Securing Land Rights: Options for Building and Supporting a Global Community of Practice to Protect Land Rights

Prepared by Alfred Brownell, Visiting Scholar, Northeastern University School of Law, Lead Campaigner, Green Advocates

I. INTRODUCTION

Liberia is an exemplary poster child for land grabbing. Even though it “escaped” the European powers’ scramble for Africa and may have avoided the “Ghost of King Leopold”, under a United States navy gunboat in the mid-1920s, it had to give away a million acres of its forest land to set up one of the world’s largest “private” rubber plantations, the Firestone Rubber plantation. The Firestone land grab opened the floodgate to a series of foreign direct investments in mining, logging and agriculture under an investment policy known as the “open door,” which characterized a period in Liberia described by economists as “the famous growth without development.”

Therefore, in the period, 2006-12, as Liberia moved into the phase of post-conflict reconstruction, where about a third of the country’s land mass was being awarded as concessions, Alfred Brownell came face-to-face with the lingering legacy and implications of land grabbing.

He also took on legal cases in which government land concessions put not just the customary rights of rural communities at risk, but also threatened the largest forest mass in West and North Africa, the Upper Guinea Forest, located in Liberia. Alfred refers to this huge wooded area as the “lungs of West and North Africa.” By the time Alfred was invited to participate in a Rights and Resources Initiatives strategic planning session in Washington DC in 2012, his traumatic experiences working with communities came in handy. He knew that a global response driven and informed by local actors would be a critical element in strengthening land rights and reversing the land grabs. This informed his conceptualization of a land tenure security index, which was first articulated at the 2012 meeting.

At that meeting, Brownell spoke about the need to for such an index. He argued that such a tool would provide a flexible mechanism to support local communities and indigenous people to claim their rights to their land and natural resources, as well as to hold governments accountable for the actions they take (or fail to take) in terms of protecting the land rights of their citizens, especially poor communities and indigenous peoples.

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1 This work would not have been possible without the assistance of many people with editing and comments on the ideas. Among those who contributed are: Alice Blondel, Devan Braun, Abu Brine, Bessie Brownell, Konah Brownell, Francis Colee, Elizabeth Ennen, Daniel Faber, Alain Frechette, Thea Gelbspan, Christine de Leeuw Huang, David Hunter, Jonathan Kaufman, Kevin Murray, Katie Redford, Ken Rosenbaum, Gerardo Segura, Simpson Snow, Téodyl Nkuinthua Tchoudjen, Peter Veit, Andy White, Liz Alden Wiley. The community of practice is already underway!
Therefore, with support from the Fund for Global Human Rights under a sub grant from the Ford Foundation, between 2012 and 2016, Green Advocates, under Brownell’s leadership, entered into collaborations with leading civil society organizations\(^2\) in Liberia, Sierra Leone, Guinea and Cote d'Ivoire, all countries included in the Mano River Union. The multi-state union was formed in 1971 to foster economic, social, technical, scientific and administrative cooperation among member countries. The Mano River Basin is a watershed rich in natural resources and populated largely by rural indigenous and farming communities spanning Liberia, Sierra Leone, and Guinea.

The organizations established a sub-regional platform to address the issues of resource rights and governance. The Mano River Union Natural Resources Rights and Governance Platform was intended to enable partners to research, draft and publish natural resources rights and governance profiles for the Mano River Union countries, as well as Mali. It also served to help partner organizations hold governments in West Africa accountable for human rights abuses related to natural resource extraction and for managing resource revenues in ways that alleviate poverty, and promote sustainable economic and social development.

In September 2016, the West African Mini-People’s Forum and Public Interest Lawyering Conference was hosted by Green Advocates in Monrovia, Liberia. At that conference, the Mano River Union Civil Society Natural Resource Rights and Governance Platform decided to expand its membership to include other partners from West Africa. It also agreed to a number of joint regional activities which among others included the development of a regional tenure security index.

In late 2016, Brownell received an invitation to serve as a Visiting Scholar at Northeastern University School of Law. He used his placement to pursue research exploring the potential, viability and validity of a land tenure security index.

As Brownell’s research progressed, Northeastern University School of Law’s Program on Human Rights and the Global Economy invited Brownell to use his research work on land rights in hosting its annual Human Rights Institute, a two-day conference providing a platform for experts to review the state of research regarding land security and the building and supporting of a community of practice to protect land rights.

The conference is aimed at building a global community of practice to secure land rights by exploring different possible coordinated strategies, programs, campaigns and initiatives including a land tenure security tool and associated strategies to protect land rights, especially community-based land rights.

**II. THE PROBLEM:**

Land-tenure security issues—particularly those rooted in the conflict between a community’s claim of ownership under customary law and the government’s claim of a superseding right to own (and sell) the same lands—are at the root of many rural environmental and human rights conflicts around the world.

Land has always been a critical factor in efforts to promote food security, alleviate poverty, strengthen democratic governance and contribute to sustainable development. Access to land is critical to efforts to address concerns related to food, fiber and fuel. However, the global financial crisis and the associated rise in commodity prices, combined with the relative weakness of domestic laws protecting land rights

\(^2\) These include: Green Advocates, Liberia, Network Movement for Justice and Development (NMJD) in Sierra Leone, Centre du Commerce International pour le Development (CECIDE) in Guinea and Fondation pour le Développement au Sahel (FDS) in Mali
has triggered a “scramble for land,” led by private interests seeking profitable uses of their capital. Many development experts refer to this feverish rush to acquire land as “land grabbing.”

Land grabbing has resulted in massive competition for land, served as a driver for foreign direct investment into poor countries, and damaged the social fabric of many indigenous and local communities. The profound impact that land grabbing has on communities and indigenous peoples has been well documented, including the destruction of farm lands, food crops and cash crops; the pollution of drinking water; the desecration of grave sites, burial grounds, and sacred areas threatening and destroying centuries of history, culture, customs, values and traditions. It has also undermined the security and stability of countries resulting in conflicts between investors, governments and communities. In fact, the United Nations Environment Program attributes at least 40% of global conflicts to the situation of land.³

Land grabbing takes place, in part, because the domestic legal regimes of many countries are not strong enough to withstand the economic and political pressures created by the investment interest of powerful international actors. Moreover, the home countries of these international investors knowingly neglect their extra-territorial human rights obligations to protect, respect and remedy rights. In this context, a significant body of empirical evidence supports the view that strengthening the legal rights over land of local and indigenous communities is a crucial strategy for addressing land- and resource-related conflicts.

For these reasons, the importance of land tenure was reflected in its inclusion in the Sustainable Development Goals (SDGs). Without secure access to land, efforts to address climate change and the fundamental human rights of the world’s landless population would be extremely difficult. In effect, it is the single most essential factor in addressing sustainability and numerous human rights on a global scale. Land tenure also plays a vital role in strengthening the rights of women because when women do not have access to land, land tenure is neither just nor secure.

### III. THE PROPOSED LAND TENURE SECURITY INDEX

One goal of this year’s PHRGE Institute is to explore the potential for a land tenure security index and associated collaborative efforts to strengthen the effectiveness of current initiatives to promote land tenure security at a global, regional and national level. We hope conference participants will help map current efforts at strengthening land tenure; identify challenges, information gaps and pathways toward establishing a tool and a data landscape that will be user-friendly for those working on the front lines of land tenure controversies-- communities, indigenous people, land rights defenders, local civil society community based organizations, national and local governments, private sector actors, including development organizations working on the ground at the national and local level.

Indices and associated rankings are used as a strategy for benchmarking and advocating for progress in a wide range of development-related issues. Examples include: “Transparency International’s Corruption Perception Index”, the United Nations Development Programme “Human Development Index”, the World Bank’s “Governance Indicators and Doing Business Index” and the “Natural Resources Governance Index.” We are exploring using a similar index as a tool linked to or complimenting existing global or national land tenure initiatives for benchmarking each country’s approach to land tenure issues.

A number of initiatives and organizations are developing indicators related to land tenure but none of them have so far achieved a comprehensive ranked index. The most comprehensive existing tool is probably “Landmark” which maps the security of indigenous and community land holdings. Landmark uses ten indicators for the legal security of indigenous land rights and creates an average score (ranging

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from 1-4), including: legal status of indigenous peoples over their land; land rights and common property; formal documentation; legal personhood; legal authority; perpetuity; right to consent before land acquisition; rights to trees; rights to water; and land rights in protected areas. This tool is not a ranking or scoring system, but an interactive global mapping tool.

In addition to Landmark, other related initiatives by International Land Coalition, OXFAM, LANDESA, the Land Alliance and the Rights and Resources Initiative, for example, have collected valuable data that could support various indicators that could contribute to a comprehensive ranking index. As we combine these different existing data bases and structure them into an indicator framework, we can identify strategies to close the missing data gaps and combine the data in an entirely new, ranking system for countries that would help shape policy reform.

A. Goals and objective of an index

The proposed index is aimed at supporting the emerging community of practice in land security by creating a comprehensive land security index system with the following goals:

- To rank various governments based on how they recognize and secure land rights within their borders;
- To prioritize areas where each country’s efforts can be improved, including improvements in government capacity, the legal framework, and implementation and enforcement of policies;
- To create cross-country comparisons that land tenure advocates can use to pressure for reforms at the community, national and regional levels;
- To amalgamate and analyze existing data on land tenure into one integrated system;
- To identify gaps and quality.

B. Scope and coverage

During our initial research, critical questions emerged regarding whether the index should be global from the beginning, or scaled up after piloting the index at a regional level. Should one attempt to achieve global relevance from the start, or begin in a more modest way and scale up, based on the learning from a pilot effort?

A global approach would rank all governments simultaneously in a global index. This approach has obvious appeal in that it allows for comparisons across all regions, legal systems, cultures and socio-economic approaches to land resources. It would force development of an index that accommodates differences across regions and is not tailored in a way that favors any specific region.

The major criticism of a global approach is the enormous amount of data required at an early stage. This risk is especially exacerbated when the system attempts to compare and analyze data from countries that have fundamentally different systems of operation, or where property rights are based on differing cultural values. Uneven data quality and availability across regions would also present a challenge for a global index. Certain data may simply not exist in some countries or may be legally inaccessible for researchers. Such gaps in the data would have to be accommodated in the global index at least initially. The key in the prevention of overburdening the system is to “normalize” the data so as to treat all systems fairly and transparently.

An alternative to launching a global index is to take a “regional” pilot approach when constructing the index. This option would focus the index initially on all the countries in one geographic region. For example, the Mano River Union countries. After demonstrating and perfecting the index in one region, the index would be scaled up to the global level. The regional approach would not have to struggle with
balancing an overload of information from every country in the world, allowing the index to be launched sooner and with fewer data gaps or nonconformities.

The drawbacks to the pilot method are that the index may be “trapped” into the pilot version and face difficulty expanding to other regions. In other words, if the index remains too heavily focused on the specific issues of one geographic region, the indicators of the index would be tailored to those circumstances accordingly, and it could possibly be harder to translate the indicators to suit the governments in other regions.

In sum, to take an all-inclusive, global approach will afford an early opportunity to address every necessary indicator and/or subcategory before the basic structure of the index is solidified. This is advantageous in order to fairly rank a diverse group of countries so as not to leave out any pertinent indicators in the early stages, but at the same time this method also has the risk of resulting in an “incomplete” index due to the lack of data or the incompatibility of an indicator to every participating government. The question is whether the risk of building an index structure that fits the sample region too narrowly outweighs the challenges in a global model of managing significantly more data.

C. Constructing, weighting and normalizing the indicators

After the indicators have been constructed and the data is gathered for each indicator, the data will need to be normalized and the indicators weighted to create the index. Over the last ten months, Brownell and the Northeastern students assisting him have put together a theoretical framework of single indicators based on a review of the literature and of past and present indices. These indicators, included in Annex A, are presented for feedback and discussion at the workshop with the goal of producing a comprehensive set of indicators to measure, score, and rank States’ ability to recognize, securitize, and formalize land tenure.

Developing the indicators in a way that can be compared across countries in a credible index will require a multivariate analysis to assess the overall structure of selected indicators and the suitability of the data set, and to weigh and aggregate the data for inclusion in an index. Based on lessons from other indices and feedback from key informants, we propose paying significant attention to how the data is developed being informed by the following:

**Data Access and Management.** Data management and accessibility were critical issues that emerged during the initial research. The findings and recommendations from key contributors indicated that a potential future land tenure security index would face serious issues of accessibility, availability and affordability of necessary data. The identification of gaps within the data currently available would also be critical, as well as the need to both fill data gaps and accommodate data in a composite indicator framework that could facilitate a cross-country comparison.

**Transparency and Peer Review.** One of the significant criticisms of indices, is the lack of transparency and peer review at early stages of data development and analysis. To avoid this criticism, a potential land tenure security index may seek to include a detailed and thorough description of the data selection and analysis that will be made public and sent to other experts for input and feedback.

**Data Development and Normalization.** After the multivariate analysis is concluded, the indicators must be normalized. We will need to assess how to deal with skewed or unavailable data in any given country. The indicators should then be weighted and aggregated using the theoretical framework that will allow for comparison. We must also analyze the robustness of the composite indicator in terms of, for example, the mechanism for including or excluding single indicators, the normalization scheme, the impact of missing data, the choice of weights and the aggregation method.
**Ranking and Cross-Country Comparisons.** Initial research suggests that the format of a “ranking system” is absent in the existing initiatives on using indicators and indices. We have thus far been unable to identify any initiative using a ranked index offering the possibility of measuring, ranking, and scoring governments based on recognition and formalization of land tenure security rights. Although this is likely due to difficulties in comparisons among countries with vastly different legal systems, natural resources, and differing and legal rights regimes, there is value in creating a framework for normalizing data to account for a cross-country comparison. The absence of a comparative framework means there is limited opportunity to benchmark countries and support “naming and shaming” or “naming and praising” advocacy to correct, for example, poor legislation, lack of due process requirements, or inadequate access to information.

**D. Communicating the index to multiple audiences**

The initial research and consultation surfaced recommendations to the effect that any future land tenure security index should take into account multiple audiences and stakeholders. Several of the existing indices/initiatives focus only on a single audience as the end user. For example, one initiative, scores indicators related to forest governance and resource rights and is primarily used for assessing the need for policy reform internally. Another initiative led by a regional group of NGOs is oriented toward collecting community-based data, and does not account for private and government interests or more wide-spread use of the index.

Early feedback strongly recommends that a potential future land tenure security index take into account the interests of multiple stakeholders, including: private investors who seek to minimize conflict, thus securing their investment; government agencies that seek assistance for policies and legislative reforms; civil society organizations that can use the data to monitor and campaign around internal reform and policy change; and community organizations that seek to monitor and assess impact on their rights, among others.

**E. Minding the gaps and making the index accessible at the local level**

A particular challenge for creating an index that serves multiple audiences is the need to communicate at the local level to governments, affected communities, indigenous peoples and land rights defenders who rarely have access to timely information as it relates to their land. In this context, our initial research suggests serious gaps relating to data accessibility, affordability and availability—and where available and accessible, the information may still be so technical or legalistic that it is not user-friendly to the communities, the targeted beneficiaries or some governments. Along the same lines, a leading expert in the field indicated that some governments do not also have access to timely information on land and related matters and as such may not have the information necessary to advance land rights policy changes. Engaging governments and communities who can use this information at the local level will also provide important feedback that can improve the quality of existing data and the credibility of the index.

For these reasons, there were strong recommendations around minding the data gaps and the need to experiment with ways of increasing the accessibility of any index, data set or existing land tenure initiatives so that affected communities can make use the information in the field. One example maybe the use of a Community Podcast or a Land Tenure Radio Program (as opposed to the internet) that would distribute findings from the data by linking the community members’ widespread use of cell phones with the production capacities of existing community radio stations. These community radio programs and podcasts would be in local languages common to everyone for a particular region.
F. New indicator areas

The initial research strongly supports the link between secure land rights and other vexing geo-political issues such as climate change, women rights, land grabbing, migration, poverty and conflicts. Incorporating new indicator dimensions in a potential future land tenure security index would help to highlight, document and analyze these linkages. For example, what indicator or combination of indicators can effectively capture the ways in which insecure land rights drive climate change or contribute to global mass migration, poverty, or political instability. As part of this, it would be important to develop new indicators that can take into account the situation of land rights defenders, the rights of women or marginalized groups, as well as how land rights affect access to water and the growth of urban slums and squatter communities, or the much more bewildering issues of gentrification masked by mega-cities globally.

G. Information hub for private foundations and grantmaking organization

An assessments of existing land tenure tools initiatives and feedback from key informants indicates that “significant gaps remain,” not just in funding land initiatives, but also in collaboration and networking among private foundations and grant making organizations working in the land rights sector. Such networking could lead to more sharing of program information, including program priorities, geographic scope, land thematic focus and strategies for advancing land rights. Several key informants pointed to the lack of information on program strategies and who is funding what, in which regions of the world.

IV. CONCLUSION AND INSTITUTE DISCUSSION QUESTIONS

This working draft provides a brief summary of the need for a comprehensive land tenure security tool that utilizes existing indices and data to advance the field to the point in which this data can be used to measure, score, and rank governments’ realization of land rights. We seek input and feedback from those at the Institute. It is our hope that PHRGE’s 2017 Human Rights Institute will provide the basis for agreement on the need for a comparative index, and at least an initial agreement among some actors working on these issues together to collaborate on this project. Such a collaboration could develop into a global partnership modeled on the Land Rights Now collaborative, hosted by one of the partners with support from all.

To facilitate the discussion, on Day Two of the Institute, we will work in small groups, with each small group addressing the same set of questions. There will also be opportunities to come back together to reflect on small-group responses. Each facilitated discussion will address the following questions, not in an attempt to reach consensus, but to surface and discuss all opinions in the group. The discussion prompts to be used by group facilitators are included below, so that participants can consider them in advance.
Working Group Session I: Discussing a Land Tenure Security Index

1) Purpose and Value of an Index
What is the ultimate purpose of gathering data on tenure security in different countries? Who is using or will use such information? How should such data be used? How important is it to be able to create an index that ranks and allows cross-country comparisons of government protection of tenure rights? What would be the value added of such an index?

2) Scale
What is the ideal scale or scope of a useful tenure security index? Bilateral (comparing two countries)? Regional (comparing a small number of countries located in the same geographical area)? Global (a broad index allowing comparisons among all, or almost all countries)? On what scale should one begin the work?

3) Data Analysis
How can we overcome the obstacles to creating an index that can be used as a tool for land rights advocacy? How can we use modern data collection and analysis techniques? What safeguards are needed to be sure that using modern data analysis techniques does not make the resulting data inaccessible to the people on the ground that most need it? What kind of data analysis precipitates a ranking and cross-country comparison?

4) Minding the Gaps, Communication and Feedback on Data from the Field
What are the missing data gaps and missing links in the land tenure landscape? How can or should we proceed with minding or identifying these gaps? What ways can we ensure that data is better communicated in language and formats that are accessible to local communities, defenders and governments?

Workshop Session 2: Next Steps in Collaboration

5) Implications and Protection
What are the implications (positive and negative) of developing more effective tools for land rights advocacy? How must we be prepared to take advantage of the opportunities presented by such a tool including existing ones? What steps must be taken to ensure the security/protection of those who would use such tools including land rights defenders, women, communities and indigenous peoples?

6) Associated or Alternative Options for Collaboration
What other tools or initiatives would be valuable to improve the global community of practice in land security—either linked to the index or separate from the index? Is there a need for an informal or formal network or other method for improving collaboration?

7) Donor Platform and Information Hub for Private Foundations and Grantmaking organizations.
Would it be helpful for private foundations and grantmaking organizations to set up an information hub, collaborate, network and share information about their programs, strategies, geographic scope, etc…?

8) Feedback on the Annex and Specific Next Steps?
9) ANNEX A:

KEY INDICATORS

Upon surveying the literature, prominent indices, and the other initiatives as it relates to securing land tenure, we identified an indicator framework that would focus primarily on three broad categories. The broad framework includes: (1) an institutional framework that focuses on the legislation and governance in a particular country that serves as the background for the state’s potential capacity to recognize land rights; (2) the actors that influence those potential rights, ranging from private investors to governmental agencies; (3) Security and protection of land human rights and (4) the actual implementation or capacity to realize the formal rights and laws in practice. The chart that follows provides a visualization of these potential indicators and sub-indicators.

1. Institutional Framework: Focuses on rules and laws, governance, political capacities and corruption, conflict, and property rights.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Potential Dataset</th>
</tr>
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<tbody>
<tr>
<td>Governance, Transparency,</td>
<td>Assesses the extent to which processes are put in place for accountability and transparency in decision-making, government effectiveness in passing laws to protect land rights, the disclosure of information at the local and administrative levels, and the management of public finances for rural areas.</td>
<td>Government Effectiveness indicators (WB), or Corruption Perceptions Index (pros and cons of each?)</td>
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<tr>
<td>and Corruption</td>
<td></td>
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<tr>
<td>Rule of Law</td>
<td>Assesses the legislative, constitutional, and other formal legal or administrative protections for local and indigenous communities relating to land, customary rights, access to natural resources, etc.</td>
<td>Rule of Law Index, Land Matrix, IFAD (could break up into further sub-indicators)</td>
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<tr>
<td>Stability and Conflicts</td>
<td>Assesses internal conflicts that can indicate a weak policy and institutional framework, political instability, and corruption, which are all tied to insecurity of land tenure. There currently exists no available data set that ties the conflicts to land disputes, but there are other available measures. Lastly, it could account for regional conflicts.</td>
<td>Political Stability and Absence of Violence from World Governance Indicators</td>
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2. **Actors:** Focuses on parties involved in decision-making with respect to land issues, including: governmental agencies and institutions, civil society organizations, local and indigenous communities, academic institutions, the media, international organizations, and the private sector.

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<tr>
<th>Indicator</th>
<th>Description</th>
<th>Potential Dataset</th>
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<tbody>
<tr>
<td>Customary and Indigenous Communities</td>
<td>Assesses the respect for local and indigenous communities land rights by local government.</td>
<td>A qualitative data set that could be obtained from NGOs working on the ground, as noted in Landac’s country fact-sheets.</td>
</tr>
<tr>
<td>Local Government - Capacity-Building for the Rural Poor</td>
<td>Assesses the policy and legal frameworks for dealing with rural populations, and to what extent there exist a dialogue between local government and rural organizations.</td>
<td>A qualitative data set, might need to create our own questionnaire</td>
</tr>
<tr>
<td>Public and Natural Resources Management</td>
<td>Assesses the role of the rural and agricultural sectors in the management of and access to resources and technology.</td>
<td>A qualitative data set, possibly IFAD information.</td>
</tr>
<tr>
<td>Private Sector</td>
<td>Assesses the extent of the private sector’s recognition of and respect for free, prior, and informed consent regarding any private investment projects on indigenous or local land. Would look at multilateral organizations like the WB/IMF and smaller, private companies.</td>
<td>CIEL Reports on WB Projects might have a data set.</td>
</tr>
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3. **Implementation Framework:** Assesses the ways in which the formal institutional framework and the relevant actors interact with one another to result in practical enforcement at the operational level. Looks at administrative processes, monitoring, and enforcement/actual implementation on the ground.

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<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Potential Dataset</th>
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<tbody>
<tr>
<td>Administrative Processes</td>
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<td>Judicial Processes</td>
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<tr>
<td>Local Implementation and Realization</td>
<td>Need qualitative measurements from NGOs working in each country on-the-ground.</td>
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