

Conference

"As Full Rehabilitation as is Possible": Do Torture Survivors Have a Right to Care?

Since the origins of humanity, pain and suffering (and death) have been a source of concern for philosophers, theologians, poets, writers and every human being. Thousands of scientists have harnessed the limits of their knowledge, striving to understand how to overcome pain and prolong life. But, at the same time, fear of suffering, and of death, have served as a political tool from the inception of humanity. The threat of death or torment has served as mechanisms for maintaining power, for ensuring law and order, for excluding ideologies and religions, political groups and peoples (nations) through the destruction of people and their social bonds, their identity and their loyalties, for different political motives in many regions of the planet. Again and again, the threat of death and physical harm reemerge, justified by the same political motives, but in seemingly new contexts with an apparently new discourse.

The sense of responsibility toward the victims of torture is also ancient. *Hebrews 13:3* say: *Remember those who are in prison, as though you were in prison with them; those who are being tortured, as though you yourselves were being tortured.*¹ Our discussion today focuses on the use of torture by the powerful, whose discourse undermines the victim's suffering in order to legitimize policy sustained by terror. Our concern is with the moral and political struggle to push the state to accept its responsibility, as stated in Article 14 of the *Convention Against Torture*, to "provide as full rehabilitation as possible." I will use the case of Chile to exemplify that struggle which, while distinctly shaped by the characteristics of our own history, has encountered the same resistance and sought the same objectives as struggles in other parts of the world. In Chile during thirteen years after 1990, recognitions of and reparation for, torture victims were postponed.

Within a few months after the military coup of September 1973 in Chile, we witnessed the devastating impact of terror, torture, and extra judicial executions (murder) on thousands of people. The violence the regime meted out, mainly against social, political, and union leaders was not in vain, effectively dismantling the opposition to the military junta. In a culturally authoritarian country, the exercise of repressive power was devastating. Human rights violations committed under the military regime for seventeen years severely affected the mental and

¹ <http://bible.oremus.org/?ql=175771896> (last access 18, June, 2011).

physical health of the victims, including thousands who were tortured and, indirectly, family members, friends and colleagues.

Human Rights institutions (Cooperation for Peace Committee, 1973-1975) and FASIC (Social Aid Foundation of Christian Churches, 1975-) were created with the support of various churches. They offered initially social support and legal defense to a certain number of former political prisoners, to the families of disappeared detainees and persons executed for political reasons, and all persons persecuted and their families, during this period. The Vicariate of Solidarity was created in 1976 by the Cardinal of the Catholic Church Raúl Silva Henríquez when the Committee for Peace was forced to close by the government.

Most political prisoners suffered some type of physical and psychological abuse or torture. At first, a network of volunteers cooperated with these institutions, and, later, specialized teams offered medical care. In 1977 FASIC opened a medical psychiatric program to provide specialized care to former political prisoners, torture victims, and their families. The NGO CODEPU (Corporación de Defensa y Promoción de los Derechos del Pueblo), was founded in 1980; in 1982 created a program addressed to denunciation, research and treatment for torture victims and their families. In 1985 was created the NGO CINTRAS related to the International Rehabilitation Council for Torture Victims (IRCT). In 1988 we created the NGO Latin American Institute for Mental Health and Human Rights (ILAS). These teams documented the psychosocial services and care delivered. The consequences of political repression unleashed in that period were identified as traumatic experiences for individuals and their families. Professionals developed a model for clinical medical care and psycho social care using various forms of intervention (medical psychiatrist, family and group therapy and social support) according to the needs of each individual and his or her family. From the beginning, this approach recognized the fundamental need for society to acknowledge the victims' suffering and the therapeutic value of both access to justice and symbolic and solidarity actions on their behalf.² All these measures were understood to encompass part of an integral rehabilitation process that included the restoration of the victims' rights. During the dictatorship of course, the regime did not acknowledge that torture was a systematic element of government policy, just as it denied the policy of disappearances, that is, kidnappings and extrajudicial executions.

Most of the professionals who undertook that tasks were unaware of what our work would entail and its implications - and I was no exception, in that respect. By the end of the dictatorship, six mental health teams operated in the various human rights organizations of Santiago, and another four in the provinces, most under the auspices of various churches. These mental health teams shared the firm conviction that therapeutic work must be conducted with the best professional resources available, as rehabilitation depends on prompt implementation of integrated forms of care (medical, psychiatric, psycho social, and medical specialties, as needed).

² The history of Chilean Mental Health teams working under the dictatorship, their medical and psychological approaches in Inger Agger y Sören Buus Jensen, *Trauma and Healing under State Terrorism*. London and New Jersey, ZED Books, 1996.

My own experience as a clinical psychologist working with victims dates from late 1977, when I joined the mental health staff of FASIC. In 1988 along with professional colleagues we founded the Latin American Institute of Mental Health and Human Rights. We worked in several provinces and also worked closely with mental health professionals of other Latin American countries. Our clinical work compelled us to train professionals who could provide care to victims in different regions of the country, and to project this work beyond the end of the dictatorship. I met Douglas Johnson in Chile and we forge a collaborative working relationship that has endured to this day. I was in Istanbul and other cities of Turkey with a team from CVT in the middle of the 1990s', endeavoring to build effective cooperation with professionals who work with torture victims of that country.

As professionals who worked with victims during the dictatorship, we did not regard our work as a *humanitarian vocation* but rather, as a response to the victims' need to recover autonomy and independence. To enable them to work, participate politically if they so chose, to generate the best living conditions for themselves and their families, by freeing themselves from paralyzing fear, by working through their traumatic experiences. We had to find technical resources adequate and sufficient to meet the needs of children, youth, women and men, working through what had happened to them and, find the resources to allow them and us to situate them again *in the flow of life*.

Our clinical approach represented an avenue for somewhat offsetting the dictatorship's impact on people and families. Through conferences, forums, and articles, professional staffs of Human Rights organizations denounced the individual, family, and social consequences of torture, forced disappearance, political execution, exile, and politically motivated loss of jobs. One response to those denunciations came in the form of the excommunication of torturers, decreed by several bishops of Chile in 1981, as well as the Catholic Church's social repudiation of such practices, which, regime leaders, of course, systematically denied. This is an example of a social committed response for protecting survivors.

Many years would go by before we were able to think that we, too, were emotionally affected by the ever-present threats aimed against some human rights workers, by the nature of our work in such difficult circumstances and managing the pain of others. Our strength resided in doing our best with each person and family. Every week we work reflecting on our knowledge, our resources, and limitations and planning for the future. We wanted to put a stop to torture, denounce effects of torture in all possible venues, and discover how fear affects all of us.

Many professionals who worked in human rights offices – lawyers, social workers, psychologists, journalists and others – participated in the formulation of proposals for the reparation of human rights violations in 1989, that the Concertación political coalition incorporated as part of its government platform. Their recommendations aimed at recognizing the damage caused by human rights violations and the need for establishing public policy on reparations that contemplates medical and psychological care, as well as other measures to reclaim victims' rights.

The Center for Victims of Torture has dedicated itself to the healing of torture victims. It is a non governmental organization with a moral, professional and human rights commitment to

providing services to victims of torture. The question we ask today is what rights do torture victims have to reparation and can those rights be vindicated. I mean legal and political rights. And putting the question that way means that I focus on public policy and government action that provides reparation to torture victims. In the Chilean case, such reparation policy has developed gradually since 1990, beginning with acknowledgment that torture actually took place, then with limited health services, and finally with small monetary lifetime annuities for survivors and their immediate family members. *Yes, the survivors have the right to care, but the guarantees for implementation of this right and the conditions for full rehabilitation depended on decisions of the four elected governments between 1990 and 2010.* In our case, some reparation was possible for victims because of the experience and collaboration of the solidarity networks of health and mental health professionals created during the dictatorship with political allies in Congress, the executive branch, journalists, human rights lawyers, and a changing political environment over the last two decades.

I turn now to the reparation policies gradually adopted after 1990 in Chile.

Reparation policies³

In April 1990, President Patricio Aylwin created the National Commission for Truth and Reconciliation (commonly known as Rettig Commission for its president Raúl Rettig) when he took office at the beginning of the political transition. The purpose of the Commission was to identify victims of human rights abuses resulting in death or disappearance as a consequence of actions by state agents or political violence. Its mandate ended in March 1991. In 1992, the National Corporation for Reparation and Reconciliation (Corporación Nacional de Reparación y Reconciliación, created by law 19.123) completed the process of acknowledging victims and implemented reparation measures (1992 - 1996). The information compiled by both entities confirmed that the number of disappeared detainees, political executions, and victims of political violence (narrowly defined) totaled 3,186 victims, recognized by the state.⁴

The Commission proposed reparation measures and offered specific considerations regarding the health services for victims of human rights abuses. The Commission stated that it had received significant opinions on the consequences of human rights violations on affected individuals. It mentioned the necessity of *specialized health care for an unspecified number of individuals and families who have been victims of very serious violations of their rights.*⁵ It also indicated that:

Health officials must develop a special program with funding and coordination from the Ministry of Health. This program would seek technical cooperation from

³ See Chapter 2. Elizabeth Lira. “The Reparations Policy for Human Rights Violations in Chile” in *The Handbook of Reparations*. Edited by Pablo de Greiff, International Center for Transitional Justice, Oxford University Press, 2006: 55-101.

⁴ www.ddhh.gov.cl/ddhh_rettig.html (last accessed June, 18, 2011).

⁵ Truth and Reconciliation National Commission. *Report Truth and Reconciliation National Commission. (Informe de la Comisión Nacional de Verdad y Reconciliación)*. Official Edition 1991: 830 – 832.

nongovernmental health organizations, particularly those that have provided health care to this population and have amassed valuable experience over all these years.⁶

During 1991, the National Congress enacted the general reparation's law. The law established a life pension for direct family members (spouse and mother, children until the age of 24 with the exception of the disabled who receive a pension for life), integral health care, education for their children until age 35 and exemption from the compulsory military service.

The Rettig Commission report became the foundation for future progress in criminal investigations – but at the time of its release, the armed forces, Carabineros (national police), and the Supreme Court all vigorously rejected its findings. In any case, investigation of torture and torture victims was outside the mandate of the Rettig, notwithstanding the fact that evidence existed that almost all the victims identified by the commission had been tortured and that almost 40 per cent of them died as a result of torture.

Reparation for victims of torture was not mentioned in Concertación political platforms of 1988 and 1989. In part, the large number of torture victims made the fragile transition government hesitant to move on that front immediately. In any case, the political opposition and Pinochet's supporters still controlled the Senate with the votes of “institutional (appointed) senators” – four of whom directly represented the armed forces and *Carabineros*. Likewise, military government appointees still dominated the Supreme Court and the Appeals Courts. In these circumstances, the Aylwin government gradually sought to implement the Concertación human rights program but chose not to engage directly the legacy of thousands of torture victims left by the military regime.

During March 1990, the government of Patricio Aylwin sent Congress various draft bills to address other human rights violations that occurred during the military regime. These legislative proposals became law and included measures intended to encourage exiles to return home to Chile. All returnees had the right to be considered beneficiaries of a new, very low visibility program called the Program for Reparation and Comprehensive Health Services for Victims of Human Rights Violations, or PRAIS, for the Spanish acronym, as also were people dismissed from their jobs for political motives during dictatorship⁷

In early 1991, the Ministry of Health began developing the Program of Reparations and Comprehensive Health Service for Victims of Human Rights Violations (Programa de Reparación y Atención Integral de Salud para las Víctimas de Violaciones de Derechos Humanos, PRAIS). The seven initial teams that constituted PRAIS were installed between 1991 and 1992 in different hospitals and provinces of the country. The ministerial resolution defined the program's objective as provision of free health and mental care for victims of human rights violations and their families, recognizing this as a right of direct victims and their immediate

⁶Ibidem.

⁷ Elizabeth Lira y Brian Loveman *Políticas de Reparación Chile: 1990-2004*. Santiago, LOM -DIBAM Universidad Alberto Hurtado, 2005. See Chapter VII.

family. Different official declarations reinforced the concept that the program represented only one part of an overall reparations policy that sought to identify victims in order to offer them concrete reparation measures and programs to meet specific needs and harm suffered. This was an important first step in acknowledging that the military government had violated human rights and that the victims were entitled to reparation from the Chilean state.

Other Human Rights Initiatives

During ten months between 1999 and 2000 I was part of the Roundtable Dialogue on Human Rights (Mesa de Diálogo) convened by the government of the time with representatives of the armed forces, representatives of churches and other groups (for example, Chilean Masonry), human rights lawyers and academics to deal with pending human rights issues, particularly the situation of the disappeared, looking for information about their whereabouts and final destination. The Dialogue Roundtable was installed when Pinochet had been arrested in London. The government invited me to participate in the dialogue roundtable for my academic work and my experience of more than 20 years of clinical work with victims.

As a result of agreements reached in the Dialogue Roundtable, the armed forces acknowledged that about 150 missing detainees had been thrown into the sea, repudiating such acts as reprehensible. Almost a thousand cases of disappeared persons remained without any information. This declaration in 2001 marked an important, if limited, turn in the armed forces cooperation in relation to judicial proceedings on human rights cases.

In Spain, Judge Baltasar Garzón charged Pinochet with genocide, terrorism, and torture committed during the Chilean dictatorship. An extradition request had been made to the English government by the Spanish Courts. The House of Lords rejected a finding of immunity, but limited the proceedings regarding the crime of torture to cases occurring after September 29, 1988, the date when torture became an extraditable crime in Great Britain. Judge Garzón, supplemented his extradition request with 53 cases of torture committed in Chile between October 1988 and March 1990, along with 1,198 cases of "disappearances," which he considered cases of (ongoing) torture, due to the suffering of the victims' families.

Pinochet was not extradited to Spain, but sent to Chile, where he was judged to be mentally incompetent to stand trial, but he was not exonerated on the torture charges. The Pinochet case gave new international significance to the Convention against Torture and encouraged human rights organizations around the world.⁸ It also opened the door for a flood of criminal cases against Pinochet and others accused of violating human rights during the dictatorship in Chile. It seemed that international human rights law, including the Geneva Conventions and the Convention on Torture, might become a tool for prosecuting human rights violations *in Chilean*

⁸ For a short-term assessment of the implications of the Pinochet case see Stacie Jonas, "The Ripple Effect of the Pinochet Case," Human Rights Brief, Volume 11, Issue 3 (May 24, 2004): 36-38 <http://www.globalpolicy.org/component/content/article/163-general/29411.html>. (May 6, 2010) For thorough analysis of the case see also Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, Philadelphia: University of Pennsylvania Press, 2005.

courts. The growing backlog of *querellas* (criminal complaints) against Pinochet and other victimizers made visible the widespread use of torture during the dictatorship and illustrated the range of people and groups in different parts of the country who had suffered torture since 1973. They also highlighted the fact that political prisoners and torture victims had not received official recognition of their suffering or reparation for their injuries in the first thirteen years of elected civilian government. Likewise, the criminal justice system had not applied Chilean or international law to prosecute the victimizers.

On 12 August 2003, President Ricardo Lagos told the country that it was not possible to simply turn the page on past human rights violations or to deny the past, and reminded Chileans that state agents had persecuted, tortured, murdered, and forcibly disappeared persons throughout the country. He insisted that the victims' families and all Chileans had the right to know the truth regarding these atrocities. Backed by a growing political consensus regarding the government's obligation to address past human rights violations, Lagos announced the creation of the National Commission on Political Imprisonment and Torture. Presidential Decree 1040 of 11 November 2003 created the commission, allocated financial resources, and defined its operational timeline to conclude before the end of President Lagos' term of office in 2006. Called the Valech Commission (after its president, Bishop Sergio Valech), this initiative by the Lagos government was partly a response to Comisión Ética contra la Tortura (Ethical Commission against Torture) which united human rights advocates, former political prisoners and human rights organizations and, since 2000, had demanded recognition of and reparations for victims of torture. I was invited by President Lagos to participate to the Valech Commission.

The Valech Commission submitted its report in November of 2004. At the end of May, 2005, 28,459 persons were recognized as victims of political imprisonment and torture from a total number of 34,690 detentions. 94% indicated that they were victims of torture. Among these individuals, 1,244 were under the age of 18 and 176 were under the age of 13. 12.72%, which is the equivalent of 3,621 persons, were women. On 24 December 2004, Law No. 19.992 was enacted. It established a small pension for reparation (now equivalent to USD 250) and awarded some other benefits in favor of those individuals that had been authenticated by the Commission as victims of detention and torture for political reasons. This was the first reparation measure specifically dedicated to torture victims since the beginning of the PRAIS, when those who had been victims of torture were considered as beneficiaries following the general recommendations of the Rettig Commission.⁹

Everyone who testified before the Valech Commission described extremely violent arrests. Some victims were taken by state agents in front of their children, in the middle of the night, amid shouts, blows and death threats to the victim and family members, creating an atmosphere of terror and anguish. The report confirmed that torture consisted of abusive treatment ranging from blows, denigration and threats of death (by shooting or by asphyxiation) to rape and abuse of both men and women, sleep deprivation, electric shocks, and exposure to cold and hunger. It documented that thousands of torture survivors endured physical, behavioral, emotional, and

⁹ Comisión Nacional de Prisión Política y Tortura. *Informe de la Comisión Nacional de Prisión Política y Tortura*. Santiago, 2005. (*National Commission of Political Imprisonment and Torture Report*).

psychosocial after effects. Many said they had felt insecure and fearful, humiliated, ashamed and guilty, depressed, anxiety-ridden and hopeless. Some persons mentioned alterations in their concentration and memory; others cited conflicts, crises, and breakups within their families, and conjugal problems. Still others mentioned the loss of their associations (trade unions, neighborhood associations) and social networks. Most victims mentioned sleep disturbances and chronic insomnia, as well as behavioral inhibitions, phobias, and fears.

The Commission identified 1,132 detention centers throughout Chile where people were held and tortured. It established that on the day of the military coup, September 11, 1973, people were tortured in military bases, police precincts, naval ships, stadiums, prison camps, jails, and secret prisons operated by the intelligence services. The Valech Commission establishes torture was a systematic practice during the military regime. In 1974, the military regime created the National Intelligence Directorate (Dirección de Inteligencia Nacional, DINA) through Decree-Law 521/1974. Some of its clauses remained secret even at the end of the military regime. The DINA was a secret agency headed by Colonel Manuel Contreras, who was directly accountable to General Pinochet, and responsible for planning and ordering acts of repression both within Chile and abroad (including the assassination of the former Foreign Relations Secretary and Ambassador to the United States Orlando Letelier and his assistant Ronnie Moffit in Washington, D.C. on 21 September 1976). In 1977, the DINA was disbanded and replaced by the National Information Center (Central Nacional de Informaciones, CNI). Some 3,059 cases reported to the Commission involved people held in CNI facilities.

The report also referred to sexual violence against women and mistreatment and torture against children. The Commission heard testimony from 3,399 women, almost all of whom said they had been victims of sexual violence; 316 reported they were raped. For different reasons, probably due to traumatic silence originated in this devastating experience and the sense of humiliation and shame, this figure underestimates the occurrence of this abuse. Of the latter, 229 were detained while pregnant. Because of the torture they suffered, twenty of them miscarried and eleven gave birth while in prison. Thirteen women said they became pregnant as result of rape by their captors; six of those pregnancies came to term. Some 978 adolescents were arrested, interrogated and tortured because of their participation in community organizations and political parties. Some 102 young boys and girls were held together with their parents.

The report confirmed the victims' legal defenselessness, considering the judicial branch's denial of the 8,000 habeas corpus writs filed from 1973 to 1988. The civil courts renounced their jurisdictional authority, bowing to the military courts. Victims who were charged and convicted by war tribunals (consejos de guerra) lacked even the most minimal due process guarantees. The report determined that political imprisonment and torture constituted a state policy of the military regime, which promoted repression, allocated public funds to it, and assigned personnel to carry out such repressive actions.

The Commission believed that state recognition of each victim could partially repair the dignity of persons debased by torture and political imprisonment. To fulfill its mandate, the Commission recommended reparations, in response to requests from organizations and individuals who testified. Collective reparation measures in the form of public and official recognition of the human rights violations against thousands of victims aimed to educate the public about the past

to ensure that "such serious acts documented here" are never repeated. A third set of measures addressed the institutional structure needed to guarantee the implementation of these proposals and the observance of human rights. With these proposals in mind, the Commission concluded that "We hope this report will succeed in satisfying the mandate the President vested [in this Commission] and that it will produce a sense of reparation for victims, reuniting the nation, and consolidating a solid commitment regarding the dignity and rights of all persons".¹⁰

The Valech Commission assigned varying degrees of responsibility to the armed forces, secret police, Carabineros, and the judiciary for the crimes and human rights violations identified in its report. For the first time, these institutions (with variations) acknowledged their responsibility, not only for the crimes of the past but for preventing such crimes in the future. Illustratively, Army Commander General Juan Emilio Cheyre declared publicly that the army had taken the difficult but irreversible decision to assume responsibility, as an institution, for the criminal and morally unacceptable actions of the past. He added that the army shared the pain of the victim's suffering from these violations of human rights, and recognized that they were treated in a way inconsistent with the permanent and historical doctrine of the army.¹¹ The commanders of the navy, air force, *Investigaciones*, and *Carabineros* offered their own versions of apology for the past.¹²

The identification of victims entitled to reparations is not finished. On February 13, 2010 the Congressional Record published Decree No 43 from the Ministry of Interior creating the Advisory commission for the qualification of disappeared detainees; persons killed by extrajudicial executions, as well as political prisoners and victims of torture from 11 of September 1973 to 10 March 1990, in accordance with transitional article three of Law No. 20.405. This Commission, on which I serve, has been working on the authentication of victims that submitted their request between February 17 and of August 17, 2010. The Commission received more than thirty thousand requests. At the end of its mandate on the 17th of August 2011, it will deliver to the President of the Republic the list of certified victims who may request all the benefits to which they are entitled according to the reparation laws.

Final Reflections

Human rights violations comprised the core issue that united political opponents against the military regime. Thousands of people were galvanized by that cause, creating public pressure that began to change the situation. At the same time, it was fundamental that opponents give serious thought to how we could contribute to the formulation of human rights policy after the dictatorship. It was vital that we identify the complexities and challenges associated with human rights policy, anticipate the tasks that needed to be undertaken and foster reflection to engender the understanding that reparations for victims must go beyond mere administrative or symbolic measures any government might implement. This task originated with solidarity work of human

¹⁰ Ibid: 646.

¹¹ Juan Emilio Cheyre Speech: "The Chilean Army: The End of a Vision" 5, November, 2004. http://www.cepchile.cl/dms/lang_2/doc_3480.html, (last access on June, 13 2011).

¹² *Estudios Públicos* (Nº 97, Verano, 2005: 504-516.

rights organizations, and continued to unfold in the course of implementation of human rights policies during the political transition.

We have learned that truth – and truth commissions – represents a point of departure, but the victims' personal truth and the right to moral and legal reparation is built partly through criminal prosecutions and partly through the political battle to enact legislation establishing the right to particular forms of reparation for the human rights abuses committed by the state actors. Victims obtain moral, social, and political reparation when the specific truth concerning what happened to them is publicly acknowledged, affirmed, and perpetrators are sanctioned. Truth also presupposes recognition of the damage that victims and their families have suffered, as well as their right to rehabilitation and compensation by the state.

This process, still incomplete, has taken two decades. According to Interior Ministry Human Rights Program data, 1,446 investigations (cases) were ongoing in Chile at the end of March 2011 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. The vast majority of these cases concern disappearance or politically-motivated extra judicial execution. A very small proportion (24 of the 1,446) represents cases brought by survivors of torture and/or political imprisonment. A total of 231 individuals have been found guilty in confirmed final sentences. Only around 30% of those convicted (68 persons) for these crimes have received sentences involving actual jail time. Moreover, 13% (10 of 75) individuals imprisoned at some time since two hundred have received post sentencing reductions of jail time resulting in their early release. Criminal cases continue, with twenty-five judges designated exclusively to investigate these cases of human rights violations committed during the military regime.

Finally, it can be said that the scope of reparations has broadened thanks to processes of historic memory policy designed with the participation of victims associations. Human Rights issues and memory processes have been developed in the arenas of education, culture, and among academics dedicated to research on social memory. Yet, just as the military government justified repression (while denying that torture and disappearances occurred) in the name of common good, the eradication of torture as public policy can be ensured only in the framework of ethical and political convictions and values that take roots in a society, which permeate and are expressed in political, institutional, family and every sphere of human relations. The eradication of torture requires an ethical and political conscience centered on human dignity and recognition of individual rights even in times of crisis. But, this is a task in perpetual construction not only in Chile, but also by a major part of the global community, including here in the United States and the democracies of Europe.

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