

NATIONAL CITIZENS' MOVEMENT FOR FREE ELECTIONS (NAMFREL)

Room 601, DMG Center, Domingo M. Guevara St.,
Barangay Mauway, Mandaluyong City 1550
Philippines

Telefax: +63 (2) 8470-4151
Wireless Landline: +63 (2) 8736-0969; 8788-3484
Telephone: +63 (2) 8451-1586
Mobile No.: +63 939.1102872; 977.2417080
E-Mail: namfrelsecretariat@namfrel.org.ph
Website: www.namfrel.org.ph

NAMFREL Report on the Observation of the 2023 Cavite District 7 Special Election March 24, 2023

Introduction

On February 25, 2022, a Special Election was held in District 7 of Cavite province for the position of District Representative. The winner will fill the seat in the House of Representatives vacated by Jesus Crispin Remulla, who was appointed by President Ferdinand R. Marcos, Jr. as Secretary of the Department of Justice effective 30 June 2022. Cavite District 7 is composed of the municipalities of Amadeo, Indang, and Tanza, and the city of Trece Martires, with a total number of 355,184 registered voters as of Special Election Day.¹ Like the mode of voting and counting used in the 2022 National and Local Elections (NLE) which elected former Congressman Remulla, the COMELEC used the automated election system for the Cavite special election.

Section 4, paragraph 2 of Republic Act No. 7166 states that in case a permanent vacancy shall occur in the House of Representatives at least one year before the expiration of the term, the COMELEC shall call and hold a special election to fill the vacancy not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy.² The COMELEC adopted several of its resolutions issued during the 2022 NLE for the Special Election, including the General Instructions For The Constitution, Composition And Appointment Of Electoral Boards; The Process Of Final Testing And Sealing Of The Vote Counting Machines; And The Voting, Counting And Transmission Of Election Results, except that no transmission was conducted during the Special Election.³

NAMFREL set out to participate in the February 25 special election not only to assist the COMELEC in ensuring that the election would be transparent and credible, but also to

¹ Commission on Elections (COMELEC), *Re: Updates on the Special Elections for Congressman in the 7th Legislative District of Cavite*, 25 Feb. 2023, available at <https://COMELEC.gov.ph/?r=References/Announcements/25Feb2023pr> (last visited 23 Mar. 2023).

² Available at <https://issuances-library.senate.gov.ph/sites/default/files/2022-07/RA%207166.pdf> (last visited 23 Mar. 2023). "In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election."

³ COMELEC Resolution No. 10867, 16 Nov. 2022, available at <https://COMELEC.gov.ph/?r=References/COMELECResolutions/SpecialElections/SpecialElectionsfor7thLegislativeDistCavite/res10867> (last visited 23 Mar. 2023). "**Closing of Polls; Delivery and Uploading of Results.** - After completing the procedures laid down in Section 77 of COMELEC Resolution No. [10727](#), the EB shall deliver the envelope containing the Main SD Card to the BOC. In the delivery of the Main SD Cards, the EB may be escorted by uniformed PNP personnel." (emphasis in the original.) COMELEC Resolution No. 10879, 16 Nov. 2022, available at <https://COMELEC.gov.ph/?r=References/COMELECResolutions/SpecialElections/SpecialElectionsfor7thLegislativeDistCavite/res10879> (last visited 23 Mar. 2023).

help COMELEC achieve its goal of ensuring that Philippine electoral processes are safe from COVID-19. Participation in the plebiscite would be an opportunity for NAMFREL to be able to formulate recommendations based on actual on-the-ground observations to help COMELEC improve forthcoming electoral processes, especially in the areas of conducting the different procedures, and in ensuring that voters, election staff, and other stakeholders are adequately protected health-wise.

NAMFREL Accreditation

On August 26, 2022, NAMFREL filed its Petition for Accreditation as COMELEC citizen's arm for the Barangay and Sangguniang Kabataan Elections (BSKE), at that time scheduled to be held on December 5, 2022. On September 6, 2022, NAMFREL filed before the COMELEC a Motion to Admit Supplemental Petition as citizen's arm for all electoral exercises, including special elections, plebiscites, initiatives, referendums, and recall elections (but not including regular elections), until the May 12, 2025 National and Local Elections, subject to the availability of resources, manpower, and reasonable time to organize and deploy.

COMELEC heard NAMFREL's Petition for Accreditation on September 13, 2022. A day later, COMELEC granted NAMFREL the Accreditation as citizen's arm for all electoral exercises, including special elections, plebiscites, initiatives, referendums, and recall elections (but not including regular elections).

NAMFREL applied/prayed to be authorized to do the following, among others, for all electoral exercises:

- To provide informational assistance to the voters;
- To observe the activities during the electoral exercise period;
- To observe the activities on voting day;
- To assist the COMELEC in ensuring that the electoral exercises would be transparent and credible;
- To perform all other activities as the COMELEC may deem necessary.

NAMFREL observation teams

The National Citizens' Movement for Free Elections (NAMFREL) deployed staff and experienced observers from the national headquarters, led by NAMFREL National Chairperson Angel Averia, Jr. (Lito Averia) and NAMFREL Secretary General Eric Jude Alvia, to observe pre-election and election day activities.

Prior to election day, NAMFREL visited the offices of the COMELEC in Cavite District 7 to speak with the respective election officers and to inquire on the status of preparations for the automated election.

Observation of Final Testing and Sealing (FTS)

On February 19, 2023 or six days before the automated special election, NAMFREL observers were deployed to schools in the three municipalities and one city in the district to observe the final testing and sealing of vote counting machines.

In a letter dated February 21, 2023 addressed to COMELEC Chairman George Garcia and COMELEC Commissioner Nelson Celis -- who were present in the voting centers during the FTS along with other COMELEC officers from the national office – NAMFREL outlined its observations during the FTS:

"In general, the process was orderly and peaceful in most of the places observed, with the process conducted as expected, but with a few exceptions.

1. Ballot paper jam

As the Commission also acknowledged in its press release last Sunday, paper jam was experienced in the few polling places that NAMFREL was able to observe. For the ballot paper to go through, the EB had to slightly lift the VCM from the ballot receptacle. Some EBs mentioned that it might have been caused by the dimensions of the special election ballot, which is shorter than the usual AES ballots that the VCMs were designed for.

2. Thermal paper jam

Thermal paper jam was also observed in at least one VCM, caused by one of the voters tearing the VVPAT instead of the EB cutting it with a pair of scissors.

3. VCM plastic box lid not fitting properly

This was observed mainly in Trece Martires, where NAMFREL observers said that all the lids of the VCM boxes would not fit properly, which delayed the process and caused confusion among the members of the EBs.

4. Delayed response of VCM screens

During the closing of polls, the VCM was not accepting the code that was being typed. Upon further observation, it seems the screen was slow to recognize the input, so if the teacher typed too fast, the VCM recognized only the number typed last. The EB had to re-type the code more slowly to enable the VCM to recognize each character.

5. Human error

In the voting center observed in Trece Martires, the FTS was held in two big rooms in their ICT building instead of in the actual polling places for election day. Crucially, during the distribution of VCMs to the EBs, the VCMs were not matched to the polling place numbers of each EB, an error that was discovered only when the FTS was already underway. Confusion started when the diagnostic reports reflected different precinct numbers. However, the EBs proceeded with FTS without rectifying the mistake in distribution. In the end, the school decided to repeat the FTS for the entire school. NAMFREL was told that they will re-feed the used FTS ballots for the said repeat.

6. Others

The FTS was delayed in some polling places because the EBs did not want to start without watchers from the candidates. In the observed voting center in Trece Martires, the parties were not informed in advance of a change of venue for the process; their watchers were waiting in their assigned polling places in another side of the school. Some NAMFREL observers were also restricted from taking photos of the entire process because the EB said they were not informed to expect observers and to allow them to take photos."

In the letter, NAMFREL expressed hope that the COMELEC could still take some measures to prevent some of the issues that arose during the FTS.

NAMFREL Special Election Day Observation

NAMFREL observers were grouped into teams and visited voting centers in the municipalities of Amadeo, Indang, and Tanza, and in the city of Trece Martires on election day. The teams were guided by forms prepared by NAMFREL HQ in accordance with internationally accepted standards on election observation. NAMFREL observed the different processes on election day: opening, voting, closing, counting, and canvassing. The observers also had separate observation forms for the voting center and its immediate environment, and for election-related incidents. During the observation, aside from looking at the transparency and credibility of the process, NAMFREL put focus on highlighting the effectiveness of the implementation of COMELEC's anti-COVID protocols, to be able to identify areas that could be further strengthened, and to recommend measures to help ensure that forthcoming elections and electoral exercises will be conducted in a safe manner. Questions on the forms related to procedures and anti-COVID protocols were based on COMELEC published guidelines for the Cavite special election, adopted from COMELEC resolution No. 10867.

Observations

A. Pre-opening, opening, and voting

Start of voting

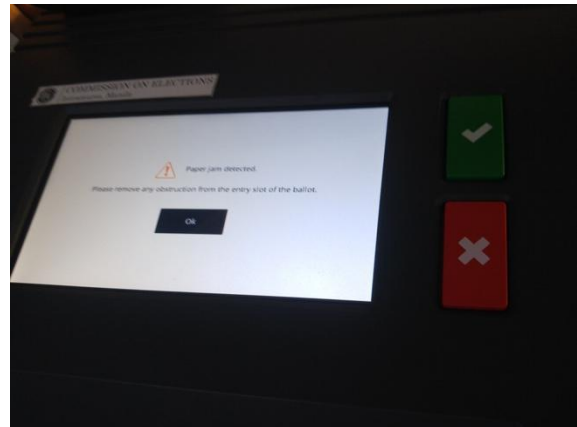
While most polling places observed opened on time, with election paraphernalia and members of the different Electoral Boards (EBs) complete, NAMFREL observers noted that there was a delay of up to 30 minutes in the start of voting in some polling places, such as in Punta Elementary School in Indang and Trece Martires Elementary School. The reason was that candidates' watchers arrived late, indicating that some members of EBs did not understand that they could proceed with the opening process without the presence of the watchers. COMELEC Resolution No. 10727, adopted by Resolution No. 10867 for the Special Election does not require that watchers should be present before

opening of voting can begin, only that the VCM box, ballot box, and package of official ballots be shown as sealed to the watchers who are present.⁴

Vote counting machines (VCMs)

Most of the problems related to VCMs that were observed during the FTS were also observed on election day. The day's voting was characterized by ballot paper jams, with almost a third of observations received from NAMFREL observers mentioning the said issue. In some polling places, paper jam occurred every time a ballot was inserted. Besides paper jam, observers also noted VCM malfunction or shutdown, and the voter verifiable paper audit trail or VVPAT not printing clearly. In Alulod Elementary School in Indang, voters were requested to leave their filled-out ballots after the VCM shut down. According to a NAMFREL observer there, voters were advised by COMELEC to leave their ballots as they secure a replacement SD card. The ballots would then be fed by the EB into the VCM upon replacement of the SD card. In a polling place in Trece Martires Elementary School, voters had to wait for their VCM to be replaced as the VVPAT receipts coming out of the original VCM were unreadable.

With only one position to vote for, voters took 2 to 5 minutes to cast their vote.



Loosening a jammed ballot

Secrecy of the vote

Volunteers all shared that the secrecy of the votes were not maintained or observed. As in the 2022 national and local elections and previous automated elections, the secrecy of the vote was compromised in several ways:

⁴ Available at <https://comelec.gov.ph/?r=2022NLE/Resolutions/res10727> and <https://comelec.gov.ph/?r=References/ComelecResolutions/SpecialElections/SpecialElectionsfor7thLegislativeDistCavite/res10879> (last visited 23 Mar. 2023). "SEC. 73. Preliminaries to the voting. - The EB shall: [...]"

f. **Show to the watchers** and the public **present** that the:

1. VCM box is sealed;
2. Ballot box is empty and thereafter, lock with four (4) seals; and
3. Package of official ballots is duly sealed, and thereafter, break the seal." (Emphasis supplied.)

- a. EBs discarded the secrecy folder while trying to find the right angle to feed the ballots;
- b. The voter was not mindful in maintaining secrecy while feeding their ballot, either by covering their vote or using the secrecy folder;
- c. EBs instructed the voter to leave the secrecy folder on the voting armchair;
- d. The voter did not use the secrecy folder at all for its intended purpose while voting.

Voter turnout

NAMFREL observers noted that there was a low turnout of voters, especially in the morning. By the end of the voting period, observers said that voter turnout appeared to be around 50% in the polling places observed. Many workers from the area's economic zone voted after coming from work.

Libreng-sakay

Observers noted also that there was an attempt to increase the number of voters as the day progressed, with observers seeing voters from different communities being brought to voting centers. In some instances, free transportation provided by barangays were used to bring in voters. In Tanza, observers saw voters from the Muslim community being brought in using "libreng sakay."



VADs / EAPPs / IPPs

Only about half of the voting centers observed had voter assistance desks, and it took less than 5 minutes for voters to find their precinct number and sequence number.

Observers also noted that there were few voting centers that had Emergency Accessible Polling Places (EAPPs) for senior citizens, the heavily pregnant, and people with disabilities, but most of the voting centers had express lanes for them. In Palawit Elementary School in Trece Martires, a senior citizen had to be carried to her polling place. While there was a room inside the school identified to be the EAPP, the room was not set up to receive voters at the time of observation.



In schools with EAPP, observers noted that they were spacious and well-ventilated. However, in some schools, the EAPP was on uneven ground that also made accessing it challenging especially to senior citizens.

While the majority of voting centers observed had Isolation Polling Places (IPPs), observers said that they did not see medical personnel inside or in the vicinity.

COVID-19 protocols

COVID-related protocols were not consistently enforced and followed in the polling places and voting centers observed, especially the proper wearing of face masks, maintaining physical distancing, and disinfection of hands and materials.

On average, ten voters were allowed to vote at any given time inside each polling place.

B. Closing, Counting, and Canvassing

In the majority of polling places where NAMFREL observers followed the closing and counting processes, the vote counting machines functioned normally. However, VCMs stopped operating during the printing of audit logs in at least two polling places observed, but NAMFREL believes these did not compromise the results in said polling places.

In general, NAMFREL observers described the conduct of the closing and counting processes as smooth and peaceful, and members of most electoral boards appeared well-trained and knowledgeable of the automated process. However, there were some lapses observed in some polling places: the EBs failed to post a copy of the results outside the polling place, to follow the correct process of sealing the ballot box, and to print and distribute the proper number of copies of the election returns.

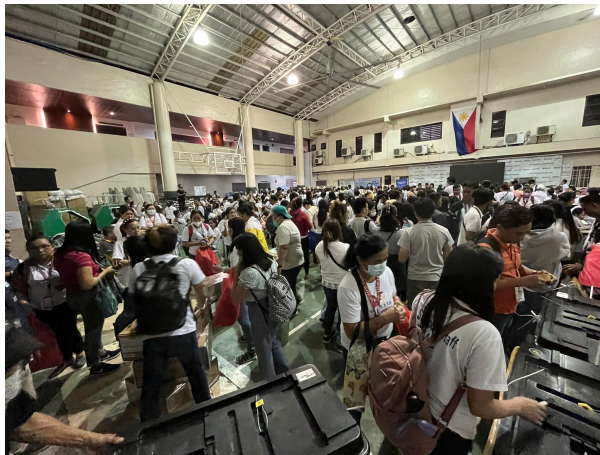
Observers noted that some members of EBs appeared frustrated during the closing process because the scissors provided were not big enough to cut the unused ballots, and the envelopes provided to them for the unused ballots were too small. Observers also found the printing of audit logs made the process too long and consumed a lot of paper.



During the canvassing process, an observer in Indang noted that some of the ballot boxes being submitted to the municipal treasurer's office were not properly sealed at the polling place. Sealing only took place outside the canvassing center. An observer also described the scene at the city hall of Trece Martires City as "disorganized" and "chaotic" during the turnover of election paraphernalia.



Indang



Trece Martires City

Recommendations

NAMFREL would like to reiterate its recommendations related to the automated election system in the Philippines, contained on pages 73 to 77 of its Final Report to the COMELEC on NAMFREL's observation of the 2022 National and Local Elections. NAMFREL submitted the said report to the COMELEC on 6 December 2022 via email. It is also available online here:

[https://namfrel.org.ph/2022/files/NAMFREL%202022%20NLE%20REPORT%20\(FINAL,%20DIGITAL\).pdf](https://namfrel.org.ph/2022/files/NAMFREL%202022%20NLE%20REPORT%20(FINAL,%20DIGITAL).pdf)

NAMFREL also reiterates its recommendations to the COMELEC contained in the reports on its observations of recent electoral exercises such as the 2021 Palawan Plebiscite, 2022 Maguindanao Plebiscite, 2022 Ormoc Plebiscite, and the 2022 Baliwag Plebiscite. These reports with recommendations were submitted to the COMELEC and are also available online at www.namfrel.org.ph.

In addition, NAMFREL would like to make the recommendations below based on its findings during the 2023 Cavite Special Election.

NAMFREL would like to encourage the COMELEC to consider:

1. Further emphasizing the importance of vote secrecy, not only during the training of election personnel, but also in voter information/education;
2. Further emphasizing in info dissemination to election personnel and to voters that it is the voter who inserts the ballot into the VCM and not the EBs;
3. Consider initiating the free transportation of voters to voting centers instead of giving local governments the opportunity to do so in their own initiative, to prevent possible questions regarding election fairness and use of public resources by incumbents;
4. Providing transportation to members of the EBs, especially in the transport of election paraphernalia to and from the voting centers;
5. Ensuring that a bigger venue is provided for the reception of election paraphernalia, to avoid crowding;
6. Providing better pairs of scissors for cutting unused ballots in bundles; and
7. Reviewing the amount of forms to be filled out and audit logs to be printed, to shorten the closing process and to use less paper.

###