



ELECTION MONITOR

**National Citizens' Movement
for Free Elections
(NAMFREL)**

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High Court suspends ARMM poll synchronization law

The Supreme Court (SC) has issued on September 13 a temporary restraining order (TRO) on the implementation of RA 10153 or the law that allows the postponement of the elections in the Autonomous Region in Muslim Mindanao (ARMM) and its synchronization with the midterm elections in 2013. The TRO will entail the deferment of the appointment of ARMM OICs until the new officers are elected.

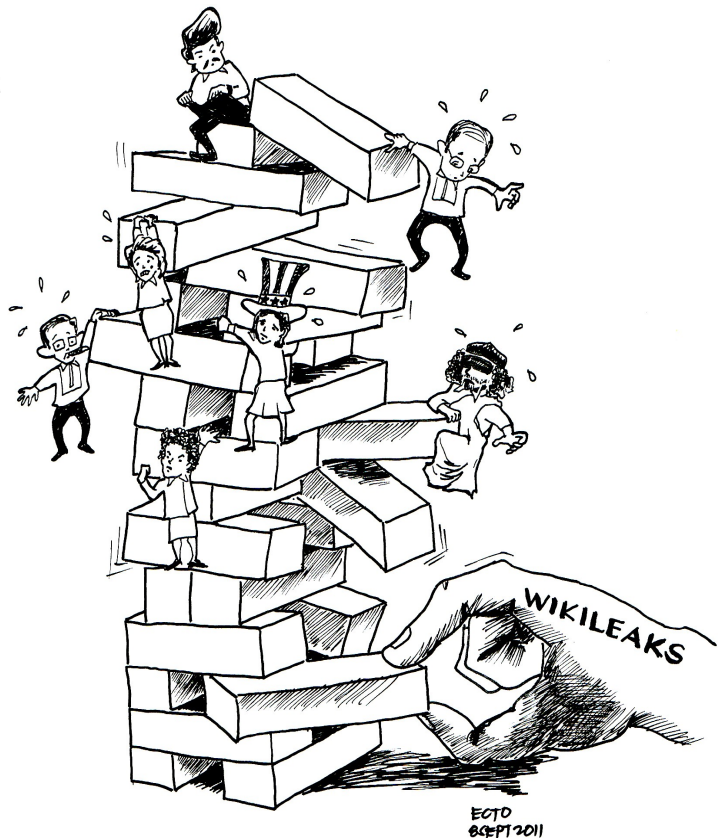
SC spokesperson Atty. Jose Midas Marquez said in a press conference that the TRO will give way for the assessment of the petitions previously submitted to the high court questioning the constitutionality of the law postponing the ARMM elections to 2013. If the petitions submitted are not resolved until September 30, 2011, incumbent ARMM officials will retain their posts until their replacements are duly elected.

Meanwhile, a Malacañang official said in response that they may consider appealing to the high court about its decision. Chief Presidential Legal Counsel Eduardo de Mesa said that submitting a Motion for Reconsideration is one of their options. (Source: ABS-CBN)

WikiLeaks cables raise questions about past elections

Recent leaked cables released by anti-secrecy internet group [WikiLeaks](http://wikileaks.org) have caused much discussion and controversy. The documents, mainly confidential and top secret cables sent from the U.S. embassy in Manila to Washington spanning several years, quote not a few individuals including prominent businessmen, and implicate prominent politicians in alleged illegal activities pertaining to past Philippine elections.

One particular [cable](#) from 1994, written by then Deputy Chief of Mission Raymond Burghardt, quotes Joel de los Santos, a former consultant to the Ramos administration, as saying that Fidel Ramos, while still a presidential candidate, "received five million pesos (US\$ 200,000) from the Libyans to finance his presidential campaign in 1992." The report also says that it was former speaker Jose De Venecia, "front man" and "errand boy" of "his Libyan benefactors" who brought Ramos to Libya. "The Libyans thought they could use De Venecia's aid in enlisting President Fidel Ramos, with his excellent American contacts, as a wedge in helping end Libya's diplomatic isolation in the West. (Embassy has reported extensively on De Venecia's efforts on behalf of Col. Qadhafi)," reads the report.



This has already prompted Ramos' rival in the 1992 election, Senator Miriam Defensor-Santiago, to call for a Senate investigation of Ramos and the alleged Libyan contribution. It will be recalled that Ramos, then the administration candidate, won over Santiago with less than a million votes. Since then, Santiago has not ceased

protesting the victory of Ramos, who, she alleges, "stole" the elections. While Santiago had always questioned Ramos' lead over the number of votes she received, now, if the leaked cables are to be believed, the winning candidate may have violated an important provision of the Omnibus Election Code, which could have resulted to Ramos' disqualification as Presidential candidate and being charged with a criminal offense. Section 81 of the Omnibus Election Code states that *"It shall be unlawful for any foreigner, whether judicial or natural person, to aid any candidate or political party, directly or indirectly, or take part in or influence in any manner any election, or to contribute or make any expenditure in connection with any election campaign or partisan political activity."* Section 95 also expressly prohibits foreigners and foreign corporations from making contributions, directly or indirectly, for purposes of partisan political activity.

Another [cable](#) from 2009, written by former US Ambassador Kristie Kenney, implicates former National Defense Secretary Hermogenes Ebdane in the alleged fraud committed during the 1997 Presidential election. Kenney writes, *"He is a committed Arroyo loyalist whom many believe President Arroyo hand-picked to 'manage' the 2007 Congressional elections before returning to his previous portfolio as Secretary for Public Works...An Arroyo loyalist, Ebdane found his name prominently featured in the 'Hello Garci' tapes scandal from the controversial 2004 elections. Many believe he helped then-Elections Commissioner Virgilio Garcilliano go into hiding at the peak of the controversy."* (Another cable, from 2005, revealed that the Arroyo administration asked the US embassy if it was the source of the "Hello Garci" tapes, as a response to the Philippine government's efforts to improve relations with China, but the US embassy denied the allegation, saying that what it had received were transcripts of the tapes and not the tapes themselves).

While in the 2009 cable Kenney may just be reporting to Washington information that had reached her, much of the discussion surrounding the former ambassador's diplomatic cables are about her impressions of President Noyonoy Aquino, and especially the presidency of his mother, Corazon Aquino. According to Kenney, then-Senator Aquino "left the impression of a diffident, unassertive man continuing a political tradition handed on by his parents but not carving his own legacy...Unlike other major presidential candidates... Aquino was vague on specific policies he would pursue if he won office." In a cable sent to Washington shortly before Cory Aquino died, Kenney said, *"Aquino's credibility as a moral crusader was tarnished when she was seen with disgraced former President (Joseph) Estrada in protest movements against (then) President Gloria Macapagal-Arroyo—even after she had supported then Vice President Arroyo's successful second People Power revolt in 2001 that ousted Estrada...Revered as a hero for taking the reins of power at a difficult moment in Philippine politics and at a time of great personal loss, President Aquino leaves behind an incomplete transition to democratic governance that, while marked by great personal freedom for Philippine citizens, never seems to have properly taken root in the institutions that must handle the difficult task of governing a diverse and divided society...(Aquino's) moral leadership, while coming at an important time for the Philippines, never fully compensated for her weak leadership style."*

While some may see Kenney's report as an honest assessment of the Cory Aquino presidency, many also reacted negatively because they believe Kenney had been largely [positive](#) about her assessment of the Arroyo presidency.

Another leaked [cable](#) from Kenney, dated June 5, 2009, implies that the awarding of contract to Smartmatic for the counting machines used in the May 2010 elections, was anomalous. Wrote Kenney, *"On the procedural side, the Commission on Elections (COMELEC) is poised to award a contract for a massive election automation scheme to supply over 82,000 optical scanning machines for use in every voting precinct. COMELEC continues to review the qualifications of the sole finalist in the bidding for the contract, the Dutch-Venezuelan consortium Smartmatic, which supplied the automation equipment for the 2008 elections in the Autonomous Region of Muslim Mindanao. The four disqualified U.S. bidders expressed concern about perceived favoritism toward the finalist. During a test at COMELEC, Smartmatic's optical scanner burned due to improper wiring, while their paper ballots failed to meet bid specifications. The last U.S. firm in the running, ES&S, was eliminated based on alleged failure of the company to comply with a bid security payment of over 44 million pesos (USD 960,000). The outcome of the bidding process has raised some concerns about COMELEC's transparency as well as the competence of the selected supplier."*

Now the US ambassador to Thailand, Kenney has declined to address the contents of the leaked cables in deference to the present Ambassador to the Philippines, and as a matter of policy by the US government.

(Various news sources)

Rafanan no longer Comelec Law Department Chief, BAC Chair

by Edward C. Torcuato, NAMFREL Assistant Project Coordinator

Former Comelec Law Department chair Atty. Ferdinand Rafanan has been transferred to the Planning Department, after also being removed by the Comelec from the joint DOJ-Comelec committee investigating allegations of fraud in the 2004 and 2007 elections. Comelec chairman Sixto Brillantes, Jr. described Rafanan as

"uncontrollable." Prior to this development, Rafanan had been complaining to the media about his transfer from the Law Department to the ad hoc investigation panel. As head of the Law Department, Rafanan spearheaded the investigation on the overpriced secrecy folders in 2010. One of the Comelec personnel implicated in the case, Atty. Allen Abaya, was transferred to the Law Department allegedly to replace Rafanan. Atty. Esmeralda Ladra, formerly of the Planning department and deputy executive director for administration, has recently been named chair of the Law Department.

While he was in the Law Department, Rafanan also chaired the Comelec Bids and Awards Committee (BAC) from September 2010 to August 2011. During Dir. Rafanan's chairmanship, the Comelec BAC was consistent in sending out invitations, not only to potential bidders but also to civil society organizations (CSOs), including the media, to observe the conduct of the committee's procurement activities. Following are some of the organizations that the BAC under Rafanan used to send invitations to, to observe the conduct of their bidding process:

- Procurement Watch, Inc. (PWI)
- Transparency and Accountability Network (TAN)
- Parish Pastoral Council for Responsible Voting (PPCRV)
- Government Procurement Policy Board (GPPB)
- Namfrel
- Commission on Audit (COA)
- Resident Ombudsman

Now that the Comelec BAC is under a new leadership (Atty. Julius Thaddeus Hernan), Namfrel encourages the Comelec to continue inviting CSOs and the media to observe their procurement activities, in the interest of transparency. Section 13 of GPRA 9184, otherwise known as the Procurement Law, states that, "to ensure transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit (COA), at least two (2) observers, who shall not have the right to vote, to sit in its proceedings."

The Comelec BAC under Hernan conducted a public bidding on Voter Registration System Machines for Overseas Absentee Voting on September 12, 2011. Prior to this, the pre-bid conference for the machines was held on August 31, 2011, to which the Namfrel Secretariat did not receive any invitation (Namfrel was invited for September 12). The approved budget for the contract (ABC) is Php 11,979,800.00, as seen in their advertisement on PhilGEPS.net, a considerable amount that more than justifies the need to have observers during the bidding.

Regarding the joint Comelec-DOJ panel tasked to probe fraud in the previous elections, the election commission has not named any person yet to replace Rafanan after he was removed. There were reports that the joint panel continues to fulfill its functions in investigating the poll frauds sans counterpart(s) from the Comelec.

Et Tu "Hintuturo" – the Biometrics Voters Registration Law a finger away from a clean voters list? (Part 2)

by Eric Jude O. Alvia, NAMFREL Secretary General

New laws as a requisite for an accurate CVL

Currently, registered voters cannot be compelled to undergo biometrics data capture ("finger printing") since no additional requirement for registration other than those provided under the Voter Registration Act of 1996 (RA 8189) can be imposed. To deal with this inadequacy and to cleanse the list of voters through the use of an Automated Fingerprint Identification System (AFIS), legislations were filed in Congress to amend RA 8189 to make biometric capture for all voter registrants mandatory. The AFIS is a biometric identification system that uses digital imaging technology to obtain, store, and analyze fingerprint data.

One such measure is House Bill (HB) no. 3469 authored by Tarlac Representative (Rep.) Susan Yap. The bill was approved on its final reading in May. Similarly, a counterpart bill proposing for a Biometrics Law (Senate Bill no. 1030) was filed by Senator Lito Lapid in July. Both bills require the submission for biometric capture and the validation of voters registered as of May 10, 2010 national elections and those who have registered under RA 8189 without biometrics data. These legislations aim to cleanse the national voters' list from multiple registrants to help curb cheating and ensure the integrity of future election results.

The main feature of these bills include requiring city and municipal Election Officers to conduct a validation process by taking the biometrics (ie. photograph, fingerprint, and signature) of registered voters through the use of Data Capturing Machines (DCMs). It also mandates an automated general registration to help the Commission on Elections (Comelec) nullify all existing registrations, purge the perceived padded old voters' list and come up with a new computerized CVL free from multiple registrants.

Under the measure, the Comelec is mandated to implement in a "uniform and nondiscriminatory manner, a single, official, centralized, interactive computerized voter registration list defined, maintained, and administered by the poll agency". This database will serve as the single system for storing and managing the official list of registered voters throughout the country. The bill also provides that the list should contain the name and registration information of every legally registered voter and assigns a "unique identifier" to each verified registrant.

It also requires that it shall be shared and coordinated with other government agency databases by mandating any authorized election official to obtain immediate electronic access to the information contained in the list. Furthermore, all voter registration information obtained by any local election official shall be electronically entered into the list immediately at the time the information is provided by a registrant.

To aid in cleansing the list of deceased or non-resident electors, those who fail to submit for validation on or before the last day of filing (ie. October 31, 2012) of application for registration for purposes of the 2013 national and local elections, shall be deactivated from the registration record by the Election Registration Board (ERB). However, those deactivated may apply before the ERB for reactivation with the simultaneous validation of the applicant, if eligible, for inclusion in the voters list.

Other pending measures are HB no.1077, co-authored by Cagayan de Oro Reps. Rufus Rodriguez and Maximo Rodriguez Jr., and HB no. 2998 by San Juan City Rep. Joseph Victor Ejercito which amends Section 58 Article 46 (Penalty) of RA 8189. The proposed law increases the penalty for violations to a maximum imprisonment of 12 years and disqualification to hold public office and deprivation of the right to vote. Political parties found guilty will be imposed a fine of Php 1,000,000.

Biometrics law may lead to disenfranchised voters

There have been arguments against legislating mandatory biometric capture. Some election lawyers believe that doing so would disenfranchise a large portion of voters who have not been registered through biometrics. They point out that the current biometric capture legislation only addresses the technology aspect but not the resource requirement for the Comelec to implement the proposed biometrics law.

With barely a year left until the end of the continuing registration in October 31, 2012 and with almost a third of the voting population still without biometrics, there is a massive need for additional DCMs and Voter Registration System Machines (VRM) in time for the use of full-biometric voters list for the 2013 elections. Passing a law without the adequate acquisition of needed DCM/VRMs will just spawn another problem of a non-inclusive voters list.

Beyond mandating biometric capture, allowing the Comelec discretion in the need for biometric capture, integration of the existing biometric database in voting machines to screen and limit multiple voting, and exercising transparency & allowing voters list access to the public can be an equally effective deterrent against election fraud without the risk of disenfranchising voters.

AFIS to cleanse the voters' list

A number of countries have used the AFIS technology for a variety of purposes with favorable results. These applications include criminal identification, applicant background checks, receipt of benefits & social services, and receipt of credentials (such as passports). The sharing of the systems database and allowing a decentralized infrastructure remains a key factor in maintaining its accuracy and optimizing its usage.

Opening and sharing the system to authorized and common users can be facilitated by the passage of these legislation and the implementation of the Information, Communication and Technology Office (ICTO) and its stakeholders initiative to adopt the "common reference number" scheme.

Thus, to fully harness the AFIS technology's capability to cleanse the voters' list and screen qualified voters, it would be advantageous to share and integrate the Comelec database with other national as well as local government agencies' database such as those from the "Unified Multiple-Purpose Identification System" (UMID) as mandated by Section 5b of Executive Order (E.O.) 420. The E.O. mandates LGUs and other branches of government to include the Comelec to streamline and harmonize their identification system. The UMID system currently unifies the existing IDs of the National Statistics Office (NSO), Social Security System (SSS),

Government Service Insurance System (GSIS), and the Philippine Health Insurance Corp. (Philhealth).

Comelec with the UMID by 2013 to improve the Voters List

Implementing EO 420 and related proposed laws assigning a “unique identifier” to each registered voter dovetails with a proposed ICTO project to capture Filipino adults’ biometric data by 2013. This would allow each citizen a unique reference number one can use in transacting business with government. The system provides for a common reference number to improve government services through the use of a digital information management system.

The digital ID management system also calls on each of the agencies capturing biometrics for various purposes – voting records for the Commission on Elections (Comelec), tax payments for the Bureau of Internal Revenue, or social security details for the Social Security System – to maintain current databases of citizens’ records. These agencies will likewise be mandated to share their records so citizens do not need to have their biometric data repeatedly captured.

Flaws in AFIS-matching to Cleanse the Voters List

While adopting the AFIS to cleanse the list is laudable, its proper and efficient use remains in doubt to accurately purge the voters list. In assessing Comelec’s recent data, IT and MIS experts reveal some flaws in its application. Comelec’s July 11, 2011 update, reveal that there are 52,720,603 registered voters of which; 34,938,758 voters have biometrics information while 15,823,342 still have none.

Comelec claims that it has AFIS-matched the almost 35 million biometric voters records that uncovered 1,021,154 multiple registrants. However, only 705,916 that were uncovered was a result of “multiple registered matching” while 315, 238 were human-verified. Based on these figures 1,958,503 registered voters are still unaccountable.

Matching 70% of an uncompleted voters list is erroneous

IT and MIS expert point out that matching on a partial portion of an uncompleted voters database is flawed. For effective and accurate cleansing, all records must be available for matching. Only if matching for all registrants will be repeated once full biometric capture is finished, can the conclusion that 1,021,154 “multiple registered” matches from the 35 million is valid. Multiple registrants may still be found from the non-biometric database when matched against the 35 million. However, if the “matches” on the 35 million were already purged then these multiple registrants (from the 15+ million) may never be identified.

Low matching accuracy of the AFIS necessitates the use of human verification

Another flaw is the seeming inaccuracy of the AFIS. From the Comelec data presented, a significant portion (31%) of the biometric database found to have multiple registers were human verified. It appears that the NEC AFIS seems to have exceeded the accuracy margins thereby requiring additional human verification.

IT and MIS experts point out that the AFIS is required to have a False Acceptance Rate (FAR) and a False Rejection Rate (FRR) of 99.99+%. Given this required accuracy level, the 315,238 human-verified multiple registrants out of the 1,021,154 records which should have been all rejected except for 102 records (the 0.01% acceptable error). However, the AFIS verified matches of 705,916 out of the 1,021,154 registrant records mean only a 69% FAR. At a 99.99% FAR, it should have “false accepted” only 102 records and not 315,238 or more than 3,000 times the acceptable rate.

The expert further asserts that a low FAR is dangerous for a voters’ database since a large proportion of multiple registrants can be accepted into the database and will be able to vote. On the other hand a low FRR is not that dangerous except but it will result in disenfranchised voters.

An Inclusive CVL to Increase Migrant Workers Participation

To address a major cause of low participation of migrant workers (OFWs) in voter registration and elections in the past elections, there are moves to amend RA 9189 or the Overseas Absentee Voting (OAV) Law. During voters registration, OFWs must be physically present in embassies and consulates to register. Moreover, they are then required to vote personally in these sites come election day.

Due to OFWs deployment in remote locations or those with tight job-schedules, provisions to allow migrant workers for internet registration and voting or mail voting will limit those constraints. To assuage security concerns, a second biometrics mode (eg. face, iris, voice recognition etc.) or a combination of any can complement the fingerprint biometric system and complement a voter registry verification system.

While there is a need to define the technical specifications for the biometric devices and database, it is not advisable to include such specifications in the law but only through an IRR to avoid the need to frequently amend the law posed by technology obsolescence and to take advantage of new and better technologies in the future.

Conclusion

While the introduction of amendments and proposed laws are laudable to enhance inclusiveness and improve the accuracy of the voters list, the core of any electoral process lies in the inclusion of eligible voters in the CVL. Ideally, using an accurate voters list diminishes the likelihood of electoral fraud. A voters list must strike the balance between inclusiveness and strictness when devising the registration and cleansing process.

Beyond the moves to have an accurate CVL by mandatory biometric capture & general registration, the sharing and proper use of the technology to cleanse the voters database; equally important is the ease of voters registration and access by the public to the CVL for citizens to fulfill their role in maintaining a clean voters list.

A challenge to Filipinos



In his lecture on September 2 entitled "Creating Paths for Sustainable Citizen Vigilance In a Young Democracy," Ramon Magsaysay awardee Koul Panha of Cambodia stressed the importance of citizens participation -- not just in safeguarding the electoral process, but more importantly, in monitoring the performance of elected officials -- to ensure that democracy is alive and working. Mr. Panha is the Executive Director of Cambodia's Committee for Free and Fair Elections, a non-partisan network of civil society organizations that work for free and fair elections and good governance in Cambodia.

COMFREL's birth and its goals and activities are a response to the numerous challenges that Cambodia has been facing in the slow road to democratization, which began only roughly 20 years ago. In

his lecture, Mr. Panha outlined some of these challenges:

- Dominance of one political party, not just in the executive and legislative branches, but also in the judiciary, law enforcement, armed forces, and public administration. Though Mr. Panha looks positively at the participation of numerous political parties in Cambodia's elections in their local councils (called communes or *sangkats*), he laments that the formula for allocating seats does not encourage small parties, and instead favor the dominant political party.
- No "clear, democratic procedures" in choosing the candidates to be fielded by parties
- Lack of access to information on campaign finance
- Use of state resources in election campaigns
- Lack of will to acknowledge and resolve election violations expeditiously and justly
- Marginalization of women
- Little free flow of information and government censorship of information, discouraging public participation in discussions on issues
- Weak institutions and limited mechanisms for accountability contributing to high levels of corruption
- Partiality of institutions such as the courts and the election commission, the military and the police, resulting to mistrust and confidence among the general public
- Use by the government of ill-defined laws to silence critics

In response to these challenges, COMFREL set out to achieve their goals of helping create an informed and favorable climate for free and fair elections, and encouraging citizens to participate in democratic governance and decision making in order to implement reforms and increase accountability of elected officials.

During election periods, COMFREL deploys long-term and short-term local observers throughout Cambodia to monitor the conduct of the elections. It also conducts parallel vote tabulation/quick count that is also used to

verify the announced election results and detect possible fraud patterns. COMFREL also conducts surveys to verify and assess the accuracy of the voters list, and does voters education through production and distribution of voters education materials, among other activities.

Mr. Panha also described COMFREL's activities in between elections. One of the most significant among their projects is Parliamentary Watch, for which COMFREL deploys a team to monitor the field visits of members of parliament, and another team to sit on National Assembly sessions to observe the activities, pronouncements and actions of the members of parliament. COMFREL also helps organize local public forums, encouraging citizens to engage elected officials in dialogues. Some of the participants became members of local watchdogs that monitor performance of elected officials at the local level. COMFREL also has a radio program through which they disseminate information and gather public support for reforms advocacy.

The Cambodian experience in democratization is strikingly similar to the Philippine experience after EDSA, and Mr. Panha's and COMFREL's response to the challenges are not unlike those of Filipino civil society organizations' like Namfrel. In a dialogue with local election monitoring organizations also on September 2, Mr. Panha acknowledged that Namfrel and its activities with regard election monitoring and seeking accountability from elected officials was what inspired him to do the same in Cambodia.

However, more significantly, it is also clear that most of the challenges that are besetting the young democracy that is Cambodia are still very much present in the Philippines. The recognition given Mr. Panha, as well as COMFREL's work, are a reminder to Filipinos that there is still much work to be done to nurture and safeguard democracy in the country, and that the only way Filipinos could move forward and overcome the challenges is to be informed, to unite, and to demand accountability from public officials and to ensure that democratic principles are upheld.

GALLERY



Mr. Koul Panha (center) with ANFREL chair Mr. Damaso Magbual (left) and NAMFREL founding chairperson Mr. Jose Concepcion, Jr. after the Ramon Magsaysay Awards presentation ceremony at the Cultural Center of the Philippines on August 31



Namfrel and other election stakeholders met with UP President Alfred Pascual, Sen. Aquilino Pimentel III, and Comelec Commissioner Augusto Lagman for consultations on electoral reform on August 20, 2011 at the UP Alumni Hall

Namfrel Sec Gen. Eric Alvia and Department of Health (DOH) resident Ombudsman Atty. Joebil Delmoro address participants during the 1st DOH Integrity Development Council National Convention held on August 18, 2011



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