

TREATY BODY MONITOR

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COMMITTEE ON ECONOMIC, CULTURAL AND SOCIAL RIGHTS 39TH SESSION PARAGUAY, 2ND AND 3TH REPORTS 13 - 14 NOVEMBER 2007

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Information submitted to the Committee

The State report

Paraguay submitted its second and third periodic reports to the Committee on Economic, Social and Cultural Rights (the Committee) on 26 February 2007; the 193-page report covered the period of 1994 – 2006. The State Party ratified the Covenant on Economic, Social, and Cultural Rights (the Covenant) in 1992. The Committee considered Paraguay's initial report at its 14th session in 1996.

The head of the Paraguayan delegation commented on the fact that the second and the third report were both overdue, arguing that the amalgamation of the two made up for this delay. There was no further explanation for the delay. The combined reports included five main chapters: the first contained information about the territory and population including general and ethnic characteristics of the population and other demographics and statistics; and the second chapter provided a synopsis of the political and social situation in Paraguay. The third chapter provided a report from the Ombudsman and the fourth chapter, consisting of one paragraph,

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dealt with the normative framework for the protection of human rights.¹ The fifth and final chapter of the report provides an article-by-article (Articles 1-15) commentary on the implementation of the Covenant. The report also contained an annex with additional statistical information on various issues. A core document dating back to 1993 was also submitted to the Committee.

List of issues

The Committee submitted a list of issues to the State party before the examination. In this list the Committee first asked for information about Paraguay's efforts to improve its system of data collection and disaggregation of information. This information enables the Committee to objectively assess a State's progress and obstacles in implementing the Covenant.

Under Article 1 of the Covenant the Committee expressed concern about conflicts between the Government and the landless peasants, and enquired about steps taken to restore ancestral land to indigenous communities. Under Article 2 the Committee highlighted issues regarding the lack of drinking water and electricity in indigenous communities, and general discrimination against these groups. Other issues under Articles 6 and 7 addressed lack of employment policies and legal norms regulating domestic work. In this context the Committee also asked if sexual harassment was classified as an offence in Paraguay, and what was being done to tackle the current wage gap between men and women.

Under Article 10 several important issues were addressed, including domestic violence, the recruitment of minors into the military, street children, and the trafficking and sexual exploitation of children. The Committee also asked for information on the high number of child workers in Paraguay. The severe problem of poverty was addressed under Article 11, with the Committee asking Paraguay if a timetable had been established for achieving the objectives of the Government's development strategy. The Committee also asked for additional information on various food, nutrition and housing programs. Finally, under Article 12, the Committee asked if the Government of Paraguay would consider introducing exceptions to the general ban on abortion given that abortion continued to be the leading cause of maternal mortality in the country. The Committee also asked the delegation to comment on the fact that more than 80% of the population did not have adequate healthcare.²

NGO parallel reports

Four non-governmental organisations (NGOs) submitted reports to the Committee. Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) submitted a report covering various issues of concern in relation to women's rights in Paraguay.³ The report stated that in spite of advances in gathering statistics in some areas, there was still a lack of surveys and statistics in relation to sex, race, ethnicity and language. It also stated that: there existed no mechanism for implementing and monitoring gender perspective policies; that a high rate of maternal mortality due to preventable causes persisted; and that the educational system reproduced socio and cultural patterns resulting in discrimination in work places and a high degree of gender-based violence. Finally, the report stated that the State party did not guarantee adequate health care, education, housing, employment and other economic, social and cultural rights, and was thus not meeting its obligations under the Covenant; and that there existed no mechanisms for presenting judicial claims against the State to oblige compliance and fulfilment of these rights.

¹ This paragraph merely referred to the report submitted to the Human Rights Committee in 2005, which contained a list of mechanisms of the promotion and protection of human rights in the legal framework of the State party

² Additional issues were addressed under article 3,8, 9,13 and 15, available at <http://www.ohchr.org/english/bodies/cescr/cescrs39.htm>

³ Available at <http://www.ohchr.org/english/bodies/cescr/cescrs39.htm>

CAPI submitted a report addressing the rights of indigenous peoples.⁴ This report highlighted the slow response of the State Party to territorial claims and the lack of possession of ancestral land, as well as displacement of indigenous groups from their land because of damages caused by cattle-raising and agro industry, which in many cases had been approved by the Government. An association of different NGOs also submitted a report addressing issues linked to the right to food and water, the right to work, and other Covenant rights.⁵

Before the plenary examination the Committee members had a short meeting with national NGOs to hear their views. During this meeting Committee member Ms Bonoan-Dandan asked the NGOs present to compile a list of the most urgent issues relating to Covenant rights. The NGOs agreed to distribute this list to the Committee members as soon as possible. Committee member Mr Rzeplinski enquired about land reform. In response, an NGO representative explained that, on one hand, the Government was changing the Constitution and guaranteeing land, but on the other hand it was also expropriating land. The representative told the Committee members that they should address the financial restitution and the recovery of the land that was redistributed during the dictatorship, and that they should recommend that the Government develop a new policy guaranteeing farmers access to land and credit.

Themes and issues

Paraguay's delegation was headed by Ms Victorina Ruiz Diaz De Espinola, Minister of Education, Children Affairs and Adolescence and included: Mr Rigoberto Gauto Vielman, Ambassador and Permanent Representatives of Paraguay in Geneva; Mr Carlos Arce, Vice Minister of Justice and Employment; Mr Edgar Taboada, Director General of Human Rights in the Ministry of Justice and Employment; Mr Manuel Acosta, Director General in the Ministry of Finance; Ms Martha Moreno, Permanent Mission of Paraguay in Geneva, Mr Francisco Barreiro, Counsellor and Director of Human Rights in the Ministry of Foreign Relations; and Mr Hugo Chaparro, Human Rights section, Ministry of Foreign Relations.

In her opening statement, the head of delegation told the Committee that national institutions and representatives of civil society had been consulted toward the drafting of the State Party report. She went on to discuss Paraguay's progress since the last report, in particular with regard to the adoption of new legislation, programs and policies. Among other things, Ms Ruiz Diaz De Espinola highlighted a law reducing deforestation by 85%, specific policies and programs especially aimed at helping vulnerable groups. She also mentioned that there had been an increase in the number of people staying in the educational system, and that several programs were established to combat poverty and to ensure access to drinking water and basic hygiene.

The right to land

In its list of issues the Committee enquired about what had been done to resolve the conflict with landless peasants, and what steps had been taken to restore ancestral land to indigenous communities. According to

⁴ Coordinadora por la Aurodeterminacion de los Pueblos Indigenas (CAPI), available at <http://www.ohchr.org/english/bodies/cescr/cescrs39.htm>

⁵ This report is the product of FNC (National Rural Federation), MCNOC (National Table Coordinators of Rural Organizations), ONAC (National Rural Organization), CLIBCH (Coordinator of Indigenous Leaders of the Lower Chaco), CONAMURI (National Coordinator of Organizations for working, rural and indigenous women), CODEHUPY (Coordinator of Human Rights in Paraguay), Tierraviva, Base Investigaciones Sociales, CIPAE (Church Committee for Emergency Help), Base Ecta (Education, communication, alternative technology), Decidamos, Ñemonguetarâ, Oguazú, Pastoral de la movilidad humana, Pastoral indígena, Pastoral social nacional, Red rural y CECTEC (Center of education, training and rural technology), with the support of Diakonia (Swedish Universal Support) and FIAN International (Food First Information and Action Network), and the special collaboration of EDD (German Anglican Churches for Development), ICCO (Inter-ecclesiastical Organization of co-operation for development) and Intermon Oxfam, available at <http://www.ohchr.org/english/bodies/cescr/cescrs39.htm>

paragraph 64 of the State Party report, groups of landless peasants invaded rural areas and made roadblocks demanding land, free seeds, and remission of debts. The Government's response was to purchase land and redistribute it.

Committee member Mr Pillay made several comments on this issue. First of all he stressed that when landless peasants occupied land, surely this was a cry for a land reform. Secondly he drew attention to the concluding observations made by the Committee 11 years ago, which highlighted the problem of indigenous groups not having access to ancestral land.⁶ He then asked what had been done in this regard, arguing that this was the main reason for hunger and malnutrition among these groups. Finally, both Messrs Pillay and Rzeplinski asked if the State Party intended to respect the decision of the Inter American Court in 2005 which found in favour of an indigenous community in a land dispute.⁷

Ambassador Vielman, in response, stated that in Paraguay as well many other Latin American countries land had been a problem since the time of colonisation. He stated that as far back as he could remember different solutions had been sought. In 2002, an agrarian reform had been adopted by the Government which was built on a model of recognition of private land ownership and redistribution of land. As a result, many hectares of land had been redistributed every year and in 2006 redistributed land amounted to 54.585 hectares. With regard to the decision of the Inter American Court, Mr Barreiro stated that Paraguay was committed to respecting the decisions of the Court, not only in this case, but also in other cases concerning indigenous communities. In various spheres the Government was working in a coordinated manner to comply with the judgement. However, Mr Barreiro also urged the Committee to understand that this was a complicated issue, as some of the land was currently in the hands of private owners and had to be expropriated.

Committee member Mr Tirado Mejia stated that the Committee was concerned about the slowness with which the Government was addressing these problems. He asked for additional information on the redistribution of land, as the Committee had received information that this was not done in a fair manner. Ms Bonoan-Dandan supported this question and added that she was also very interested in knowing who the former landowners were. Committee member Mr Sa'di asked if there was a fund to facilitate land ownership for people who did not have money to purchase land.

In response, a representative of the delegation stated that he could not provide a list of former landowners, but that he would attempt to get one as soon as possible. He recalled, as one example, that the Moon sect had had land expropriated from it, but also emphasised that confiscation was forbidden by the Constitution and that payment of compensation for expropriated land was mandatory. The delegation member also stated that the Government was aware that more needed to be done in this area, but pressed that progress was linked to the country's economy.

Committee member Mr Pilay highlighted the fact that NGOs had documented around 350 cases of forced evictions of indigenous people from 1990-2004. According to Mr Pillay there was a lot of illegally occupied land that could have been given to these families. Mr Pillay also claimed to have received reports about extensive harassment, and intimidation from big landowners, which had forced indigenous communities to move to cities in which they found themselves in vulnerable situations, pressing that when people are deprived of their land they are also deprived of the right to work, the right to food, and the right to shelter.

In response, the delegation stated that Paraguay was going through a new democratic phase, including political problems, which had made things more difficult. It reiterated that land reform compensation would be paid, but only in cases where the land had been owned by its occupants. The question of indigenous communities' access to ancestral land was not specifically addressed by the delegation, however other issues concerning this group were discussed later during the examination.⁸

⁶ CESCR E/1997/22, paragraph 71, available at http://www.bayefsky.com/html/paraguay_t4_cescr.php

⁷ Yakye Axa Indigenous Community vs Paraguay, June 17 2005, available at www.cidh.org

⁸ For further discussions on this issue see page 5

Another issue that was addressed by Committee member Mr Rzeplinski was the question of **the security zone** that had been established between Paraguay and Brazil. He asked why this had been included in the report. Ambassador Vielman explained that due to several wars there was no precise border between Paraguay and Brazil, and that this had resulted in a lot of Brazilians buying land in Paraguay. For this reason the Government had been forced to establish a “border security zone” of 50 kilometres within the national territory.

Finally, the issue of **pollution and land deforestation** was addressed. In her opening statement the head of delegation mentioned that as a result of colonisation and the establishment of agricultural programs, there had been massive deforestation in Paraguay. However, with the adoption of a law preventing further deforestation, the Government had now succeeded in reducing deforestation by 85%. In this context, Mr Sa’di asked if the Government had also taken steps to correct damage. Mr Tirado Mejia enquired about the spraying of pesticides, as this was apparently being done without any government control. Committee member Mr Kerdoun added that indigenous people have a right to be protected from the pollution of their land and water.

Ambassador Vielman assured the Committee that an extensive program with the involvement of civil society had been established in order to control the use of pesticides. A law had been adopted, which controlled who could import pesticides and in what amounts. All other imports were considered illegal. With regard to deforestation, Ambassador Vielman explained that farmers who own forested land receive payments to protect and take care of these areas.

Rights of Indigenous peoples

In its list of issues the Committee raised concern about the fact that only 2.5% of the indigenous population had access to safe drinking water and only 9.7% had electricity. In her opening statement the head of delegation said that different resources had been allocated to combat poverty, and to ensuring the accessibility of drinking water and basic hygiene for everyone. The Committee also expressed other concerns in regard to indigenous communities in its list of issues, but few of these issues were specifically addressed during the examination.

Committee member Mr Tirado Mejia stated that the **Guani** people were a significant and proud part of the Paraguayan. He enquired why they were not recognised as an indigenous group. Delegation member Mr Arce explained that during the era of colonisation there was a unification of the Guanies and the Spaniards. This led to a mixed race, which was now the most prevalent in Paraguay. According to Mr Arce there had never been any conflict between the Spaniard and Guani, and the languages of both groups were now official languages used on a daily basis.

Committee member Ms Wilson said that according to the State Party report there was a de facto discrimination of indigenous people in relation to the right to work. She asked what steps had been taken to improve this situation. The head of delegation responded that the Government was trying to provide work training to indigenous communities in order to improve their employment opportunities.

Gender equality and the rights of women

In her opening statement to the Committee the head of delegation stated that since the submission of Paraguay’s last several specific programs had been implemented addressing vulnerable groups. These included the secretariat for women’s affairs and a special unit in the Ombudsman’s office dealing with discrimination of women. Nevertheless, non-discrimination and gender equality was one of the main issues addressed during the examination.

Committee member Ms Barahona Riera recognised that Article 48 of the Paraguayan Constitution guaranteed **equality between men and women** and asked about other equality legislation. The delegation responded that the right to equality guaranteed under the Constitution could be readily applied. He added that if the Committee thought that further legislation was necessary then the delegation would listen, but the delegation was not of the opinion that additional equality legislation was necessary. In response to this, Ms Barahona Riera said that specific legislation would of course be better.

Ms Wilson asked if programs promoting gender equality had produced any concrete results. She also mentioned that women in rural areas risked dual discrimination, and asked what measures had been taken to support single women who were head of households.

The head of delegation explained that because of two big wars with Argentina, Brazil and Uruguay, many boys and men had been killed, leaving many women heads of households. Ms Ruiz Diaz De Espinola reiterated the Government's strong desire to guarantee equality, and assured the Committee that the allocation of budgetary means to social areas where there was a clear vision of equal opportunity for men and women was a priority.

In this context Ms Barahona Riera stated that the fact that **domestic workers** did not enjoy the same rights as other workers was a serious problem; one which the Government needed to address. She enquired how **equal pay** was guaranteed and commented on the fact that the number of cases of discrimination in the work place was very low, asking how evidence was brought forward in these cases. Committee member Mr Rzeplinski also commented on this issue saying that while the Constitution and the labour code guaranteed equal salaries for men and women, private employers were ignoring this. He also stated that the process for dealing with complaints in this area took too long.

Delegation member Mr Taboada explained that women in average earned about 73% of the salary of men, and that a commission was being set up to promote women being a part of the workforce on an equal basis with men. Furthermore, he explained that the Ombudsman's unit dealing with discrimination processed 53 cases in 2006, none of which had been workplace related. In relation to domestic workers, part of a worker's salary was consumed by rent and board, but if an employer did not ensure that domestic workers were paid the minimum wage then the employer could be fined.

In her opening statement the head of delegation had also stated that a law against **domestic violence** had been adopted in 2000. Committee member Ms Barahona Riera highlighted the fact that the penalty for domestic violence was only a fine, stating that this was a very low penalty.

The delegation responded by stating that a complete revision of the criminal code was underway, including sections addressing sexual and domestic violence. A delegation member stated that the concerns and recommendations of the Committee would be studied, but added that the Government did not want to interfere in family matters. The delegation member also stated that at one time if a man raped a woman and subsequently married her he was not punished, however, that provision has been abolished by the criminal code.

The rights of children

In her opening statement and throughout the examination the head of delegation, as Paraguayan Minister of education, children's affairs and adolescence, repeatedly highlighted different programs and laws that had been adopted to promote and protect the rights of children. Among these initiatives she mentioned the establishment of the secretariat of children's affairs, the adoption of a law which for the first time protected the interest and welfare of children, special programs to help street children, and programs to ensure that pregnant women had sufficient nutrition through to their post-natal recovery.

Committee member Mr Rzeplinski asked why so many mothers did not register their children at birth, stating that this was a serious issue as the **lack of registration** meant that a person did not legally exist and was thereby unable to claim his or her rights. Mr Sa'di commented on the fact that 15% of the population was under 18 years of age, and enquired how many children were born out of wedlock.

The head of delegation responded that because many men had died in the wars a significant number of children were born out of wedlock, and that was why it was always the mother's name in which a child was registered. The head of delegation stated that, according to a study, 60% of all persons in Paraguay were registered at birth, but one of the problems was that women who gave birth in rural areas did not have birth certificates themselves and did not know about registration. It was stated that the Ministry of Child Affairs was working together with the United Nations Children's Fund (UNICEF) to resolve this issue, with the Government intending to amend the law so that it would be easier to register children at birth. Furthermore, birth registration was free and the officials who administered it had access to a computer catalogue. The head of delegation also recognised that the lack of registration could result in trafficking and sexual exploitation of children, but reiterated that a lot of progress had been made. The goal was to have all children registered before reaching the age of one year.

Committee member Mr Rzeplinski also commented on the fact that quite a high number of children, some under the age of 12, were working for middle class citizens. He asked for information on the Ministry's policies with regard to this, and stated that while he commended the Government for extending the right to education, he had not identified a law eradicating **child labour**. Mr Sa'di also expressed concern, stating that child labour could lead to violence and sexual abuse. He asked if the Government would consider making child labour illegal, which was possible under ILO Conventions.

The representatives of the delegation recognised that child labour was a major problem, but one that was also a result of the economic situation in the country. The Government was trying to deal with this problem by complying with ILO Conventions. A national action plan had been set up which addressed 1400 children, ensuring rights to health, identity, and recreation. It was, however, acknowledged that 338,000 Paraguayan children were working or looking for work, and that one in every seven child was not attending school. The representative assured the Committee that the Government was working to eradicate child labour in all forms before 2020, and that training was provided to the authorities monitoring the situation.

Mr Sa'di enquired about legal cases addressing instances of child labour that had led to violence. The delegation stated that in the few instances where such cases had been heard the penalties for perpetrators had been severe.

Committee member Mr Rzeplinski raised the serious issue of the **recruitment of child soldiers**. He stated that it was an absolute right of a child not to be in the army, and that this problem should be eradicated right away. He also asked how many children had been wounded while serving in the army. The delegation stated that progress had been made in relation to minors serving in the military. Paraguay was now a party to the *Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, which had been implemented into national legislation. No one under the age of 18 could be enrolled in the army, and special orders had been given in this regard.

Committee member Mr Zhan asked why ten out of every 200 children that died had not received any **medical care**. The representatives answered candidly that the children probably died because they could not reach health care in time, but that progress was gradually being made to correct this phenomenon. The delegation stated that major improvements had been made in relation to the care of pregnant women and newly born infants.

The Judiciary

Committee member Mr Atangana stated, in relation to the **separation of powers**, that according to the State Party report the heads of the Supreme Court were called ‘ministers’. He asked if it would be possible to call them something else as this might lead to confusion between them and the executive. He also enquired about the jurisdiction of the **electoral tribunal**, asking if these courts had permanent jurisdiction or only performed a function during elections. Mr Rzeplinski added that an independent judiciary and equal access to the courts were of major importance. He asked what was being done in this regard, as the country report did not indicate any improvements.

The representative of the delegation answered that Paraguay had regional judicial system equivalent to that of Argentina and Uruguay. The judges had both judicial and administrative duties, depending on the arena in which the task lay. In order to change this there would have to be an amendment to the Constitution. In relation to the electoral tribunals, the representative stated that these were not only active during presidential elections, but also addressed municipal elections, party elections and other elections that took place during a five-year term. Finally, the representative stated that there were three bodies in the judiciary guaranteeing equal access: the Supreme Court, the Public Ministry and the public defenders office. Where people did not have the means to afford legal representation, a lawyer would be provided to them.

Other issues

Committee member Mr Zhan stated that Paraguay faced major challenges because of its **underdeveloped economy**. He advised the Government to concentrate on economic development. Ms Wilson asked for examples of specific improvements, and whether the Government had a tax system for redistributing wealth.

The delegation responded that after years of stagnation of the gross domestic product, there had been an increase since 2003. The national economy was on its fifth consecutive year of growth and exports had doubled between 2002 and 2006. The delegation also stated that the Government had balanced the economy, creating room for investments in infrastructure and increases in social expenditure. The Government had also managed to reduce external debt, with the Committee assuring the Committee that a program of redistribution of wealth was on the way.

Under the issue of the **right to work** several Committee members asked questions on minimum wage and freedom of association. Mr Martynov was concerned that only 40% of workers received minimum wage, and stated that it was his understanding that there was a law determining a minimum wage but that it was not respected by the private sector.⁹ Further, it was highlighted that, in some cases, civil servants also failed to receive the minimum wage. Mr Rzeplinski pressed that because it took large numbers of people to form a union, employers had a very powerful position. He enquired about the laws in respect to this.

The delegation recognised that there was a problem with ensuring the receipt of minimum wage by all workers, but assured the Committee that steps were being taken to correct this.

Ms Wilson expressed concern about the lack of a national action plan on the **right to food**, stating that the Government was promoting healthy eating to an already healthy part of the population while turning its back on poorer groups. She expressed her grave disappointment over this and asked if there were any laws regulating the right to food since there were no national action plans. Ms Wilson also asked why there was very little information on people in rural areas in the State report. She stated that the way to help people was not to give them handouts, but to make them self-sufficient, and that polluting food and water supplies undermined such progress.

⁹ Supported by Committee members Ms Barahona Riera and Ms Bonoan-Dandan

Addressing the **right to education**, one Committee member enquired about the “new awakening” program for people living in poverty and extreme poverty. The delegation stated that the objective of the new educational reform was to build harmony and reduce inequality after the dictatorship. To achieve this end Paraguay required resources and had to some extent received funds from the Inter American Development Bank to build the first phase of this program. The program was based on a new curriculum, which included democracy, family, environment, and human rights.

Conclusions and next steps

At the end of the session the President of the Committee thanked the delegation. He added that the concluding observations would be available on 23 November, but at the time of writing the concluding observations had still not been released.

The head of the delegation thanked the members of the Committee, stating that the examination had been an important opportunity to review Paraguay’s progress. However, she also acknowledged that the Government needed to work more efficiently in some fields. Furthermore, she underlined that an increase in resources would be necessary in order to ensure access to basic services for all Paraguayans. The head of delegation ended her closing statement by reiterating that the Government was aware of its responsibilities, and by underlining Paraguay’s commitment to progress. Finally, she also thanked NGOs for their contributions.

Paraguay-specific recommendations from other treaty bodies have also addressed a number of the issues dealt with by the Committee. The Human Rights Committee (HRC) examined Paraguay in April 2006. It recommended that the State Party take steps to ensure equal working conditions for men and women, and introduce appropriate measures to combat domestic violence.¹⁰ The HRC also urged the Government to abolish the recruitment of children into military service and to take steps to eradicate child labour. These two recommendations were also highlighted in the concluding observations of the Committee on the Rights of the Child (CRC) in November 2001, which also included recommendations in relation to birth registration and education.¹¹ The Committee on the Elimination of Discrimination Against Women (CEDAW) urged Paraguay to put in place effective monitoring mechanisms to ensure the enforcement of existing legislation, particularly laws addressing domestic workers. Furthermore, CEDAW urged the State party to act without delay in introducing effective measures to deal with the high maternal mortality rate and to prevent women from having to resort to unsafe abortions, in line with CEDAW’s General Recommendation No. 24 on access to health care and the Beijing Declaration and Platform for Action.¹²

Last revised and updated: 1 February 2008.

¹⁰ CCPR/C/PRY/CO/2, 24 April 2006, available at <http://www.ohchr.org/EN/countries/LACRegion/Pages/PYIndex.aspx>

¹¹ CRC/C/15/Add.166, 6 November 2001, available at <http://www.ohchr.org/EN/countries/LACRegion/Pages/PYIndex.aspx>

¹² CEDAW/C/PAR/CC/3-5, 15 February 2005, available at <http://www.ohchr.org/EN/countries/LACRegion/Pages/PYIndex.aspx>

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