

ONGOING PROJECTS

Narratives Project: ENSAAF continues to collect narratives from the survivors of human rights abuses in Punjab, currently living in the U.S. ENSAAF believes that a human rights movement driven by survivors can challenge impunity at every level. Towards this end, ENSAAF is working to meet survivors, record their narratives, and encourage them to build an association of families in North America who have survived human rights violations in Punjab.

Legal Advocacy: ENSAAF has drafted a 17-page letter addressed to the Immigration and Refugee Board of Canada regarding the lack of an Internal Flight Alternative in India for returned Sikh asylum seekers. The communication focuses on several trends that demonstrate refouled asylum seekers are likely to be persecuted: (1) government protection for perpetrators of human rights abuses in Punjab and India; (2) the police portrayal of attempts at reviving the militancy in Punjab; (3) the continuation of abuses perpetrated by security forces in India; and (4) the ability and willingness of security and intelligence agencies to track down Sikhs who have relocated to other parts of India, outside of Punjab. If you feel this may assist an asylum case, please contact ENSAAF. In October 2004, ENSAAF also filed an a letter in lieu of an amicus brief in the case of Kulvir Singh Barapind, emphasizing the human rights abuses committed by the officers requesting and investigating the extradition.

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ABOUT ENSAAF

ENSAAF—a U.S.-based organization launched to enforce human rights and fight impunity in India—works with survivors to engage in advocacy and outreach, documents violations, and educates the public about human rights abuses in India. ENSAAF has five programs: Community Advocacy, Human Rights Education, Legal Advocacy, Media and Human Rights, and United Nations. ENSAAF, which means Justice in many South Asian languages, acts to implement the international rights to knowledge, justice, and reparation. The board of directors comprises human rights lawyers Sukhman Dhimi and Jaskaran Kaur, as well as Professor Peter Rosenblum of Columbia Law School.

OUR PRINCIPLES

Right to Knowledge. People have the right to know the truth about gross human rights violations and the people and institutions involved in the perpetration of these abuses. The State also has a duty to acknowledge and remember the violations suffered.

Right to Justice. All victims of human rights abuses possess the right to an effective remedy, including an investigation of the abuses and prosecution of perpetrators.

Right to Reparation. All victims of human rights violations and their beneficiaries have a right to reparation, including restitution, compensation, and rehabilitation.

Satisfaction and Guarantees of Non-recurrence. To prevent the recurrence of systematic human rights violations, governments must commit to guarantees of non-repetition, such as: full public disclosure and investigation of the facts; public acknowledgment and acceptance of State responsibility; and repeal of all laws that facilitate human rights abuses and abrogate guaranteed rights protections.

REFLECTIONS ON STUDENT HUMAN RIGHTS ACTIVISM

Nikki Serapio

Background to the Darfur Crisis

In early 2003, two rebel groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), began attacking military installations in Darfur. The rebels want an end to the region's continuing economic and political marginalization. Some of them seek similar political promises as those given to the Sudan People's Liberation Movement/Army (SPLM/A), the largest rebel group in the country: in July 2002, for example, the Sudanese Government and the SPLM/A signed the Machakos Protocol, an agreement addressing Sudan's long Second Civil War (between southern populations and the Khartoum government) in general and the right of self-determination for the south in particular.

The rebel groups in Darfur also seek to protect their communities against a twenty-year period of violence by government-backed militias. Over the past year, these "Janjaweed" militias have intensified their systematic, scorched-earth campaign: receiving more and more support from the government, the Janjaweed are killing innocents, looting and burning down villages, and using rape as an instrument of warfare.

At the time of this writing (Dec. 2004), these numbers stand: "approximately 370,000 have died since conflict erupted in February 2003, and...the current mortality rate has increased to approximately 35,000 per month, though this figure is poised to grow rapidly in light of food deficits forecast for early 2005."¹ Close to 2 million people have been forced from their villages and farms. About 200,000 have fled to Chad.

The Crisis and Student Activism

In February 2005, various community service and human rights groups at Stanford University will hold an awareness and fundraising event about the genocide in Darfur. The event will include a documentary screening, speeches from human rights activists and journalists, and a campus-wide teach-in. Doctors Without Borders, whose staff and volunteers are currently providing medical aid to Sudanese refugees in Chad, will receive all the money raised during the week.

As a member of Stanford's Amnesty International chapter, I'm helping to organize these February activities. I have involved myself, in this small way, because issues like these push so heavily on the conscience. Given the resources that I have as a student, and given the blessings that I take for granted as an American, any silence or half-measures on my part effectively constitutes complicity.

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During the past few months, I have been able to take stock of the moral imagination at work: the activism of Stanford students, yes, but also the activism and concerns of so many others. In the small United Nations Association shop in Palo Alto—the store sells flags and wood trinkets, among other things, to benefit organizations like UNICEF—a retired teacher kindly gave me the contact information of a possible event sponsor. Right now, too, at the time of this writing, I am corresponding with Philip Cox, a documentary director and producer from England. In early 2004, he was one of the first two filmmakers to see the Darfur crisis firsthand.² And he has offered to come to Stanford with his footage and his memories.

Here, one might question the practical efficacy of the Stanford groups' work. Indeed, in my experience, a kind of latent yet stubborn skepticism always underlies much of human rights activism, especially the activism of youth. So: documentary screenings; modest fundraisers; protests; editorial pleas; discussions with cosmopolitan friends—these make bare our compassion, but what do they *exactly do* for the displaced Sudanese?

On November 21, I saw John Prendergast speak. He is currently with the International Crisis Group, and was Director for African Affairs for the National Security Council from 1996-1999. In very plain terms, he told his audience that the physical

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UPDATE ON NHRC CASE: HEARING AND COMPENSATION AWARD

For a background to the Punjab mass cremations matter pending before the NHRC, please visit ENSAAF's website. This article draws from an update sent by CIIP to the Punjab Solidarity e-group.

On November 15, the National Human Rights Commission (NHRC) announced an award of 2.5 lakh rupees (around \$5,500) to 109 families whose next of kin had been illegally cremated by the Punjab police in Amritsar district (one of 17 districts), with no admission of liability or inquiry into the facts, even though these were established cases of police custody resulting in illegal cremations. Although some hailed this as a positive development or a landmark ruling, this order undermines the rule of law and the protection of human rights by eliminating an inquiry into the range of abuses and the systems that allowed such abuses to occur, by preventing a complete determination of wrongdoing and liability, and by failing to provide compensation based on a full understanding of the different abuses suffered by survivors, among other issues. This article provides a description of the hearing and the November 15 order.

At the hearing on September, 23 2004, the Commission informed the parties that it had received 1,591 claims in response to its public notice issued on July 19, 2004, inviting claims from families who believed their relations were illegally cremated by Punjab's security forces. On that date, among other things, the Commission asked for the following: 1) That the parties representing the families assist the Commission in translating the claims into English; 2) That copies of the claims be served upon the State of Punjab, who was directed to file its response by October 26 2004; and 3) That the counsel for the parties file letters of authority with respect to the claims. The hearing on that date concluded with the Commission expressing its anxiety to begin the process of compensating claimants before Diwali, which fell on November 12 this year.

On November 5, 2004: a) translation was completed in roughly 1000 claims; b) the counsel for the claimants were prepared to file roughly 1,235 letters of authority and sought time for filing the rest; and (c) the Punjab government filed its response to roughly 400

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NEWS FLASHES

Read ENSAAF's blog on human rights in India, at <http://www.blogs.law.harvard.edu/jaskaran>.

* India's Central Board of Film Certification has approved *Amu* to be released on January 7 after its director, Shonali Bose, agreed to cut some dialogue critical of the government's response to the 1984 pogroms of Sikhs. *Amu* tells the story of an orphan who lost her parents in the pogroms. The censor board also cut scenes of a widow blaming the government for turning a blind eye to the pogroms.

* In early December, Sikh refugee claimants camped out in front of the Montreal offices of the Immigration and Refugee Board. The refugees maintained a rotating hunger strike and burned documents to protest the refugee-determination process. This demonstration follows months of protests over the "racist and incompetent practices" of Immigration and Refugee Board judges who unjustly reject refugee claims.

* A City Court in New Delhi sentenced nine people to three years in prison for looting a shop during the 1984 pogroms of Sikhs. This action is a tiny step towards providing justice to the survivors of the 1984 massacres.

* In late July, the government of Dr. Manmohan Singh proposed a new law to combat communal violence. In August, a group of human rights activists, jurists, and retired police officials released a draft model law, called the Prevention of Genocide and Crimes Against Humanity Act 2004. In December, another collection of human rights groups proposed a draft bill. The 32-page draft bill calls for punishment for communal hate speech; a ban on educational materials that "create communal hatred"; state prevention of economic boycotts of communities; a ban on housing segregation; a prohibition on the destruction of religious structures and the use of religious symbols as weapons; verification of public prosecutors to filter out those who hold communal biases; and punishment for police officers who do not register cases or investigate communal violence, among other provisions.

claims. With respect to the remaining claims, they stated that they were unable to file any response since the records pertaining to these cases were in the custody of the CBI. In addition, the Commission informed the parties that it had received 81 more claims since the last date of hearing on September 23, 2004.

Justice Anand then raised the issue of granting compensation in cases where the State had admitted police custody of the person prior to his death. The parties, including the Commission, seemed confused about the number of cases in which the State of Punjab had admitted custody. Ashok Agrawal, representing the original petitioners Committee for Information and Initiative in Punjab (CIIP), stated that the CIIP had filed a list of 156 cases of admitted police custody on October 27, 2003. This list was based solely on the stand of the State of Punjab in their affidavits with respect to the 582 cases of identified cremations, and 100 cases of partially identified and unidentified cremations, where the identification process had been completed by the CIIP. Accepting this number, Justice Anand asked the State of Punjab to respond as to why it was not liable to pay compensation in the cases where custody was admitted.

The State of Punjab was represented by Altaf Ahmed, Senior Advocate and former Additional Solicitor General of India. He argued on behalf of the State of Punjab:

a) India's right to life jurisprudence does not apply in the present case. Between 1984 and 1994, the police fought a war with the separatist militant forces. In such situations, the normal laws of the country were not sufficient and special legislation was necessary. The Disturbed Areas Act, the Terrorist and Disruptive Activities (Prevention) Act (TADA), and the Armed Forces Special Powers Act were in force in Punjab at that time. The Supreme Court had also taken note of this special war-like situation in Punjab.

b) "Custody" has a different connotation in such a situation. In other words, liability can not be placed upon the State of Punjab merely because it had admitted custody of the person in question.

c) The situation was not of conventional warfare because there was "no geography, border, uniform, or disciplined force," against which the State was fighting. When a "combatant" was in custody, it required them to obtain information from the combatant to lead the police to enemy combatant locations, weapons/ arms hideouts, etc., in further of counter-insurgency operations. If such a person in custody was killed in an attack by other militants, while leading the police to the hideout/ cache, the State could not be held liable. Thus, in all of the admitted cases of police custody, the person in custody was killed as a result of an attack upon the police by the militants. Moreover, the persons in custody were all terrorists and the rule of absolute liability as laid down in the *Nilabati Behara* case could not be applied.

d) Apprehensions were also expressed that a 'finding' of liability in specific cases against the Punjab government by the Commission would prejudice the criminal prosecution of the police personnel, denying them their right to a fair trial.

e) The State of Punjab and the Union could not be ungrateful and abandon those who had rendered service to preserve the nation. If they felt betrayed, the "soldiers" of the nation could rebel.

f) Thus, under these circumstances, the Commission should accept the "magnanimity" of the State and give expression to its "compassion" for the deceased by awarding them compensation.

Initially, Justice Anand stated that interim relief would be given to survivor families in those cases where the State has admitted custody of that person at any point of time prior to his death and that, the final order of compensation would be decided later based on the questions of whether the body was cremated as

unidentified even though the identity had been ascertained and whether the Punjab Police Rules had been followed or not. Later, on the persuasion of the Counsel for the State of Punjab, he said that the order passed in these cases would be final. Further, Justice Anand pointed out that the NHRC could not go into issues of aspect of criminal liability since the CBI was conducting investigations in these cases, and that its objective was to “apply balm on the wounds”.

The counsel for the Committee for Coordination on Disappearances in Punjab (CCDP) and Paramjit Kaur—the wife of disappeared human rights activist Jaswant Singh Khalra, who made the discovery of mass cremations—discussed the amount of compensation families should receive. They cited the example of interim compensation of one million rupees awarded by the Supreme Court in the case of Paramjit Kaur and said that, to avoid any invidious discrimination, the Commission should award the same amount in these cases.

Ashok Agrwaal of CIIP argued that if the State wanted to justify its actions by claiming that it was a war-like situation, and that its forces were exempted from liability under the fundamental rights jurisprudence of India, then they should accept the application of the Geneva Conventions—the laws of war. He asked the Commission to remember that it was not there to convey the State government’s dole to the survivor families, but to do justice by remedying the wrong done to them.

Mr. Venkatramani, the Amicus attorney advising the NHRC, supported this stand stating that even when there was a threat to the State, life could not be arbitrarily extinguished. He submitted that the power to take a person into custody must not be permitted to extend to the taking of life, under any circumstance. The taking of life was an abuse of power, and the State is bound to make restitution in such cases.

Justice Anand concluded the hearing by saying that if the parties wanted to file any submissions relating to the law on compensation, they had until November 8, 2004 to do so.

On November 15, the NHRC announced the compensation award for 109 families. Indian law on compensation for victims of human rights abuses, particularly in the context of mass crimes committed by the state, remains weak. Because the NHRC is in this case, for the first time, acting as a designated body of the Supreme Court, its decisions will serve as precedent for victims of human rights abuses throughout India, and will give content to the rights to life and redress. Unfortunately, the Commission has abandoned this opportunity and duty to provide reparations to survivors of State abuses.

The NHRC was established as a UN-mandated National Human Rights Institution, designed with the purpose of implementing India’s obligations under international law. Whereas India’s domestic human rights law is weak, international law has developed extensive jurisprudence on reparation and liability principals for crimes committed by the state, as in the Punjab mass cremations matter. As discussed in the August 2004 issue of *ensaaf Dispatch* and below, numerous commissions around the world have successfully investigated tens of thousands of cases of human rights abuses, and provided meaningful compensation to the victims of state abuse. The NHRC only had to look to these international sources to understand and apply the appropriate liability and reparations regime. For example, the President of Chile recently awarded compensation to 28,000 survivors of torture based on the report by the National Commission on Political Imprisonment and Torture established in November 2003. Additionally, this report was based on survivors’ testimonies, whereas the NHRC has yet to collect a single survivor’s testimony.

Even if the NHRC does begin to examine the particular cases before it, it still refuses to extend its inquiry to the fact of disappearances in general, and to other districts in Punjab. Thus, only those who can prove their family member was cremated in three crematoria in Amritsar district can hope to receive a remedy from the NHRC.

The petitioners in this case have repeatedly argued for the application of international law and precedent, but the Commission has ignored them, and its own mandate. India has breached its obligation to

and sexual violence against Darfurians would stop if the international community did three things: 1) implement an arms embargo on the Sudanese government; 2) issue a travel ban on senior Khartoum officials; and 3) freeze the assets of these officials.

Indeed, in my experience, a kind of latent yet stubborn skepticism always underlies much of human rights activism, especially the activism of youth. So: documentary screenings; modest fundraisers; protests; editorial pleas; discussions with cosmopolitan friends—these make bare our compassion, but what do they exactly do for the displaced Sudanese?

Upon hearing this putative solution, I immediately called to mind the efforts of Stanford's Amnesty chapter, the Stanford International Human Rights Law Association, and all the other groups involved in the February event. What did we think we were going to achieve, really? Mr. Prendergast had just told us what the United Nations Security Council ought to do, and he gave us clear and valid reasons for his position. Construing it another way, Mr. Prendergast had provided our student campaign with its primary objectives. Best to try to pressure the Bush administration. Best to write more letters to our Congressional representatives. Best to make a loud protest, say, instead of merely informing ourselves within quiet classrooms and dormitories.

This way of going about human rights activism, though—dismissing an awareness and fundraising effort, for instance, in order to privilege more direct political agitation—is probably misguided. On one hand, the various Stanford community service and human rights groups do see the limitations of the February event. We do admit the value of prioritizing: outside of netting this or that amount of money for Doctors Without Borders, we must spend a lot of time calling and writing our public officials. On the other hand, nowhere should we take prioritizing to mean *excluding*. It's right to raise money for Doctors Without Borders, the Red Cross, or the United Nations High Commissioner for Refugees, since even if the crisis were to "end" today or tomorrow, humanitarian aid groups would still very much need funds to do their relief work.

It's also right—and a very urgent task—to simply inform a student community. Documentary screenings, survivor testimonies, and informal discussions are all forward-looking activities. They move ordinary people to become lifelong activists. They shed light on how we should approach similar humanitarian problems in the future; sometimes, even, they shed light on how we might undercut the conditions that give rise to these problems in the first place. And they help form a history that serves as a bulwark against any future governmental denials and equivocations. Leaders, in other words, won't have room to justifiably say that *this* human rights abuse never happened, or that this abuse wasn't so bad.

If there's one piece of advice about human rights activism that I've come to believe more and more over these past few months, it's this: Venture everything.

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Admittedly, in the case of any student interested in becoming a human rights practitioner, it's not often clear what can be done effectively in terms of sustained activism and how to effectively venture *everything*—even if the previous has referenced some possibilities. So, let me give three points:

1) Human Rights, Academics, and Research. On the university level, there are usually a number of service-learning classes and research opportunities related to human rights. In late November, I talked to a

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Stanford senior about a trip she took to South Africa. During her trip she interviewed a number of married women afflicted with AIDS; these interviews, in turn, served as the impetus for a fifty-page paper about the economic and social rights of South African women. The relevant human rights activism—the student here made sure to give these women a voice and a hearing—was funded by the university, sponsored by a professor, and sanctioned by her major department (International Relations) in such a way that she was given formal academic credit for her work. It's important, too, to mention that this student wasn't an outright exception in the context of university life. I've talked to other students (from California and Colorado schools) who've been able to do human rights work in Guatemala, Haiti, and Honduras, simply because they had the nerve to express an interest to do so—upon coming back to the states, also, they did not stop their work, but rather used it as a foundation from which to build campus organizations or define their career paths.

2) Ask Another Group for Advice. In coming up with the structure of our weeklong awareness and fundraising event, the Stanford groups decided to plan for a large photo exhibit in a high-traffic area of the campus. And this wasn't completely our idea: it was Amnesty International's. Indeed, for the past few weeks, I've been in contact with a regional Amnesty director in San Francisco: she and I have been in constant email correspondence about event logistics.

Really, no student activist starts without at least a modicum of support. Even if a student doesn't know how to specifically relate herself or himself to a human rights project—doesn't know, for instance, which human rights issue or country to focus upon—organizations like Amnesty exist to give suggestions. In high school, my exposure to human rights issues was mainly limited to problems in the Philippines and Latin America. When I wanted to consider other avenues for activism, then, I sought help from many outside groups—and these groups pointed me ultimately to organizations like ENSAAF.

3) Always Try to Get Your First Option. Originally, I thought that we wouldn't be able to get Philip Cox to speak on the Stanford campus. This

whole year he has been very busy. He has appeared before the UN Commission on Human Rights, and the English and European Parliaments. His Darfur footage is going to be used in future war crimes prosecutions.

This initial doubt, though, did not prevent Stanford groups from sending him a simple invitation (by email). And this invitation was accepted graciously.

The point here: it's fine to be ambitious in one's human rights projects. For the immensity of the human rights problems themselves requires as such.

¹ Please see

<http://www.sudanreeves.org/modules.php?op=modload&name=News&file=article&sid=8&mode=thread&order=0&thold=0>.

² Please see http://www.nativevoicefilms.com/films_darfur.htm

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The Darfur Relief Campaign at Stanford, in cooperation with other national and Bay Area human rights groups, is planning a number of awareness and fundraising events around Northern California. Please email nserapio@stanford.edu if you'd like to get involved.

Update on NHRC Case (continued from Page 4)

investigate violations of the right to life and to bring those responsible to justice. As a signatory to the International Covenant on Civil and Political Rights (ICCPR), under article 2(1), India must "respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized" therein. The right to life, article 6(1), is a right recognized therein. Moreover, the Human Rights Committee of the UN has found that article 2(1) imposes an affirmative obligation to investigate thoroughly violations of the right to life, to take action against violators of the right to life, and provide redress to victims. Notwithstanding these obligations under international law, India has perpetuated violations of the right to life within its territory and jurisdiction by failing to take action against those responsible for the violations.

ACTIVITIES LOG

Legal Advocacy: In October, the Ninth Circuit accepted ENSAAF's motion to appear as Amicus Curiae on behalf of petition-appellant Kulvir Singh Barapind by submitting a letter in lieu of a brief. ENSAAF's interest in this case derives from its knowledge based on primary and secondary research that the Indian government targets political activists for implication in criminal cases based on falsified evidence, often extracted under torture, as in this case; Barapind's experiences of torture by the Punjab police; and the role of the officer making the extradition request in perpetrating arbitrary detention, torture, extrajudicial execution and/or disappearance.

In December, ENSAAF prepared a communication for refugee cases proceeding in Canada, regarding the lack of an internal flight alternative for Sikh asylum seekers returned to India.

Human Rights Education: On September 4, ENSAAF gave a presentation at the Gurmat Camp at Fremont Gurudwara, California to Sikh children on human rights abuses in Punjab since 1984. Focusing on the past two decades of human rights abuses in Punjab, India, it explained how youth living in the U.S. can get involved in the struggle for justice.

In October, ENSAAF and the Sikh Coalition presented at the Renton Gurudwara, and at "Remembering our Past, Investing in our Future," an event held in Seattle at the Microsoft campus.

1984 Remembrance Events: In the first week of November, ENSAAF participated in "Remember 1984," a series of commemorative events organized by the Sikh Research Institute and Trinity University's Students Creating Awareness of the Sikh Faith in Antonio, Texas.

On November 13, ENSAAF organized a program at San Jose State University commemorating the 1984 massacres. This event featured a presentation by Reena Aurora, a survivor, a preview of Michael Singh's *Riding the Tiger*, a poetry reading by Meeta Kaur, a screening of Rakesh Sharma's Final Solution, among other talks.

On November 20, ENSAAF made a presentation at the Punjabi American Heritage Society's remembrance event in Yuba City, California, attended by several hundred people.

ENSAAF BOARD OF DIRECTORS

Sukhman Dhami: A graduate of American University, both the School of International Service and the Washington College of Law, Sukhman has interned for civil and human rights groups, such as the Lawyers' Committee for Civil Rights Under Law and the Civil Rights Division of the Department of Justice. At the Public International Law and Policy Group, Sukhman drafted peace agreements and advised non-governmental organizations on legal reform issues. His diverse public interest experience includes representation of asylum seekers from Mali and Sierra Leone; and legal work on arbitrary detention before the Inter-American Commission on Human Rights.

Jaskaran Kaur: A graduate of Yale University and Harvard Law School, Jaskaran is a lawyer focusing on human rights documentation, research and advocacy on human rights issues in Punjab. She is a contributing author to *Reduced to Ashes: The Insurgency and Human Rights in Punjab*, which analyzes impunity and over 600 cases of extrajudicial execution and disappearance by Punjab's security forces. Jaskaran has also researched the judiciary's handling of habeas corpus petitions filed in Punjab by families of the disappeared, publishing her study in the *Harvard Human Rights Journal*.

Peter Rosenblum: Peter is the Lieff, Cabraser, Heimann & Bernstein Associate Clinical Professor in Human Rights at Columbia Law School. He joined the Human Rights Program at Harvard Law School in the fall of 1996 and served as Associate Director until 2002, when he became Clinical Director. Peter also held an academic appointment as Lecturer at Harvard Law School and oversaw clinical human rights projects with students. In 2003, Peter joined Columbia Law School. He was formerly Program Director for the International Human Rights Law Group and Human Rights Officer for the United Nations Centre for Human Rights. Peter has engaged in human rights research and field missions in Africa, Eastern Europe, and Asia.

CONTACT US

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