



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

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.

x-----x

RESOLUTION NO. 16-03

In its letter dated 22 July 2016, the Commission on Elections (Commission), thru Commissioner Christian Robert S. Lim, Project Director, 2016-AES Project, seeks clarification of the Precautionary Order contained in Resolution No. 16-02 of the Executive Committee of the Tribunal dated 07 July 2016. In particular, the Commission wants to be clarified on whether or not the phrase "other materials and paraphernalia" in the said Precautionary Order covers the materials and paraphernalia enumerated in its letter, which were used during the 09 May 2016 elections, but which do not contain any election data.

The Commission informs the Tribunal that the enumerated items shall be subjected to the 2016 Automated Election System (AES) Project closure/stripping activities, which should be undertaken as soon as possible in view of the provision in the AES Contract that "all goods still in the possession of 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, and the COMELEC shall pay the corresponding price [...] without prejudice to COMELEC requiring the protestant to shoulder such costs."

The Commission further informs the Tribunal that with respect to the ballot boxes involved in the instant protest case currently in the embassies and consular

offices, the estimated cost of shipment via DHL is Php7,600,914.10; and in case the ballot boxes are not yet shipped to the Philippines, the monthly storage cost is Php658,840.00 per Post.

Rule 36 of the 2013 Rules of the Tribunal provides that "(t)he cash deposits shall be applied for the payment of all expenses not programmed into or provided for in the Tribunal's budget which may be necessary or incidental to the resolution and adjudication of the protest, x x x, including, but not limited to, transportation and storage of the ballot boxes, and election documents and paraphernalia x x x."

IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to require the parties to **COMMENT**, within a non-extendible period of five (5) days from receipt of this Resolution, on the letter of the Commission on Elections dated 22 July 2016, a copy of which is hereby furnished them.

SO ORDERED.

28 July 2016.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



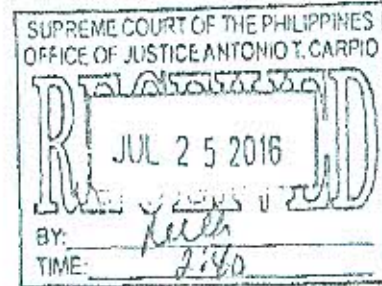
ARTURO D. BRION
Associate Justice
Member



REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila

22 July 2016

Hon. ANTONIO T. CARPIO
Senior Associate Justice
Chairperson
Senate Electoral Tribunal
COA-NCR Bldg., Batasan Road
Quezon City



Sir:

This refers to Senate Electoral Tribunal (SET) Resolution No. 16-01 dated 07 July 2016 (*Francis N. Tolentino versus Leila M. De Lima*), which the Commission received on 13 July 2016, wherein officials of concerned municipalities, cities, embassies and consular offices were directed: (a) to safeguard and preserve the integrity of certain documents, materials and paraphernalia used or accomplished in connection the 09 May 2016 elections for the office of Senator of the Philippines; and (b) to submit a compliance report to the SET within ten (10) days from receipt of said Resolution.

The Commission notes that the phrase "other materials and paraphernalia" was couched in general terms, and thus, respectfully seeks clarification if the following materials and paraphernalia used during the 09 May 2016 elections for the affected elective position - which do not contain any election data - are covered by the subject protection order:

1. BGANS (Satellite Antennas)
2. External Backup Batteries
3. Vote Counting Machine (VCM) Kits
 - a. VCM and its 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
 - h. Documents contained inside the Kit (BEI PINs, FTS ballots, etc.)
4. Canvassing and Consolidation (CCS) Kits
- a. CCS Laptop
 - b. Printer and Toner
 - c. Unused Bond Paper
 - d. USB Modem and SIM cards
 - e. USB Token
 - f. Documents contained inside the Kit

The above items shall be subjected to the 2016 Automated Election System (AES) Project closure/stripping activities wherein each VCM Kit shall be opened and tested so that the leased equipment can be turned-over to Smartmatic-TIM, Inc. while the consumables, such as, SD cards, i-Buttons, thermal paper and marking pens shall be turned-over to the Commission. The CCS Kits, the contents of which are already owned by the Commission, shall likewise undergo stripping activities.

Please note that prior to the issuance of SET Resolution No. 16-01, the BGANs have already undergone closure activity evaluation while the external batteries are currently being prepared for appropriate disposal due to hazards posed by improper storage¹.

Simultaneous with the closure/stripping activities is the manual backing-up by the Commission's Election Records and Statistics Department of the data contained in all the VCM SD cards and CCS laptops, as authorized under Minute Resolution No. 16-0439², promulgated on 12 July 2016, prior to the receipt of SET Resolution No. 16-01.

¹ Letter dated 21 July 2016 of Mr. Ebe Moreno, Project Director of Smartmatic-TIM, Inc.

² In the Matter of the Request to Back-up the Files in the SD Cards and CCS Laptops, with the 19-page CCS Manual Backup Procedures

Pursuant to the AES Contract, "all goods still in the possession of 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, and the COMELEC shall pay the corresponding price [...] without prejudice to COMELEC requiring the protestant to shoulder such costs"; hence, the need to undertake the project closure activities as early as possible to avoid incurring additional costs on the part of the Commission, as well as the protestant.

As regards the SET Order directing the Commission to submit a compliance report, please be informed that the concerned officials of the Commission's field offices have been furnished copies of SET Resolution No. 16-01, through the Regional Election Directors³, while those of the embassies and consular offices were notified through Mr. Edgardo O. Castro, Officer-in-Charge and Vice-Chairman of the Overseas Voting Secretariat, Department of Foreign Affairs⁴.

Please be informed further that the ballots boxes from Meycauayan, Bulacan; Toledo City, Cebu; Cebu City; Marawi City, Lanao del Sur; Basilan Province; and the Autonomous Region in Muslim Mindanao (ARMM) are also involved in Election Protests filed with the Commission⁵. With respect to the affected ballot boxes currently with the embassies and consular offices, the estimated cost of shipment via DHL is Php7,600,914.19; and in case the ballot boxes are not yet shipped to the Philippines, the monthly storage cost is Php658,840.00 per Post⁶.

In view of the foregoing, it is respectfully requested that Honorable Senate Electoral Tribunal issue an Order:

1. Clarifying the coverage of the protection order set forth under SET Resolution No. 16-01;

³ Memorandum dated 20 July 2016 of Deputy Executive Director for Operations Bartolome J. Sinocruz, Jr.

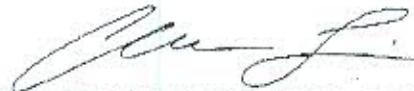
⁴ Letters dated 12 July 2016 and 20 July 2016 of Atty. Maria Juana S. Valeza, Acting Director III, Office for Overseas Voting

⁵ Memorandum dated 20 July 2016 of Atty. Allen Francis B. Abaya, Acting Director IV, Election Contests Adjudication Department

⁶ Memorandum dated 21 July 2016 of Atty. Maria Juana S. Valeza

2. Authorizing the Commission and Smartmatic-TIM, Inc. to conduct the 2016 Automated Election System (AES) Project closure/stripping activities for all the VCM and CCS Kits;
3. Confirming the closure/stripping activities undertaken on the BGANs prior to the receipt of SET Resolution No. 16-01; and
4. Authorizing the Commission's Election Records and Statistics Department to back-up the contents of the VCM SD Cards and CCS laptops of the cities and municipalities covered by SET Resolution No. 16-01.

Respectfully submitted.



CHRISTIAN ROBERT S. LIM
Commissioner
Project Director, 2016-AES Project