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Somaliland: Democracy Threatened

Constitutional Impasse as Presidential Elections are Postponed

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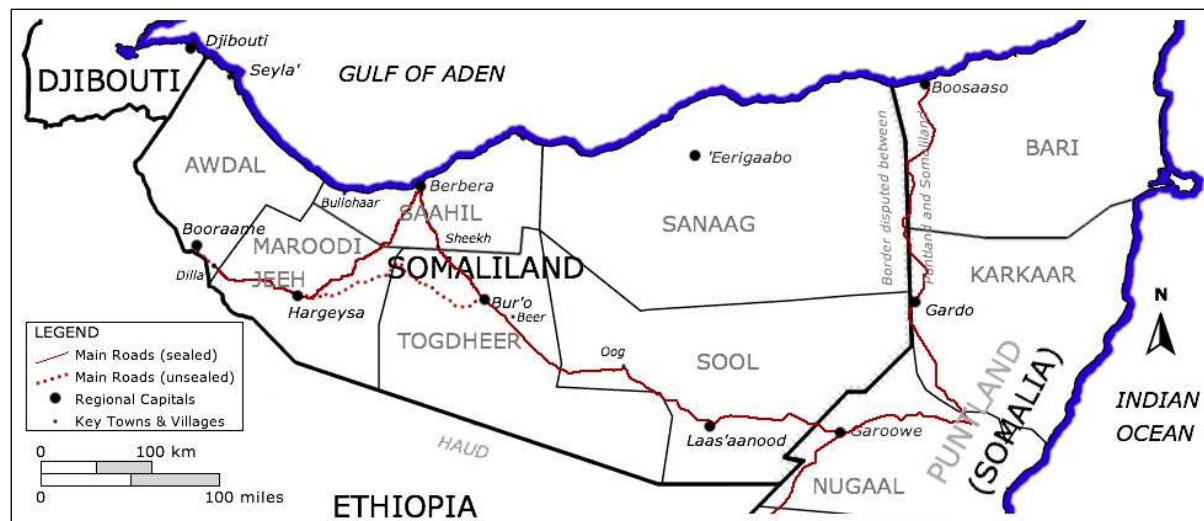
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Summary Points

- Somaliland currently faces a critical constitutional and political dilemma. Successful negotiation of this dilemma would mark a significant step forward in the evolution of the Somaliland political system, but failure with consequent instability and a more authoritarian governance system remains a distinct possibility.
- The presidential election scheduled for 27 September has again been postponed, with no new date yet announced. The President's and Vice-President's already extended terms in office expire on 29 October 2009, and there is currently no constitutional means for addressing the power vacuum that will arise in the absence of an election one month before that date.
- The National Electoral Commission's (NEC) technical ability to organise a free and fair election has been widely questioned, exacerbating the political and constitutional problems.
- In the absence of a constitutional remedy, the Somali tradition of dialogue and consensus-building remains the only real avenue for resolution of the crisis. A recently agreed Memorandum of Understanding establishes the conditions in which that dialogue might take place, but the hardest decisions remain to be made.
- Somaliland is one of the few secure and democratic territories in the Horn of Africa. The destabilising effect of a failure to successfully tackle the current crisis can only contribute to further deterioration in an already unstable part of the African continent.

Map of Somaliland



Source: Author, 2009

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INTRODUCTION

On 14 April 2003, Somalilanders voted in an election for the positions of President and Vice-President, with the count indicating that 205,515 votes had been cast for the candidate of the largest opposition party, Kulmiye, while 205,595 had been cast for the Government (UDUB) candidate¹. Election observers had already declared the voting process reasonably free and fair, although in an election conducted without any register of voters, the inevitable accusations of electoral malpractice were plentiful, and the result surprised many as a Kulmiye victory had been widely tipped².

An 80 vote margin (0.019% of the votes cast) clearly represents the narrowest of victories by any calculation, leaving ample room for contestation. It was only after great debate that the Kulmiye leader and presidential candidate at the time, Ahmed Mohamed 'Siilaanyo', was persuaded to exercise 'considerable political responsibility and judgement' and accept the result, evidently for his country's rather than party's sake³.

Timeline of Key Events

2003

14 Apr: Presidential elections. The Government (UDUB) candidate wins by only 80 votes. The same three candidates are up for election in 2009.

2008

10 Apr: Upper House of the Somaliland Parliament (*Guurti*) votes to extend the presidential term by one year until 6 May 2009.

9 Jun: The three parties and the National Electoral Commission (NEC) reach agreement on the conditions and date for the next election. Local elections are postponed indefinitely and the presidential election should occur before 6 April 2009.

21 Oct: Voter Registration starts in Saahil region.

29 Oct: Hargeisa is hit by suicide bombings which cause disruption to voter registration.

2009

March: President suggests that elections should be rescheduled for 31 May, and his term extended. This request is granted but rejected by the largest opposition party.

28 Mar: *Guurti* meets to discuss whether the presidential term can be extended by a further 6 months. It is decided to extend to 29 October 2009.

28 May: An agreement brokered by members of the Electoral Monitoring Board is reached, confirming an election date of 27 September 2009. Parties demand that a final voter register be ready for 27 July.

27 Jul: Voter register is accepted by opposition parties but rejected by government. The NEC announces election will take place on 27 September without a final voter register.

7 Sep: NEC acknowledges that time has run out to organise an election on the 27 September.

27 Sep: Proposed date of presidential elections, rescheduled from already rescheduled date of 29 March, and now postponed again but with no new date.

29 Oct: end of the twice-extended presidential term.

1 ICG, 2003, 'Democratisation and its Discontents', Africa Report 66, Africa Report, International Crisis Group, Nairobi/Brussels (28 July), p.37

2 Adan Abokor, 2003, 'Somaliland: Opposition supporters protest election outcome', CIIR/Progressio website, London/Hargeisa [http://www.ciir.org/progressio/internal/90756/somaliland_opposition_supporters_protest_election/] (accessed 3 September 2009)

3 Mark Bradbury, 2008, *Becoming Somaliland*, Progressio/James Currey, London/Oxford, p.194

In 2009, Somaliland once again faces a political dilemma of great urgency; indeed, on this occasion the passage of time and rising inter-party animosity mean that the significance is greater now than was the case in 2003. That earlier presidential result nevertheless continues to influence the current environment. For one thing, the presidential election that has been repeatedly delayed and was most recently meant to proceed on 27 September 2009, pits exactly the same three candidates against each other as was the case in 2003. The constitutional ambiguities that pertained in 2003 also remain, although the bitterness of the arguments surrounding them has deepened markedly in the intervening years. Somaliland now faces a political and constitutional crisis (and it is undeniably both of those things) that sits, in terms of significance, alongside those that preceded the transition from the interim Somali National Movement (SNM) government to a civilian administration in 1993, and the adoption of a single, agreed constitution in 1997.

With twenty days until the poll scheduled for 27 September, the National Electoral Commission (NEC) finally bowed to the inevitable and announced that it was too late to organise the election. In the past days, a Memorandum of Understanding has been agreed by all parties committing them to a broadly defined process of dialogue and action. However, there remains no specific constitutional remedy when the previously scheduled date passes without a valid election, and many of the most contentious issues remain to be resolved. More specifically, the extended term of the current executive team (President and Vice-President) expires on 29 October 2009, and while the latest Memorandum acknowledges the need for a further extension, the duration of that extension remains to be agreed.

This paper suggests that the one formally-mandated avenue remaining for resolution of a difficult situation lies in the Constitution's call for the Somaliland political system to be 'based on ... consultation'⁴. The history of Somaliland has shown that only through negotiation in good faith and a willingness to compromise can a solution be found. Should that be achieved, it will represent a significant advance in the gradual evolution of a hybrid system of democracy that has been occurring since 1991. However, the risk of failure remains, and should the current set of fragile political accommodations collapse, that would mark just as significant, and possibly dangerous, a regression. The Memorandum just agreed goes some way to

⁴ Article 91, Republic of Somaliland, 2001, Constitution of the Republic of Somaliland: Presidential Decree: 129/72001, Hargeisa

setting the context in which that consultation can take place, but much work remains.

An additional and immediate problem relates to the ability of the National Electoral Commission to actually organise an election. Senior commissioners have been widely criticised within Somaliland for failing to achieve success in grappling with the logistical challenges involved in the voter registration process, and fears are widespread that they will also find themselves incapable of providing the organisation required for a successful presidential election. While consultation and consensus-building may be sufficient to address constitutional ambiguities, difficult decisions are also urgently required on these practical issues. This situation is also acknowledged in the Memorandum of Understanding, but while commitment is made to an exploration of 'all options' available to restore confidence in the Commission, no specific process or action has been agreed to address this.

Since 1991, Somaliland has established an impressive pattern of addressing and resolving political crises in a methodical manner. The process has often been difficult and it has been marred by outbreaks of violence. However, it has resulted in remarkably durable agreements on matters including short-term reconciliation and the design of the constitutional system. If it is resolved in a manner that builds on the process to date and garners popular acceptance, the current crisis might prove to be a catalyst for further advances in Somaliland's stabilisation and democratisation. However, it remains a possibility that, in spite of recent progress, such an agreement will not be reached, and if that occurs then Somaliland will inevitably lose many of the gains made in the past eighteen years. The consequence would be a rise in instability as those in power seek to tighten their grip through the use of increasingly authoritarian means. While there is not an immediate prospect that Somaliland would see a break-down in stability to rival that in Mogadishu or the southern and central areas of Somalia, this would nevertheless mark a significant deterioration in an area that has earned a reputation as the most stable and democratic in the Horn of Africa.

With international attention on the Horn of Africa focused on piracy off the Puntland coast, the rise of militant Islamist groups such as al-Shabaab in southern Somali areas, and the threat this is perceived to represent with regard to international security and global terrorism, the potential for such a deterioration in Somaliland must surely be cause for concern.

Constitutional Dilemma

The constitutionally mandated term for the Somaliland President and Vice-President (both of whom are elected in a single poll) is five years, meaning that the current incumbents' term first expired in May 2008⁵. At that stage, local council elections, previously held in December 2002, were also due to take place before the presidential poll. However, it rapidly became obvious that the preparation for both elections was simply not sufficiently far advanced to permit either poll. Consequently, on 10 April the upper house of the Somaliland Parliament, the Guurti, voted to extend the presidential term to 6 May 2009, citing a range of justifications, some more based on constitutional

Somaliland's Political System

On 18 May 1991, Somaliland unilaterally declared the restoration of the independence they enjoyed for a few days in 1960. However Somaliland has not yet been recognised by any other state.

The government consists of a powerful executive branch in the form of a President and Vice-President, supported by an appointed cabinet of ministers.

The legislative branch consists of a bicameral parliament: the upper house or *Guurti* is composed of elders who were originally appointed by their respective sub-clans; and the lower House of Representatives were elected by popular vote in 2005. The government party UDUB is the largest single party in the House of Representatives, but the two opposition parties, Kulmiye and UCID, tend to work together and command a significant combined majority over the government.

In an effort to prevent the emergence of a plethora of clan-based parties, the Constitution, which was adopted overwhelmingly in a public referendum in 2001, limits the number of political parties to three.

grounds than others.

Their main reasoning was that Kulmiye's failure to appoint their party delegate to the National Electoral Commission (NEC) meant that progress had been delayed in proceeding with voter registration. They then noted the 'impossibility' of holding an election without registration 'because of insecurity that might arise', thus

purporting to justify their decision constitutionally⁶. The specific constitutional argument relates to Article 83[5], which states that,

'[i]f it is not possible, due to circumstances related to ... security and stability to hold the elections of the President and Vice President when their term of office ends, the House of Elders must increase the duration of their powers while taking into consideration the time in which it is possible to overcome these difficulties and to hold the election'⁷.

5 Article 83 of the Constitution stipulates that the election must be held one month before the expiry of the incumbents' term, with the new administration assuming control within that month *ibid.*. The present Executive team therefore count their unextended term as having concluded one year and one month after the 2003 election.

6 Guurti, 2008, 'Go'aanka korodhsiiimada muddada xilka ee Madaxweynaha & ku-Xigeenka Madaxweynaha JSL', Resolution of the Somaliland House of Elders (Guurti), Jamhuuriyadda Soomaaliland, Hargeisa (10 April)

7 Republic of Somaliland, 2001, Constitution of the Republic of Somaliland

The issue at stake is not one of legal pedantry: the lack of clarity in the law defining 'circumstances related to security and stability', and even more so in identifying the prescribed course of action should an election not be held for reasons other than 'stability and security' lies at the heart of the constitutional problem that is behind the current crisis.

There has been a great deal of debate over the validity of the Guurti decision, and a number of well-informed commentators have concluded that the reasoning employed to connect Kulmiye's tardiness in appointing a Commissioner with a threat to security is too strained to carry real weight. Conversely, the opposition demand that failure to hold an election on time must result in the installation of a caretaker government has similarly been dismissed as lacking constitutional authority⁸. The fact is that the constitution simply fails to address the situation and more importantly perhaps that the level of mutual mistrust precludes an easy solution.

After much posturing and debate, the three political parties and the NEC did finally reach an eight-point agreement on 9 June 2008:

1. Local-body elections would be postponed indefinitely, with the presidential election taking place first;
2. Voter registration would be completed;
3. The NEC would commence preparation for the presidential election on completion of voter registration;
4. The presidential election would take place before 6 April 2009;
5. The law would be harmonised to facilitate the voter registration process;
6. Should further delay to the election become necessary, the three political parties plus NEC would meet and determine the necessary extension, which the Guurti would accept without change;
7. The three political parties would institute and maintain a regular dialogue, including consultation on relevant issues; and

⁸ See, for example, ISG, 2009, 'Implementing The Mediation Committee's Recommendations', unpublished discussion paper, Somaliland Independent Scholars' Group, Hargeisa (16 May); Mohamed Farah, 2009, 'A Constitutional Solution to the Political Crisis in Somaliland', unpublished paper, Academy for Peace and Development, Hargeisa (3 September)

8. The technical committees of the parties would become permanent and would meet to build trust and confidence between the parties⁹.

A new election date of 29 March 2009 was duly announced by the NEC and the House of Representatives moved to introduce the required electoral legislation. Work on the voter registration process also commenced in October. However, in the event, that extension was not to prove adequate either. The signatories to the agreement quickly deviated from the remaining terms and crucially, no consultative process was put in place between the parties.

Voter Registration: Mismanagement and Political Disagreement

Voter registration nevertheless proceeded, although it was disrupted early on by the three suicide bombings carried out in Hargeisa on 29 October 2008, and was also marred by astonishingly widespread fraud and mismanagement. 1.3 million registrations were collected throughout the country, each of which was meant to be validated through a fingerprint system (Automated Fingerprint Identification System or AFIS). However, registration centres permitted fully 53.5% of those registering to do so without provision of a readable fingerprint. The system was also intended to produce a photo identification card for every registered voter, but large numbers of registrants were permitted to hold photos in front of the camera rather than presenting themselves for the purpose.

While it is not possible to comment in detail on the many motivations of the individuals taking part in such activities, it is fair to note that they were driven in large part by the politicised sense of clan which permits the exploitation of kinship affiliation for party-political gain, and vice versa. In other words, clan and party affiliation have become intricately interlinked, and the behaviour of registrants can be seen as a collective effort to gain advantage for each simultaneously. The Somaliland socio-political system has long been based on an assumed weighting of clan numbers, which is translated into formulae that determine effective influence in deliberative processes. Those formulae are ostensibly reflective of relative clan populations. However, in the absence of any widespread population count since the mid-1970s, alternative traditions have been employed, including formulae utilised in the colonial era, and

⁹ Interpeace, 2008, 'Sustaining the ability to vote for peace in Somaliland', Interpeace website, Geneva [<http://www.interpeace.org/index.php/Latest/Sustaining-the-ability-to-vote-for-peace-in-Somaliland.html>] (accessed 7 September 2009)

reversion to kinship traditions that are based on the number of sons of Sheikh Isahaaq, from whom all the Isaaq clans who dominate Somaliland trace descent. Consequently, the voter registration process was always going to introduce significant political sensitivities as it was readily apparent that, whatever the result, it would challenge prior assumptions of relative clan power.

Whatever the reasons for such widespread fraud, the result, inevitably, was a debased process which then required far more extensive processing than had been planned. At the time and since, the NEC has been widely criticised by many, both within Somaliland and outside, for displaying a low level of competence in discharging their responsibilities in the voter registration process, and more generally in preparation for an election. Although the NEC was responsible for managing the registration process 'on the ground', they blamed their INGO partner, Interpeace, for the problems that had arisen, entering into an increasingly vitriolic campaign and alienating not only the very partner with the capacity to help them run a successful election, but also others within and outside Somaliland. In spite of this deteriorating relationship, international donors accepted financial responsibility for the introduction of an additional validity check based on facial recognition software. They believed this would be sufficient to generate a workable database of voters from what would otherwise have been so corrupted as to be worthless. This additional technical filter required the purchase of new software and the appointment of a new team with experience in this more sophisticated identification system, both tasks being completed with relatively little delay and at donor expense.

With the voter registration still subject to fundamental disagreement between the political parties, the NEC and their international partner, it was becoming increasingly clear that the 29 March 2009 polling date would also be impossible to meet, and finally, a matter of days beforehand, the President approached the Guurti suggesting a new election date of 31 May. With no constitutional right to grant himself an extension of term, he instead asked the Guurti 'to find a way' to resolve the problem that this new date posed, given that his term then expired on 6 April 2009.

Kulmiye refused to accept the 31 May election date, although UCID, the second opposition party, did accept it. The NEC also declared that they would prepare for an election on that date. However, donors had already made it clear that the agreement of all parties would be required before a date could be considered final. Meanwhile some Guurti members were rumoured to have prepared a letter arguing that a delay of five or six months would be needed

in order to ensure that preparations were complete before the election. In many ways, Kulmiye's refusal, while understandable in legalistic terms, represented a lost opportunity, as the 31 May date seemed both then and in hindsight to offer the best opportunity for an election with sufficient time for organisation and political engagement. However, the Kulmiye leadership had recently struck a deal with the influential Guurti Chairman, and were gambling on defeating any resolution for a further extension.

Against this backdrop, the Guurti met on 28 March 2009 to decide whether an extension of six months would be granted. Kulmiye had already pushed through legislation in the House of Representatives that envisaged the installation of a 'caretaker' administration should the President's term expire without a valid election. Reflecting this new political reality, the debate was more evenly divided than had been the case prior to the April Guurti vote. However, after three highly contested recounts the extension of the presidential term was granted until 29 October 2009. The NEC duly declared that the election would be held on 27 September, in spite of the fact that that date fell a few days after the end of Ramadan, making campaigning difficult. Kulmiye had failed narrowly to achieve their political objective, and were left with no alternative plan.

New Election Date: Constitutional Crisis Deepens

For a time both opposition parties maintained the position that the President's term had expired and that the country was therefore without a constitutional head – a position which the government inevitably countered by refusing to enter into talks with the opposition parties. In spite of the intervention of a number of mediating groups, this situation only changed with a new agreement on 28 May 2009 at the behest of a group associated with the voluntary but officially recognised Electoral Monitoring Board. That agreement accepted the date of 27 September 2009, and also confirmed that no further extensions in the President's term would be granted. It demanded that a final voter register be produced by 27 July to allow its use in the election.

Once again, this apparent breakthrough was quick to break down. The argument over the voter register became increasingly vociferous, with the Government arguing for a list in which all registrations lacking absolute proof of their validity be discarded, which would probably have produced a list of slightly more than half the original, while Kulmiye argued that only obvious duplicate registrations should be discarded, resulting in a list close to the original 1.3 million. Technically, the enquiries of the author both in Hargeisa

and from London suggest that a position more or less half-way between these two extremes would have been statistically reliable, while avoiding the disenfranchisement of large numbers of eligible voters. However, the party positions became increasingly entrenched.

On 27 July, the very day of the deadline for agreement on the database, the two opposition parties confirmed their acceptance of a register, but the government remained intransigent. In the absence of government agreement, the NEC, with the explicit support of the President, announced that the election would go ahead on 27 September without a voter register. The international donors who had been committed to funding 75% of the election cost had long ago announced that they would not support an election which had failed to gain the support of all the major political actors. At any rate, they had so lost faith in the NEC's ability to organise an election that they announced the suspension of their funding. The NEC and President subsequently confirmed that the election would be run without both external funding and the database of voters.

Within a few days, both opposition parties had declared that they would boycott any election that did not utilise the voter register, and in spite of the efforts of a number of mediating groups, they maintained that position for some weeks. At the time, the coordinators of the international election observation expressed their 'deep concern' at the prospect of a one-party election, and suggested that they may not be able to undertake the coordination task should the situation remain unchanged¹⁰ and other observers similarly expressed their dismay at the prospect.

While the constitutional dilemma is a fundamental component in the recent impasse, it is really the widespread doubt over the technical ability of the NEC to organise an election that has served as the catalyst which led to the problem becoming so intractable. There is ample evidence, some of it witnessed personally by the author, that senior members of the Commission simply lack the ability to carry out the basic duties required for an exercise as sensitive and demanding as a pivotal presidential election. In 2005, it was precisely the ability and willingness of the commissioners, as inexperienced as many of them were, to tackle the day-to-day exigencies with commitment and a generous amount of goodwill that enabled the House of

¹⁰ Progressio/DPU, 2009, 'Progressio, the Development Planning Unit of University College London (UCL) and Somaliland Focus (UK) express deep concern at prospect of one-party election', press release from coordinators of 2009 International Election Coordination, Progressio/DPU, UCL/Somaliland Focus (UK), London (20 August)

Representatives election to take place in as satisfactory a manner as it did¹¹. The absence of precisely those qualities in the current NEC has instead meant that political and constitutional hurdles that might have been overcome have instead been exacerbated and allowed to become political obstacles.

On 7 September 2009, with less than three weeks to go until the scheduled election, the NEC finally accepted that time had run out for organisation of a poll on that date. No new date was announced, and there remains no constitutional avenue within which to address the question of presidential incumbency once the current term expires on 29 October. The last full political agreement was explicit in accepting that no further term extensions would be granted, leaving Somalilanders with an obvious and significant problem.

Most recently, and with unexpected speed, a potentially significant breakthrough was achieved with agreement by all parties on a six-point Memorandum of Understanding. That two-page document commits the three parties to finding a means of restoring public confidence in the NEC, inviting external technical assistance to finalise a robust voter register, and utilising the resultant register in a presidential election to be held as soon as practicable. The agreement marks a significant step forward as the commitments are meaningful, but numerous hurdles remain. Agreement on the reformulation of the NEC effectively represents the necessary first step in the process. If that situation can be effectively resolved, then the next step would require agreement on the necessary steps for the production of an acceptable voter register. Those are effectively the central issues that have bedevilled the process to date, so while the situation looks significantly more positive now than it did until very recently, the central constitutional and practical issues remain.

The one constitutional remedy that is available lies in the wording adopted in Article 9[1]:

'The political system of the Republic of Somaliland is based on peace, consultation, democracy and multiplicity of the political parties.'¹²

The consultation that is referred to is anchored in the long-standing Somali custom and practice of dialogue and reconciliation. In the absence of a specific precedent or constitutional stipulation dealing with the current situation, it offers the only realistic avenue for a satisfactory and peaceful

¹¹ Adan Yusuf Abokor et al., 2006, *Further Steps to Democracy: The Somaliland Parliamentary Elections, September 2005*, Progressio, London

¹² Republic of Somaliland, 2001, *Constitution of the Republic of Somaliland*

resolution to a difficult political problem. The recent agreement offers hope that such a process remains possible and Somaliland's negotiation of previous crises, including those of 1993 and 1997, show that the system can be effective.

Somaliland's reputation as a 'beacon of stability and democracy' in a very fragile region is in danger of being undermined. The dangers of instability and authoritarianism characteristic of a number of Somaliland's neighbours can still be averted, but the traditions of dialogue still urgently need to be reactivated. Both domestically and internationally, it is difficult to overstate the importance of Somaliland's continued progress down the path of stability and democracy along which they have made so much progress to date.

- Those involved in Somaliland politics need to work together in employing precisely the traditions of dialogue and consensus-building that have served so well over the past eighteen years.
- Equally, members of the international community must pay greater attention to the successes that have been achieved in an area which is more often seen as a case study in state failure and humanitarian crises. Continued refusal to acknowledge the steps taken in achieving the remarkable degree of stability which Somaliland has enjoyed in recent years will by default contribute to rising instability in an already unstable area. This must have significant repercussions for an international community already concerned at rising radicalisation in other Somali territories.

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