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# **ADVANCE UNEDITED VERSION**

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## **Human Rights Committee**

### **Concluding observations on the fourth periodic report of Israel**

1. The Committee considered the fourth periodic report of Israel (CCPR/C/ISR/4) at its 3115th and 3116th meetings (CCPR/C/SR.3115 and 3116), held on 20 October 2014. At its 3127th meeting (CCPR/C/SR.3127), held on 28 October 2014, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee is grateful to the State party for having accepted the new optional procedure for submission of reports and for the timely submission of its fourth periodic report in response to the list of issues prior to consideration of reports (CCPR/C/ISR/Q/4), under that procedure. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the responses provided by the delegation orally.

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) Adoption of Amendment No. 4 to the Pupil's Rights Law 5761-2000 whereby sexual orientation and gender identity were added to the prohibited grounds of discrimination against pupils, in March 2014;

(b) The transfer of the function of Inspector for Complaints against Interrogators of the Israel Security Agency (ISA) to the Ministry of Justice, in June 2013;

(c) Establishment of a joint inter-ministerial team, headed by the Deputy Attorney General, tasked with the review and implementation of the concluding observations of human rights treaty bodies, in 2011.

4. The Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities, on 28 September 2012.

## **C. Principal matters of concern and recommendations**

### **Applicability of the Covenant, including to the West Bank, including East Jerusalem, Gaza Strip and the Occupied Syrian Golan**

5. The Committee regrets that the State party continues to maintain its position on the non-applicability of the Covenant to the Occupied Territories, by claiming the Covenant is a territorially bound treaty and does not apply with respect to individuals under its jurisdiction, but outside its territory, despite the interpretation to the contrary of article 2, paragraph 1, supported by the Committee's established jurisprudence, the jurisprudence of the International Court of Justice and State practice. It is further concerned at the position of the State party that international human rights law does not apply when international humanitarian law is applicable. The Committee reiterates its view on these matters (see CCPR/CO/ISR/3, para. 5; CCPR/CO/78/ISR, para. 11 and CCPR/C/79/Add.93, para. 10). The Committee notes that the State party maintains its reservation to article 23 of the Covenant. It also notes that the State party has not yet acceded to any of the two Optional Protocols to the Covenant (art. 2).

#### **The State party should:**

(a) **Interpret the Covenant in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of the object and purpose of the Covenant, and review its legal position so as to acknowledge the extraterritorial application of the Covenant under certain circumstances, as outlined, inter alia, in the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. In this respect, the Committee reiterates and underscores that the Covenant applies with regard to all conduct by the State party's authorities or agents adversely affecting the enjoyment of the rights enshrined in the Covenant by persons under its jurisdiction regardless of the location;**

(b) **Review its legal position and acknowledge that the applicability of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant.**

(c) **Reconsider its position regarding its reservation to article 23 of the Covenant with a view to withdrawing it;**

(d) **Consider acceding to the (First) Optional Protocol to the Covenant providing for an individual complaint mechanism.**

(e) **Consider acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

### **Accountability for alleged human rights violations committed during the State party's military operations in the Gaza Strip**

6. The Committee, while noting that the State party implemented some of the recommendations of the second report of the Turkel Commission aiming at improving the investigation mechanisms into alleged violations of the laws of armed conflict, and that the implementation of other recommendations are currently being considered by a special Committee set up in January 2014, regrets the State party's failure to provide updated information on investigation into human rights violations related to the "Operation Cast Lead" (27 December 2008-18 January 2009) conducted in the Gaza Strip. The Committee expresses its concern at allegations of human rights violations committed during the military operations in the Gaza Strip known as "Operation Pillar of Defence" (14-21 November 2012) and "Operation Protective Edge" (8 July-26 August 2014), inter alia the

disproportionate number of casualties among civilians, including children; the destruction of homes and other civilian infrastructure, including medical facilities and schools, in particular UNRWA schools used as shelters for civilians and other UN installations during the “Operation Protective Edge” (arts. 2, 6, 7, 9, 12, and 17).

**The State party should continue reforming its investigative system, including by, as an initial step, implementing the recommendations of the second report of the Turkel Commission. It should ensure that all human rights violations committed during its military operations in the Gaza Strip in 2008-2009, 2012 and 2014 are thoroughly, effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned in a manner commensurate with the gravity of the acts committed, and that victims or their families are provided with effective remedies, including equal and effective access to justice and reparations.**

#### **Equality and non-discrimination**

7. The Committee reiterates its concern (CCPR/C/ISR/CO/3, para. 6) that the principle of equality and non-discrimination is not explicitly codified in the State party’s Basic Law: Human Dignity and Liberty 5752-1992 which serves as the State party’s bill of rights, despite its recognition as a fundamental principle in the State party’s legal system. The Committee, while noting that relevant legislation is currently under review, is also concerned that the Jewish and non-Jewish population are treated differently in several regards and that the State party’s domestic legal framework maintains a three-tiered system of laws affording different civil status, rights and legal protection for Jewish Israeli citizens, Palestinian citizens of Israel and Palestinian residents of East Jerusalem (arts. 2 and 26).

**The Committee reiterates its previous recommendation (CCPR/C/ISR/CO/3, para. 6) that the State party should amend its Basic Law: Human Dignity and Liberty 5752-1992 to explicitly incorporate the principle of equality and non-discrimination. It should ensure equal treatment for all persons within its territory and subject to its jurisdiction regardless of their national or ethnic origin and in particular pursue the review of all laws discriminating against Palestinian citizens of Israel as well as ensure that any future legislation is fully compatible with the principle of equality and non-discrimination.**

8. The Committee is concerned that, despite the steps taken by the State party, Israeli citizens of Arab origin continue to be underrepresented in the civil service, in particular in decision-making positions (arts. 2, 25 and 26).

**The State party should step up its efforts to achieve equitable representation of Israeli citizens of Arab origin in the civil service, in particular in decision-making positions in legislative and executive bodies, Knesset and Government comprised.**

#### **Punitive demolitions, planning and zoning regime in the West Bank and displacement of Bedouins**

9. The Committee is concerned at the resumption of the policy of punitive demolitions in the West Bank since July 2014. It is also concerned about the discriminatory zoning and planning regime regulating the construction of housing and structures by Palestinians in Area C of the West Bank and by Palestinian Bedouins in the central West Bank, including the East Jerusalem periphery, that makes it almost impossible for them to obtain building permits, while facilitating the State party’s settlements in the Occupied Palestinian Territory. The Committee further notes with concern that, for that reason, many are forced to build without a permit and are at high risk of eviction. The Committee is further concerned at the demolition and forcible transfer of Bedouins residing in Area C of the West Bank and at plans to relocate a total of approximately 7,000 people in around 45

residential areas to three urbanized ‘townships’ elsewhere in the West Bank without taking into account their traditional pastoral economy, social fabric, and rural way of life. The Committee also expresses concern at demolitions, forced evictions and displacement of Bedouin citizens of Israel living in the Negev desert, and notes that the proposed legislation which seeks to legitimize such forcible displacement, including the Bill for the Regulation of the Bedouin Settlement in the Negev, are currently frozen. Finally, the Committee is concerned at the restricted access of Bedouins living in unrecognized and recently-recognized villages in the Negev to basic services, including adequate housing, water and sanitation, healthcare, education and public transportation (arts. 2, 7, 12, 14, 17, 26 and 27).

**The State party should:**

**(a) Immediately put an end to conducting punitive demolitions given their incompatibility with the State party’s obligations under the Covenant and provide effective remedies to victims of destruction of property, forced eviction and forcible transfer;**

**(b) Refrain from implementing evictions and demolition orders based on discriminatory planning policies, laws and practices affecting Palestinians, including Bedouins, in the West Bank, including the East Jerusalem periphery; remove discriminatory provisions from relevant planning and zoning legislation; provide for procedural protection and due process guarantees against forced evictions and demolitions; ensure the participation of Palestinians in the planning and zoning process; withdraw the so-called ‘Bedouin Regulation’ plan;**

**(c) Desist from any actions that may facilitate or result in forcible transfer and forced evictions, particularly of the Bedouin communities in the central West Bank, including the eastern Jerusalem periphery, and forced displacement and dispossession of Bedouins residing in the Negev;**

**(d) Ensure the participation of Bedouins in the Negev in any process concerning their relocation; ensure that any proposed plans for their relocation take due account of their traditional way of life and, where applicable, their right to ancestral land and is carried out in accordance with relevant international human rights standards, in particular the principle of non-discrimination, the rights to be informed and consulted, to an effective remedy, and provision of adequate relocation sites; withdraw the discriminatory Bill for the Regulation of the Bedouin Settlement in the Negev (the Praver-Begin Bill).**

**State of emergency and administrative detention**

10. While noting the ongoing legislative process regarding the future cancellation of the state of emergency, the Committee reiterates its concern at maintaining the state of emergency (see CCPR/C/ISR/CO/3, para. 7; CCPR/CO/78/ISR, para. 12 and CCPR/C/79/Add.93, para. 11). The Committee also remains concerned at the continuing practice of administrative detention of Palestinians, at the fact that in many cases the detention order is based on secret evidence and at the denial of access to counsel, independent doctors and family contacts (arts. 4, 9, and 14).

**The Committee recalls, with reference to its general comment No. 29, that measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature and be limited to the extent strictly required. It reiterates its previous recommendations (CCPR/C/ISR/CO/3, para. 7), and requests the State party to:**

**(a) Expedite the process of reviewing its legislation governing the state of emergency and the necessity of maintaining the state of emergency proclaimed since**

1948, as well as revisiting the modalities governing the renewal of the state of emergency;

**(b) End the practice of administrative detention and the use of secret evidence in administrative detention proceedings, and ensure that individuals subject to administrative detention orders are either promptly charged with a criminal offence, or released.**

#### **Counter-terrorism measures**

11. While noting that the legislative process on the Fight against Terrorism Bill, 5771-2011 is underway, the Committee notes the absence of specific information on the definitions of terrorism, and on the legal safeguards afforded to persons suspected of or charged with a terrorist or related crime contained in the draft law currently under consideration (arts. 2, 7, 9, 10 and 14).

**The State party should ensure that the new legislation governing the State party's counter-terrorism measures is in full compliance with its obligations under the Covenant. The State party should, inter alia, take into account the Committee's previous recommendations on this issue (CCPR/C/ISR/CO/3, para. 13).**

#### **Ongoing blockade of the Gaza Strip**

12. The Committee is concerned at the long-standing blockade of the Gaza strip imposed by the State party. It notes with concern that the blockade continues to hamper the freedom of movement with only limited categories of persons able to leave Gaza, such as medical referrals; to negatively impact on Palestinians' access to all basic and life-saving services such as food, health, electricity, water and sanitation; and to delay reconstruction efforts in the Gaza Strip (arts. 1, 6, 7 and 12).

**The State party should, in line with the Committee's previous recommendation (CCPR/C/ISR/CO/3, para. 8):**

**(a) Lift its blockade of the Gaza Strip, insofar as it adversely affects the civilian population and provide unrestricted access for the provision of urgent humanitarian assistance and construction materials needed for civilian reconstruction efforts;**

**(b) Ensure that any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza are consistent with its obligations under the Covenant.**

#### **Excessive use of force by State party's security forces**

13. The Committee expresses its concern at persistent reports of excessive use of lethal force by the State party's security forces, in particular the Israel Defense Forces, during law enforcement operations against Palestinian civilians (children included), particularly in the West Bank, including East Jerusalem, and in the Access Restricted Areas of Gaza. While noting the new policy announced by the Military Advocate General in 2011, according to which criminal investigations are automatically opened into some incidents involving fatalities in the West Bank, and the measures taken to investigate such incidents, the Committee remains concerned that accountability for such acts remains weak. The Committee is further concerned about damage to and demolition of properties during arrest operations, which seem disproportionate (arts. 2, 6, 7, 9, and 24).

**The State party should:**

**(a) Take all necessary measures to prevent incidents of excessive use of force during law enforcement operations, including by ensuring that rules of engagement or open fire regulations of State party's security forces in the West Bank, including East**

**Jerusalem, and the Access Restricted Areas of Gaza, are consistent with article 6 of the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

**(b) Ensure that prompt, thorough, effective, independent and impartial investigations are launched into all incidents involving the use of firearms by law enforcement officers, including members of the Israel Defense Forces, the Border Police and private security personnel contracted by the State party's authorities;**

**(c) Ensure that those responsible for disproportionate demolition of properties and excessive use of force during arrest operations are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies.**

#### **Torture and ill-treatment**

14. The Committee reiterates its concern (CCPR/C/ISR/CO/3, para. 11) that to date no crime of torture in conformity with article 7 of the Covenant has been incorporated into the State party's legislation. Furthermore, the Committee reiterates its concern that the "defence of necessity" continues to be legal and is used as a possible justification for torture. It also notes with concern that the Supreme Court implicitly allows the use of so-called "moderate physical pressure" in cases of "necessity". The Committee is also concerned about the exemption from the obligation to provide audio or visual documentation of interrogations in cases of persons detained for security offenses. The Committee recalls that the prohibition of torture, cruel, inhuman or degrading treatment in article 7 is absolute, and according to article 4, paragraph 2, no derogations therefrom are permitted, even in time of public emergency (arts. 4 and 7).

**The State party should explicitly prohibit torture, including psychological torture, and cruel, inhuman or degrading treatment by incorporating into its legislation a definition of torture that is fully in line with article 7 of the Covenant, and ensuring that the law provides for penalties commensurate with the gravity of such acts. It should also: (a) remove the notion of "necessity" as a possible justification for the crime of torture; (b) refrain from inflicting "moderate physical pressure" in cases of "necessity" and ensuring that interrogation techniques never reach the threshold of treatment prohibited by article 7 of the Covenant; and (c) provide for audio or visual documentation of interrogations in cases of persons detained for security offenses.**

15. The Committee is concerned at reports of the use of torture and other ill-treatment in the State party's detention facilities, including widespread, systematic and institutionalized ill-treatment of Palestinian children. It is particularly concerned that no preliminary investigations by Inspector for Complaints against the Israel Security Agency (ISA) have led to judicial proceedings against alleged perpetrators (arts. 2, 7 and 24).

**The State party should take robust measures to eradicate torture and ill-treatment against adult and child detainees and carry out prompt, thorough, effective, independent and impartial investigations into all allegations of torture and ill-treatment, including in the case of complaints against the Israel Security Agency, hold perpetrators accountable and provide victims with effective remedies, including appropriate compensation.**

#### **Violence perpetrated by State party's settlers against Palestinians in the West Bank, including East Jerusalem**

16. The Committee is concerned at the acts of violence perpetrated by the State party's settlers against Palestinians and their property in the West Bank, including East Jerusalem, and at the lack of effective accountability and protection from such acts by the State party's authorities partly due to deficiencies in investigating such cases. The Committee takes note

of the measures taken by the State party to address this serious matter, including the establishment of an inter-ministerial team to deal with ideologically-motivated crimes (arts. 2, 6, 7, 14, 17 and 26).

**The State party should take all necessary measures to prevent violence perpetrated by State party's settlers and protect Palestinians effectively when such violence occurs. It should strengthen its efforts with a view to ensuring that prompt, thorough, independent and impartial investigations are launched, in a non-discriminatory manner, into all incidents of violence by private actors against Palestinians and their property, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and victims are provided with effective remedies.**

**Self-determination of Palestinians, access to natural resources, State party's settlements and related-activities, and the Wall**

17. The Committee is concerned about continuing confiscation and expropriation of Palestinian land. It is also concerned at continuing restrictions on access of Palestinians in the Occupied Palestinian Territory, including East Jerusalem, and of residents of the Occupied Syrian Golan, to natural resources, inter alia agricultural land and adequate water supply. The Committee is further concerned about (a) the resumption since 2013 of the practice of claiming land as State land; (b) the continued construction of the Wall in the West Bank, the limited allocation of permits for Palestinians to access their agricultural lands situated on the other side of the Wall, and the restricted number and opening hours of access gates; (c) the continuing construction and expansion of settlements throughout the Occupied Palestinian Territory, that has more than doubled, and the transfer of State party's settlers to that Territory; (d) the retroactive legalization of outposts. The Committee notes with concern that these undermine the enjoyment by Palestinians of a wide range of their Covenant rights, including the right to self-determination (arts. 1, 2, 9, 12, 17, 18 and 26).

**The State party should:**

**(a) Ensure and facilitate non-discriminatory access of Palestinians in the Occupied Palestinian Territory, including East Jerusalem, to land, natural resources, water and sanitation;**

**(b) Put an end to the practice of expropriation of land and allocation of State land for the expansion of settlements;**

**(c) Cease the construction and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem and the Occupied Syrian Golan, and all settlement-related activities, including the transfer of its own population thereto, and take measures aimed at the withdrawal of all settlers from those territories;**

**(d) Reroute the Wall consistent with the ICJ's Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory of July 2004, and ensure that Palestinians have full access to their lands and livelihood.**

**Freedom of movement**

18. The Committee expresses concern, in conjunction with the concerns raised in paragraphs 12 and 17 above, at the restrictions on freedom of movement of residents of the Occupied Palestinian Territory, including persons residing in the "Seam Zone" between the Wall and the State party. The Committee is further concerned at the treatment of Palestinians residents in East Jerusalem as aliens and the insecurity of their permanent residency status that can be revoked if they live outside the municipal boundary of Jerusalem (art. 2, 12 and 26).

**The State party should take all necessary measures with a view to ensuring respect for the right to freedom of movement for Palestinians throughout the Occupied Palestinian Territory, comprising the West Bank, including East Jerusalem and the Gaza Strip, and ensure that any restrictions on freedom of movement are in line with its obligations under the Covenant. It should also ensure respect for the rights of Palestinians residents in East Jerusalem to freedom of movement and freedom to choose residence.**

#### **Juvenile criminal justice system**

19. The Committee, while noting positive developments in the administration of juvenile military justice, including the increase in the age of majority in the military courts from 16 to 18 years and the adoption of a number of military orders providing for guarantees and safeguards for children, remains concerned that such reforms appear not to be effectively implemented in practice and that Palestinian children are still exposed to arbitrary arrest and detention and often do not enjoy full procedural rights (arts. 2, 7, 9, 10, 14 and 24).

**The State party should ensure that any arrest and detention of a child is in conformity with article 9 of the Covenant. It should further ensure that children are:**

- (a) Only detained as a measure of last resort and for the shortest possible period of time;**
- (b) Treated at all times with respect and dignity and in accordance with their age, specific needs and vulnerability;**
- (c) Provided with safe and child-friendly complaint mechanisms, including during trials, regarding treatment at the time of arrest, interrogation and detention, and that proceedings are audio-visually recorded;**
- (d) Afforded, in practice, all fair trial guarantees in line with article 14 of the Covenant.**

#### **Refugees and asylum-seekers**

20. The Committee is concerned about the very low recognition rate of refugees in the State party, including of Eritreans and Sudanese from South Sudan seeking such status. While noting that the State party does not deport such persons to their country of origin, it is concerned that the lack of formal procedures at the border for those wishing to apply for refugee status and the lack of a clearly defined legal status for individuals who have not been recognized as refugees but whose continued presence in the country is tolerated, may expose them to the risk of refoulement. Furthermore, while welcoming the decisions of the High Court of Justice of 16 September 2013 and of 22 September 2014 declaring unconstitutional the mandatory detention of asylum-seekers for a period up to three years and one year respectively, the Committee is concerned about the prolonged detention of a large number of asylum-seekers over the course of past years and the lack of new legislation that would introduce a detention regime in line with the requirements of article 9 of the Covenant (arts. 2, 7, 9, 13 and 26).

**The State party should:**

- (a) Review its policy of recognition of refugees;**
- (b) Ensure that formal procedures for asylum application are made available at its border;**
- (c) Create a legal status for failed applicants for refugees status who cannot be deported to their country of origin, allowing them to stay in the State party until**



return becomes possible, as well as having access to formal employment and basic services;

(d) **Ensure that the new legislation abolishes the system of automatic detention of asylum-seekers and requires that in each case detention is reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time.**

#### **Protection of the family**

21. The Committee reiterates its concern (CCPR/C/ISR/CO/3, para. 15) regarding the disproportionate and adverse restrictions imposed by the Citizenship and Entry into Israel Law (Temporary Provision) which suspends the possibility, with certain rare exceptions, of family reunification of Israeli citizens with Palestinian spouses living in the West Bank, East Jerusalem or Gaza Strip or with spouses living in several States classified by the State party as “enemy States”. It also expresses concern at the decision of the High Court of Justice of 11 January 2012 upholding the constitutionality of the Law (arts. 17, 23, 24 and 26).

**The Committee reiterates that the Citizenship and Entry into Israel Law (Temporary provision) should be revoked and that the State party should review its laws, practices and policies with a view to bringing them in line with its obligations under articles 23 and 26 of the Covenant.**

#### **Freedom of opinion and expression and freedom of association**

22. The Committee is concerned at the chilling effect that the Boycott Law (5771-2011) providing that a call for an economic, cultural, or academic boycott of people or institutions in the State party or the Occupied Palestinian Territory for political reasons is a civil offence, and the so-called “Foreign Funding Law” (5771-2001) imposing mandatory disclosure of foreign funds received by any association or company may have on the freedom of opinion and expression and freedom of association (arts. 19 and 22).

**The State party should ensure that individuals fully enjoy their rights to freedom of expression and association and that any restrictions on the exercise of such rights comply with the strict requirements of article 19, paragraph 3 of the Covenant as interpreted in the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression, and article 22, paragraph 2, of the Covenant.**

#### **Conscientious objection**

23. The Committee remains concerned (CCPR/C/ISR/CO/3, para. 19) at the proceedings before the special Committee in charge of recommending to the competent authorities to grant or reject an individual’s application for exemption from compulsory military service for reasons of conscience and at its lack of independence given that its membership comprises only one civilian member and all the rest serve as officials of the armed forces. The Committee reiterates its concern that individuals whose conscientious objection applications are rejected may be repeatedly imprisoned for their refusal to serve in the armed forces (arts. 14 and 18).

**The Committee reiterates its previous recommendation that the special Committee making recommendation to the competent authorities on conscientious objection applications is made fully independent, and proceedings before it include hearings and provide for a right to appeal against negative decisions. The State party should also refrain from repeated imprisonment for refusal to serve in the armed forces that may constitute a violation of the principle of *ne bis in idem*.**

### **Dissemination of information relating to the Covenant**

24. The State party should widely disseminate the Covenant, the text of its fourth periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official language of the State party.

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 9, 12, 14 and 19 above.

26. The State party is invited to submit its next report, which will be its fifth periodic report, by 31 October 2018. To that end, the Committee will send the State party in due course a list of issues prior to reporting. The Committee also requests the State party, when preparing its next periodic report, to continue its practice of broadly consulting civil society and non-governmental organizations operating in the country.

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