Two Hundred Forty-Four Pesos (₱5,609,244.00) per month.

On June 20, 2017, protestee filed her Motion for Clarification in connection with the COMELEC's Manifestation dated May 25, 2017. Therein, protestee sought clarification from the Tribunal whether the said rental expenses would be charged against the cash deposits of protestant and protestee.

On this matter, the 2010 PET Rules removes any confusion. Rule 33 provides:

Rule 33. *Cash deposit.* - In addition to the fees mentioned above, each protestant or counter-protestant shall make a cash deposit with the Tribunal in the following amounts:

x x x x

(b) If the protest or counter-protest requires the bringing of ballot boxes and election documents or paraphernalia, Five Hundred Pesos (₱500) for each precinct involved. If the amount of the deposit does not exceed Two Hundred Thousand Pesos (₱200,000.00), the same shall be made in full with the Tribunal within ten days after the filing of the protest or counter-protest; and

x x x x

The cash deposit shall be applied by the Tribunal to the payment of all expenses incidental to the bringing of the ballot boxes and election documents or paraphernalia to the Tribunal and returning them after the case is terminated, and to the compensation of the members of the revision committees. When the Tribunal determines that the circumstances demand, it may require additional cash deposits. Any unused cash deposit shall be returned to the protestant or counter-protestant after complete termination of the protest or counter-protest. (Emphasis supplied)

From the foregoing, only the following expenses are chargeable against the cash deposit of the protestant or counter-protestant, as the case may be: (i) expenses incidental to the bringing and returning of ballot boxes and other election paraphernalia to and from the Tribunal, and (ii) the compensation of the revision committees.

⁸⁹ Id. at 23058-23059.

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Here, the payment of ₱5,609,244.00 is pursuant to a "Contract for the Provision of Warehousing Facility and Equipment through Lease, and Allied Services" between COMELEC and JAM Liner, Inc. As clarified by the COMELEC, the expense of ₱5,609,244.00 is to be applied to the lease of the warehouse being used in its closure activities. The said amount is further broken down as follows: (i) ₱2,737,200.00 for the lease of the covered area and open area; (ii) ₱2,149,600.00 for the lease of equipment; (iii) ₱461,164.00 for compensation of personnel; and (iv) an estimated ₱261,280.00 for electricity, drinking water, and gasoline expenses.⁹⁰

In this regard, it is clear that such expenses are not incidental to the retrieval and transportation of ballot boxes to the Tribunal in connection with the instant Protest and Counter-Protest. Hence, there would be no occasion for the Tribunal to charge the same against either of the cash deposits of protestant or protestee.

On another matter, protestee is similarly seeking clarification on whether protestant would be held liable for the amount of Two Billion Seventy-Eight Million Three Hundred Four Thousand Two Hundred Twenty-Five Pesos and Seventy-Six Centavos (₱2,078,304,225.76) representing the costs to be incurred by COMELEC in case of its failure to turn over possession of 97,366 leased units of Optical Mark Recognition (OMR) Machines to Smartmatic-TIM, Inc., pursuant to the AES Contracts executed between the said parties. Parenthetically, Section 6.9 of the AES Contracts provides for an option to purchase scheduled to take effect on December 1, 2016.⁹¹

Given the collateral nature of protestee's inquiry, the Tribunal finds such matter to be outside the issues posed in the instant Protest and Counter-Protest. Such matter is more properly within the competence of COMELEC to address. Besides, there is no showing at this time that COMELEC is already demanding such amount from protestee pursuant to the AES Contracts.

- C. Protestant's Motion for the Collection and Retrieval of Ballot Boxes and other election documents and paraphernalia dated July 10, 2017 (Motion for Retrieval); Motion for Technical Examination dated July 10, 2017 (Motion for Technical Examination); Protestant's Motion for Decryption and Printing of Ballot Images dated June 1, 2017 (Motion for Decryption); and COMELEC's Letter dated April 22, 2017 requesting for temporary custody of ballot boxes and election documents in connection with EPC No. 2016-37 (Abdusakur M. Tan v. Mujiv S. Hataman).

⁹⁰ Rollo (Vol. XXXI), pp. 23814, 23866-23867.

⁹¹ Id. at 23815, 23867-23873.

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In protestant's Motion for Decryption, he prayed that the Tribunal direct the COMELEC-ERSD to conduct the decryption and printing of the ballot images from the relevant SD cards and/or data storage devices in each of the 36,465 protested clustered precincts. Protestant claims that the conduct of the decryption and printing of ballot images will not only aid the Tribunal in the prompt disposition of the Protest, but will likewise assist protestant in the preparation for the recount proceedings and the presentation of his evidence for the protest. Significantly, however, protestant has not prayed that the revision or manual recount be conducted using the printed ballot images in lieu of the actual ballots.

In her Comment and Opposition to the Motion for Decryption,⁹² protestee contends that the decryption and printing of ballot images is premature in view of the pendency of her Motion for Reconsideration on the sufficiency of the Protest and considering that Rule 43(q) of the 2010 PET Rules allows decryption only when the integrity of the ballot box and its contents had been compromised or was not preserved.

In protestant's Motion for Retrieval, he prayed for the collection, retrieval, transport, and delivery of all the following items from all clustered precincts in the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental, as well as the provinces of Basilan, Lanao del Sur, Maguindanao, subject of his Third Cause of Action:

- a. ballot boxes and their contents;
- b. the list of voters;
- c. the audit logs, transmission logs, and all log files; and,
- d. all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the VCMs, CCS units, SD cards (main and back up), and other data storage devices containing electronic and ballot images, evidencing the conduct and results of the elections in all the six provinces mentioned above.

Incidentally, on April 26, 2017, protestant filed a Letter⁹³ praying for the denial of COMELEC's Letter dated April 22, 2017,⁹⁴ requesting temporary custody of ballot boxes and election documents in connection with EPC No. 2016-37 (*Abdusakur M. Tan v. Mujiv S. Hataman*), involving 200 clustered precincts of the municipalities/cities in Basilan, Maguindanao, Tawi-Tawi and Lanao del Sur.

In its Manifestation⁹⁵ filed on July 19, 2017, the COMELEC, maintained that its request for custody is indispensable for the resolution of

⁹² Id. at 23395-23404.

⁹³ *Rollo* (Vol. XXX), pp. 23125-23127.

⁹⁴ Id at 23112-23117.

⁹⁵ *Rollo* (Vol. XXXII), pp. 24187-24198 (inclusive of Annexes).

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the election protest pending before it; but recognized that the Tribunal has preferential right over the custody and recount of ballots involved in simultaneous protest and submitted the matter to the wise discretion of the Tribunal.

Protestee, in her Comment and Opposition to the Motion for Retrieval⁹⁶ dated July 20, 2017, on the other hand, argued for the denial of the Motion for Retrieval because of the pendency of protestee's Motion for Reconsideration and for logistical and practical reasons as the Tribunal had mentioned during the preliminary conference, that the retrieval should only be limited to the three pilot provinces.

On the other hand, in protestant's Motion for Technical Examination,⁹⁷ protestant prays that the Tribunal direct the conduct of technical examination to be done by handwriting experts of the COMELEC of the voters' signatures appearing on the EDCVL as against the voters' signatures appearing on the VRRs in each of the 2,756 clustered precincts of Lanao del Sur, Maguindanao, and Basilan.

Similar to her Comment and Opposition to the Motion for Retrieval, protestee argued in her Comment and Opposition to the Motion for Technical Examination, that protestant is not entitled to the technical examination of the signatures of voters in Lanao del Sur, Maguindanao, and Basilan as these provinces are not among those protestant designated as his pilot provinces.⁹⁸ Protestee also argued that the pending incidents and logistical and practical considerations as discussed during the Preliminary Conference warrant the denial of the Motion for Technical Examination.⁹⁹

The Tribunal has already resolved protestee's Motion for Reconsideration above; thus, the Motions for Decryption, Retrieval, and Technical Examination can already be resolved.

Rule 65 of the 2010 PET Rules, as its caption states, is for the initial determination of the grounds for the protests. Following this, the revision and reception of evidence, upon designation of the provinces best exemplifying the frauds or irregularities, will begin with those provinces, thus:

INITIAL DETERMINATION OF THE GROUNDS FOR PROTEST

RULE 65. *Dismissal; when proper.* — The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the

⁹⁶ Id. at 24220-24237.

⁹⁷ *Rollo* (Vol. XXXI), pp. 23966-23972.

⁹⁸ *Rollo* (Vol. XXXII), pp. 24239-24245.

⁹⁹ See id. at 24245-24250.

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province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors.

Rule 65 provides the Tribunal with a litmus test for protestant's grounds as raised in his Protest. Thus, protestant is given the opportunity to designate three provinces **which best exemplify** the frauds or irregularities raised in his Protest. These provinces constitute the "test cases" by which the Tribunal will make a determination as to whether it would proceed with the Protest — that is, retrieve and revise the ballots for all the remaining protested clustered precincts — or simply dismiss the Protest for failure of the protestant to make out his case.

Thus, in consonance with Rule 65, the Tribunal hereby orders that the retrieval of ballot boxes and other election documents, revision of ballots and reception of evidence **can already begin with, but shall first be confined to, only the provinces that have been designated by protestant, namely, Camarines Sur, Iloilo, and Negros Oriental.** It is premature to retrieve the ballot boxes and conduct a technical examination on voters' signatures from provinces **other than** those designated to be the pilot provinces. As already stated, Rule 65 allows the Tribunal to conduct the revision of ballots and reception of evidence on the designated pilot provinces first, and on such basis, decide if it will proceed with the revision of ballots and reception of evidence on the other contested provinces in the Protest. Parenthetically, it is worthwhile to stress that this is likewise the practical resolution of this matter at this stage given the physical and logistical constraints already facing the Tribunal as regards having to retrieve, store and safeguard all the 5,418 ballot boxes pertaining to the pilot provinces. In other words, judicial economy likewise commands the Tribunal¹⁰⁰ to defer action on these matters until such time that the Tribunal has made its initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules.

As regards the COMELEC's request for temporary custody of the ballot boxes, other documents and storage devices in connection with the election protest pending before it, involving clustered precincts in the municipalities/cities of Basilan, Maguindanao, Tawi-Tawi, and Lanao del Sur, the same is, by virtue of the foregoing, accordingly granted. While the Tribunal has the preferential right over the custody and recount of ballots

¹⁰⁰ TSN, pp. 47-48.

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involved in simultaneous protests, it will not be exercising such right now considering that the Tribunal, pursuant to Rule 65, needs to make an initial determination of the grounds of the Protest based on protestant's pilot provinces.

With respect to the protestant's Motion for Decryption, the Tribunal finds it premature to decrypt and print the ballot images from the relevant SD cards and/or other data storage devices in each of the 36,465 protested clustered precincts. As stated earlier, protestant himself has not prayed that the revision process use the printed ballot images in lieu of the actual ballots. Indeed, considering the protestant's Motion for Retrieval — where he likewise prayed for the immediate retrieval of all ballot boxes in the protested provinces¹⁰¹ — it appears to the Tribunal that protestant himself desires that the revision would use the actual ballots themselves. This is consistent with his counsel's declaration during the preliminary conference¹⁰² and in his Comment to the Preliminary Conference Guides¹⁰³ that the "ballots are the best repository of the sovereign will. Hence, in the hierarchy of evidence in election contests, ballots constitute the highest and best evidence of the voters' will."¹⁰⁴

That said, the Tribunal deems it proper to allow the decryption and printing of the ballot images from the relevant SD cards and/or data storage devices in the three (3) pilot provinces chosen by protestant. Again, this is aligned to Rule 65 of the 2010 PET Rules as regards the initial determination of the grounds for the Protest.

IN VIEW OF THE FOREGOING, the Tribunal resolves to:

- a. **DISMISS** protestant's First Cause of Action;
- b. **DENY** protestee's Motion for Reconsideration, *Pro Tanto*, with Prayer to Set for Hearing dated February 24, 2017;
- c. **PARTIALLY GRANT** protestant's Motion for Retrieval only insofar as all the precincts in the provinces of Camarines Sur, Iloilo, and Negros Oriental are concerned;
- d. **NOTE** COMELEC Letter dated April 22, 2017 and **GRANT** the request for temporary custody of the ballots, other election paraphernalia, including list of voters such as EDCVL, VRR and Book of Voters as well as data storage devices used in May 9, 2016 elections for the position of Regional Governor, Autonomous Region of Muslim Mindanao involving the 200 clustered precincts listed in said letter;

¹⁰¹ See *rollo* (Vol. XXXI), pp. 23980-23981.

¹⁰² TSN, p. 24.

¹⁰³ *Rollo* (Vol. XXXII), pp. 24324-24341.

¹⁰⁴ *Id.* at 24329. Emphasis omitted.

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- e. **NOTE** and **DENY** Letter dated April 22, 2017 filed by Protestant's collaborating counsel, Atty. Jose Amor M. Amorado;
- f. **DEFER ACTION** on protestant's Motion for Technical Examination until after the Tribunal's initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules;
- g. **PARTIALLY GRANT** protestant's Motion for Decryption and Printing of ballot Images dated June 1, 2017 only insofar as all the precincts in the provinces of Camarines Sur, Iloilo and Negros Oriental are concerned, and **DIRECT COMELEC** to inform the Tribunal of its recommended procedures, logistics, schedule and estimated costs for the activity within a non-extendible period of ten (10) days from receipt of this Resolution;
- h. **DIRECT** protestant to submit a new list of witnesses for the Third Cause of Action in compliance with the Tribunal's directive to limit the number of witnesses to three (3) per clustered precinct and to identify the concerned clustered precinct, within a non-extendible period of five (5) days from receipt hereof; otherwise, the Tribunal will deem protestant's non-compliance as waiver of his right to name and identify his witnesses for the Third Cause of Action and to eventually present witnesses during the reception of evidence; and
- i. **DIRECT** the parties to submit their comments or objections, if any, to the Preliminary Conference Order, within 10 days from receipt hereof; failing which, it shall bind them and the Preliminary Conference Order shall control the course of the proceedings without prejudice, however, to the inherent power of the Tribunal to modify the same for the orderly proceedings of Protest and Counter-Protest.

Addressing other pending matters, the Tribunal further resolves to:

- j. **DIRECT COMELEC** to reply to the Comment (On the Letter dated July 10, 2017 of Maria Lea R. Alarkon, Director III, Office of Overseas Voting [OFOV], Commission on Elections [COMELEC] pursuant to PET Resolution dated July 18, 2017) dated August 7, 2017 within a non-extendible period of ten (10) days from receipt of this Resolution;

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- k. **DIRECT** Hon. Corpus B. Alzate to furnish COMELEC local officers of Bucay, Abra and COMELEC Central Office the Manifestation dated August 17, 2017 within a non-extendible period of five (5) days from notice, and to **SHOW CAUSE** why he failed to seek prior approval from the Tribunal before the conduct of the activity in accordance with the Precautionary Protection Order within a period of ten (10) days from notice;
- l. **DIRECT** COMELEC local officers of Bucay, Abra and COMELEC Central Office to **SHOW CAUSE** why they failed to seek prior approval from the Tribunal before the conduct of the activity in accordance with the Precautionary Protection Order within a period of ten (10) days from receipt of the Manifestation dated August 17, 2017 in (k);
- m. **NOTE** Letters dated August 17, 2017 and August 21, 2017 of Atty. Jose M. Tolentino, Jr., Executive Director, COMELEC; Letter dated August 1, 2017 of Elma A. Mellomida, Election Officer III, Sta. Josefa, Agusan del Sur; and Letter dated August 14, 2017 of Helen I. Prieta, Municipal Treasurer, Bato, Camarines Sur; and **GRANT** requests, subject to the following:
- i. COMELEC shall give the Tribunal and the parties prior notice of the date of the activities; and
 - ii. The parties shall be allowed to observe and participate therein.
- n. **NOTE** Manifestation dated August 22, 2017; and
- o. **DIRECT** parties to file comment on the Motion for Reconsideration (of the resolution dated July 11, 2017) dated August 22, 2017 within a non-extendible period of ten (10) days from notice." Sereno, C.J., on leave. Leonardo-De Castro, J., on official time. Tijam, J., on official leave. Gesmundo, J., on leave. (1)

Very truly yours,


FELIPA B. ANAMA
Clerk of the Tribunal *amhmc*

August 29, 2017

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Office of the Executive Director
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