



REPUBLIC OF THE PHILIPPINES  
**SENATE ELECTORAL TRIBUNAL**  
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,  
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,  
Protestee.

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**RESOLUTION NO. 16 - 96**

In Resolution No. 16-87 dated 09 January 2018, the Tribunal granted Protestant Tolentino time within which to limit the number of Secure Digital (SD) Cards he intends to be decrypted and authenticated. On 10 January 2018, Protestant, in his *Urgent Motion*, listed the clustered precinct numbers of the SD cards to be decrypted and authenticated.

Upon verification of the list submitted vis-à-vis Protestant's pilot precincts, it was ascertained that the SD Cards of Five Hundred Ninety Seven (597) clustered precincts included in the list may be allowed for decryption and authentication as these form part of Protestant's pilot precincts. Thus, in Resolution No. 16-89 dated 17 January 2018, the Tribunal required the Election Records and Statistics Department of the Commission on Elections (COMELEC-ERSD) to decrypt the SD Cards and print the digital images of the ballots, election returns and audit logs of the Five Hundred Ninety Seven (597) Clustered Precincts identified by the Canvass Board Service of the Tribunal as part of the pilot precincts.

In her *Comment/Opposition* dated 18 January 2018, Protestee de Lima called the Tribunal's attention to the discrepancies in the list submitted by Protestant Tolentino vis-à-vis his pilot precincts. Protestee further prayed that the SD cards pertaining to those clustered precincts wherein the Statement of Votes by Precincts (SOVPs), the Election Returns (ERs) and the physical count of Official Ballots all tally and match should be excluded from the decryption and authentication in order to abbreviate the proceedings and cut the costs of the

decryption so as not to waste time, money and resources, which resources Protestee de Lima does not have.

In response to Protestee de Lima's *Comment/Opposition*, Protestant Tolentino filed a *Comment* dated 29 January 2018 acknowledging that the incorrect number of clustered precincts appearing in the list he submitted was merely an inadvertence and that Protestee de Lima is raising the issue rather too late. Protestant added that the prayer of the Protestee to exclude from the decryption and authentication the SD Cards of the clustered precincts wherein the SOVPs, the ERs and the physical count of the official ballots tally and match should be denied as mere physical count cannot be the basis to deny decryption. He further anchors his position on the wisdom of the Tribunal in allowing decryption by declaring in Resolution No. 16-80 dated 22 November 2017 that such course of action is allowed since "the interest of justice so requires".

In a *Manifestation* dated 31 January 2018, Protestee de Lima reiterated her prayer for the Tribunal to limit the number of clustered precincts for decryption and authentication as the same would serve no purpose but to delay the proceedings specifically the presentation of Protestant's evidence. She, nonetheless, submitted the names of her representatives who shall witness the decryption of the SD cards.

Pursuant to the COMELEC-ERSD notice that the decryption activity was scheduled to commence on 05 February 2018, Protestant Tolentino was directed to remit directly to the COMELEC not later than 31 January 2018 the costs of decryption. In his *Manifestation* dated 02 February 2018, Protestant explained that he was unable to make timely arrangements for the payment of the costs of decryption due to his unexpected designation by President Rodrigo Duterte as overall Crisis Manager for the relief efforts necessitated by the eruption of Mt. Mayon and his immediate deployment to Camp Ola, Legazpi City. He further stated that with the prior coordination with the Office of the Secretary of the Tribunal and the COMELEC-ERSD, payment will be made at 8:00 in the morning of 05 February 2018 upon the opening of COMELEC offices and the belated payment will not affect the decryption activity as the first activity would be the orientation of representatives.

Indeed, payment was made on 05 February 2018 as promised and decryption commenced as scheduled. In another *Manifestation* dated 06 February 2018, Protestant Tolentino furnished the Tribunal a copy of the COMELEC Official Receipt evidencing payment of the cost of decryption and listed therein the names of his representatives.

The decryption, authentication of the SD cards and printing of picture images involving the 597 clustered precincts duly identified and verified by the Canvass Board Service of the Tribunal as forming part of Protestant's pilot precincts is indeed a tedious process. At the rate the activity is undertaken, it will take around twenty (20) working days to complete, if not more.

Be that as it may, the fear of Protestee de Lima that the decryption process will delay the reception of evidence is unfounded. The Tribunal invites the parties' attention to the Amended Preliminary Conference Order dated 09 May 2017 which shall control the proceedings, particularly the presentation of evidence. Page 14, to be exact, states in item 40 that only the "electronic images of the ballots as stored in secure digital (SD) cards of the forty-five (45) vote counting machines (VCMs) under the protective custody of the Commission on Elections" form part of Protestant Tolentino's evidence, not the entire 597 clustered precincts.

To recall, the 45 VCMs, as identified by Protestant in his *Manifestation* dated 18 November 2016 and attached as Annex "A" of his *Manifestation* dated 21 November 2016, pertain to the following polling precincts:

Precinct No.	City/Municipality	Province
0013A	South Ubian	Tawi-Tawi
0018A	Maimbung	Sulu
0015A	Al-Barke (should be Al-Barka)	Basilan
0043B	Sultan Kudarat (Nuling)	Maguindanao
0012A	Marawi	Lanao del Sur
0001A	Picong (Sultan Gumander)	Lanao del Sur
0044A	Sultan Naga Dimaporo (Karomatan)	Lanao del Norte
0080A	Pikit	North Cotabato
0077A	Buonavista	Agusan del Norte
0002A	Cortes	Bohol
0001A	Cordoba	Cebu
0001A	Cebu City	Cebu
0001A	Daanbantayan	Cebu
0001A	Alcantara	Cebu
0001A	Alcoy	Cebu
0006A	Ormoc City	Leyte

0001A	San Jose de Buan	Samar (Western Samar)
0004A	Calbayog City	Samar (Western Samar)
0001A	San Margarita (should be <i>Santa Margarita</i> )	Samar (Western Samar)
0098A	Maria Aurora	Aurora
0003A	Atok	Benguet
0022A	Aguinaldo	Ifugao
0088A	Angadanan	Isabela
0018A	Balbalan	Kalinga
0013A	San Emilio	Ilocos Sur
0015A	Borongan City	Eastern Samar
0008A	Baliuag	Bulacan
0302A	Marilao	Bulacan
0026B	Balagtas	Bulacan
0001A	Angat	Bulacan
0001A	Bocaue	Bulacan
0001B	Candaba	Pampanga
0020B	Bacolor	Pampanga
0006B	Lubao	Pampanga
0001A	Angeles City	Pampanga
0012A	Atimohan	Quezon
0001A	Agdangan	Quezon
0001A	Cabanatuan City	Nueva Ecija
0013A	Jaen	Nueva Ecija
00045	Aliaga	Nueva Ecija
0005C	Anilao	Iloilo
0029P1	Iloilo City	Iloilo
0013B	Dapitan City	Zamboanga del Norte
0022B	Sindangan	Zamboanga del Norte
0008B	Dipolog	Zamboanga del Norte

Of the foregoing list, only twelve (12) are included in Protestant's pilot precincts, to wit:

Precinct No.	City/Municipality	Province
0015A	Al-Barka (should be <i>Al-Barka</i> )	Basilan
0001A	Picong (Sultan Gumander)	Lanao del Sur
0044A	Sultan Naga Dimaporo (Karomatan)	Lanao del Norte
0080A	Pikit	North Cotabato
0001A	Cordoba	Cebu
0001A	San Jose de Buan	Samar (Western Samar)
0004A	Calbayog City	Samar (Western Samar)
0001A	San Margarita (should be <i>Santa Margarita</i> )	Samar (Western Samar)
0001A	Bocaue	Bulacan
0029P1	Iloilo City	Iloilo
0022B	Sindangan	Zamboanga del Norte
0008B	Dipolog	Zamboanga del Norte

As of 14 February 2018, the decrypted SD cards and printed picture images from five (5) out of the aforementioned twelve (12) clustered precincts are already in the custody of the Tribunal, namely:

Province	City/Municipality	Clustered Prec. No.	Grouped Prec. Nos.
Lanao del Sur	Picong (Sultan Gumander)	1	1A, 1B, 1C
Lanao del Norte	Sultan Naga Dimaporo (Karomatan)	11	44A, 44B, 44C, 44P1
North Cotabato	Pikit	31	80A, 81A, 81B, 82A, 82B
Cebu	Cordoba	1	1A, 2A, 3A, 3B
Iloilo	Iloilo City	9	28A, 29A, 29B, 29C, 29D, 29E, 29P1

To allay the fear of Protestee de Lima, the Tribunal requests the COMELEC-ERSD to give priority to the decryption of the following SD cards:

Province	City/Municipality	Clustered Prec. No.	Grouped Prec. Nos.
Western Samar	San Jose de Buan	1	1A, 1B, 1C
Western Samar	Calbayog City	2	3B, 4A, 4B, 4C
Western Samar	Santa Margarita	1	1A, 1B, 2A, 2B
Zamboanga del Norte	Sindangan	9	22B, 23A, 23B, 23C
Zamboanga del Norte	Dipolog City	3	6B, 7A, 8A, 8B, 9A, 9B

Further, the Tribunal noted that the following clustered precincts were not included in the list for decryption and authentication submitted by the Protestant:

Province	City/Municipality	Clustered Prec. No.	Grouped Prec. Nos.
Basilan	Al-Barka	1	15A, 15B, 16A, 16P1
Bulacan	Bocaue	1	1A, 1B, 2A, 3A, 4A

In order not to cause delay in the reception of Protestant's evidence, the Tribunal also requests the COMELEC-ERSD to include these two (2) clustered precincts in the decryption activity being undertaken and likewise give priority thereto. The Tribunal also directs Protestant Tolentino to defray the additional cost of decryption and remit the same directly to the COMELEC.

While the other clustered precincts ordered to be decrypted and authenticated are not identified as part of the evidence for the Protestant, the Tribunal is not precluded in taking cognizance of other related documents in its appreciation of the evidence that the parties may present. The Tribunal, in its discretion, may use the decrypted SD cards and printed picture images in its verification and validation process, if the occasion calls for it. It is for this reason that the Tribunal allowed the decryption of the SD cards as identified and requested by the Protestant.

Indeed, there were discrepancies in the list submitted by the Protestant. However, the Tribunal, through the Canvass Board Service (CBS), was able to properly identify the precincts listed by using the COMELEC Project of Precincts. As earlier mentioned, 597 clustered precincts were ascertained to be part of Tolentino's pilot precincts. Hence, decryption was allowed.

Meanwhile, during the decryption proceedings, the original SD card for Clustered Precinct No. 14 of Al-Barka, Basilan was found to be missing. In his *Urgent Motion* dated 07 February 2018, Protestant prays that the Tribunal direct the COMELEC to allow the use of the back-up SD cards for decryption and authentication, as well as printing of the picture images of the ballots, in cases where the SD cards are missing, lacking or misplaced, or whenever necessary.

The Tribunal finds the aforesaid request well-taken for purposes of expediency.

**IN VIEW OF THE FOREGOING**, the Executive Committee of the Tribunal Resolves to:

1. **DENY** Protestee de Lima's *Comment/Opposition* dated 18 January 2018;
2. **NOTE** Protestee de Lima's *Manifestation* dated 31 January 2018;
3. **NOTE** Protestant Tolentino's *Comment* dated 29 January 2018, *Manifestation* dated 02 February 2018, and *Manifestation* dated 06 February 2018;

4. **REQUEST** the COMELEC- ERSD to give priority to the decryption of the SD Cards for the following clustered precincts:
- 1) San Jose de Buan, Western Samar - Clustered Precinct No. 1 (1A, 1B, 1C)
  - 2) Calbayog City, Western Samar - Clustered Precinct No. 2 (3B, 4A, 4B, 4C)
  - 3) Santa Margarita, Western Samar - Clustered Precinct No. 1 (1A, 1B, 2A, 2B)
  - 4) Sindangan, Zamboanga del Norte - Clustered Precinct No. 9 (22B, 23A, 23B, 23C); and
  - 5) Dipolog City, Zamboanga del Norte - Clustered Precinct No. 3 (6B, 7A, 8A, 8B, 9A, 9B)
5. **REQUEST** the COMELEC- ERSD to decrypt the SD cards for Clustered Precinct No.1 (15A, 15B, 16A, 16P1) of Al-Barka, Basilan and Clustered Precinct No.1 (1A, 1B, 2A, 3A, 4A) of Bocaue, Bulacan and likewise give priority thereto; and **DIRECT** Protestant Tolentino to remit directly to the COMELEC the additional cost of decryption; and
6. **ALLOW** the COMELEC-ERSD to use the back-up SD cards for decryption and authentication, as well as printing of the picture images of the ballots, in cases where the SD cards are missing, lacking or misplaced, and similar circumstances, whenever necessary.

**SO ORDERED.**

19 February 2018.



ANTONIO T. CARPIO  
Senior Associate Justice  
Chairperson



TERESITA J. LEONARDO-DE CASTRO  
Associate Justice  
Member



LUCAS P. BERSAMIN  
Associate Justice  
Member