



**REPORT ON THE FINANCIAL AND FISCAL
COMMISSION SEMINAR:
SOCIO-ECONOMIC RIGHTS AND THE ROLE OF
THE FFC**

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October 2021



For an Equitable Sharing
of National Revenue

The Financial and Fiscal Commission

The Commission is a body that makes recommendations and gives advice to Organs of State on financial and fiscal matters. As an institution created in the Constitution, it is an independent, juristic person subject only to the Constitution itself, the Financial and Fiscal Commission Act, 1997 (Act No 99 of 1997) (as amended) and relevant legislative prescripts - and may perform its functions on its own initiative or on request of an Organ of State.

The vision of the Commission is to provide influential advice for equitable, efficient and sustainable intergovernmental fiscal relations between the national, provincial and local spheres of government. This relates to the equitable division of government revenue among the three spheres of government and to the related service delivery of public services to South Africans.

Through focused research, the Commission aims to provide proactive, expert and independent advice on promoting the intergovernmental fiscal relations system, using evidence-based policy analysis to ensure the realisation of constitutional values. The Commission reports directly both to Parliament and the Provincial Legislatures, who hold government institutions to account. Government must respond to the Commission's recommendations and the extent to which they will be implemented at the tabling of the annual national budget in February.

The Commission consists of women and men appointed by the President: the Chairperson and Deputy Chairperson; three representatives of provinces; two representatives of organised local government; and two other persons. The Commission pledges its commitment to the betterment of South Africa and South African's in the execution of its duties.

1. PURPOSE AND BACKGROUND

In its Main Budget submission to the Parliament, the Financial and Fiscal Commission (FFC) noted that despite the onset of the COVID-19 pandemic with significant socio-economic impacts on the citizens, the 2021 Budget has unambiguously proposed substantial reductions in the real value of allocations. These reductions are to be carried out over the medium term to public services that undergird key aspects of the socio-economic rights (SERs) as outlined in the Bill of Rights. Further, the FFC expressed concern that neither the Budget Speech nor the Budget Review references the state's constitutional obligations to ensure the progressive realisation of socio-economic rights. The budget also showed no indication that the government considered how the rights as enshrined in the Constitution would be preserved in the context of falling fiscal envelopes. Therefore, it is vital that these issues be debated, especially given that the erosion of real budgets for basic rights may continue even beyond the tabled medium term.

To better understand the socio-economic impacts of the budget with the considerations of the COVID-19 pandemic on especially the poor and vulnerable in South Africa, the FFC has held a Commission Seminar to deliberate on *socio-economic rights and the role of the FFC*. This seminar aimed to invigorate people's thinking, understanding and interest in the subject by means of inviting external, non-governmental and thus, independent guest speakers to engage the Commission on the three key topical issues identified. To sharpen the Commission's stance on these matters at Parliament, three guest speakers, namely: Professors Servaas van der Berg, Tania Ajam and Jaap de Visser, were invited to make inputs at the seminar. Table 1 provides a short biography of each of the presenters and the titles presented at the seminar.

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Table 1: Presenters' biography and topics presented

Name	Short Biographical Detail	Topic Presented
Servaas van der Berg	Servaas van der Berg is a Professor of Economics at Stellenbosch University and holds the <i>South African Research Chair in the Economics of Social Policy</i> . He leads Resep (Research on Socio-Economic Policy), a research group focusing on socio-economic policy. His research interests centre on issues of poverty and inequality, including fiscal incidence. He was a member of the Lund Committee that recommended the institution of the Child Support Grant. As poverty and inequality are tied so closely to education quality and inequality in South Africa, much of his recent social policy work has been in the field of education.	Socio-economic rights: From the Constitution to budget implementation
Tania Ajam	Tania Ajam is an Associate Professor in Public Policy, Finance and Economics at Stellenbosch University. An economist with broad experience in implementing fiscal policy and intergovernmental fiscal relations. She holds a PhD in Public Management, is a member of President Ramaphosa's Economic Advisory Council, and is a former non-executive director of the South African Reserve Bank.	Mandate of the FFC in relation to the progressive realisation of socio-economic rights
Jaap de Visser	Jaap de Visser is a Professor of Law at the University of the Western Cape and assumed office as Director of the Dullah Omar Institute in 2013. In 2015, he spearheaded the conversion and renaming of the Community Law Centre into the Dullah Omar Institute for Constitutional Law, Governance and Human Rights. He is the co-author of <i>Local Government Law of South Africa</i> . His research, teaching and consulting focuses on multilevel government, local government, good governance and federalism in Africa, and he has published widely on these topics. In addition, he has overseen and conducted postgraduate and contract research on multilevel government in South Africa, Uganda, Zimbabwe, Ethiopia, Tanzania, Lesotho and Kenya. With Prof Nico Steytler and Dr Tinashe Chigwata, he convenes the Masters in Law, State & Multilevel Government. He holds an LLB and an LLD from Utrecht University, where he taught from 2002-2006 and an LLM from the University of the Western Cape.	The intersection of socio-economic rights, the courts and the mandate of local government

The purpose of this report is to provide an overview of the proceedings of the FFC seminar entitled: "Socio-economic rights and the role of the FFC", which was hosted virtually on Thursday, 02nd September 2021.

2. SOCIO-ECONOMIC RIGHTS: FROM THE CONSTITUTION TO BUDGET IMPLEMENTATION

Professor van Der Berg's presentation, entitled "Socio-economic rights: From the Constitution to budget implementation", honed in on the challenges that persist as South Africa tries and move from legal prescripts as contained in the Constitution, as well as the various pieces of legislation and international agreements to which South Africa is signatory, to practical implementation and delivery of services.

Professor Servaas Van Der Berg focused on three key areas, namely:

- a) The fact that the debate on SERs in relation to basic education has largely ignored educational outcomes. It focuses largely on physical infrastructure, specific programmes (for example, the National School Nutrition Programme) and access to schools. Outcomes within the schooling sector – such as the elimination of learning-poverty, is not emphasised. Further, whilst there is talk of improving literacy through various programmes, there tends to be little substance behind it, with few to no provinces measuring and monitoring the outputs and outcomes of these programmes.
- b) Basic education is categorised as a shared or concurrent function – this gives rise to various challenges. Policies are largely made nationally, with limited room for provincial contributions which creates disincentives for provincial officials to implement some national decisions. Lastly, there are unfunded mandates, which spawn coordination failures on basic education.
- c) There are explicit demographic shifts in teachers' age, which have future implications (both provincially and nationally), as the shortage of teachers will threaten educational outcomes. On the other hand, the pressure on the fiscus caused by compensation costs will decline due to the reduction in teacher wages (which results from younger, less experienced teachers becoming dominant).

Following the presentation, the discussion centred on quite a few themes, notably the (a) implications of the demographic shifts in teacher age for the total cost of compensation and quality of education, (b) options around an alternative model of education delivery, (c) what we can learn from other better-performing countries, (d) whether shifting responsibility for education to the national sphere could prompt better performance and (e) why, post-1994, it has proven so challenging to improve educational outcomes. Please see Annexure A for more detail regarding the question and answer session.

3. SOCIO-ECONOMIC RIGHTS AND THE MANDATE OF THE FINANCIAL AND FISCAL COMMISSION

Professor Tania Ajam shared her perspective on the role that the FFC could play in relation to SERs. Her presentation focused on three areas: firstly, Professor Ajam focussed on the fiscal Constitution, which speaks to the origin of the FFC's mandate. Secondly, Professor Ajam's presentation honed in on the implications of the legislation for the FFC's mandate. What differentiates South Africa from many other countries is that we have a set of justiciable SERs within an outcomes-based fiscal system. Professor Ajam's presentation emphasised that the FFC's focus should be broader than only grant and budget allocations, but should also cover: (a) value for money, immediate and intermediate outcomes and developmental impact, (b) should go beyond looking at only the three spheres of government also to include public entities, universities and non-profit organisations and (c) should start emphasising the financial aspects of the '*Financial and Fiscal Commission*'. Specifically, in relation to SERs, Professor Ajam advised that the FFC takes a macro-, meso- and micro- level approach with macro focussing on issues like the implications of an unstable fiscal framework on the fulfilment of SERs, whereas a meso-level focus could entail either a sphere or sector emphasis.

The last part of Professor Ajam's presentation focussed on how the FFC can ensure that it makes influential recommendations on SERs. In this regard, the presentation emphasised the need for the FFC to improve its stakeholder management, policy advice and policy packaging skills, which refers to the process of converting research findings/knowledge into influential, timely and feasible policy recommendations in a format that is user friendly to different groups of users. For Professor Ajam, the FFC can contribute towards improving developmental outcomes in the intergovernmental fiscal relations (IGFR) system by excelling in both knowledge generation (research) and knowledge broking (policy advice role).

During the discussion session, most Commissioners commented that Professor Ajam's evaluation of the FFC was insightful. Further, the Commissioners indicated the issues raised were spot on, and most have been addressed. Professor Jaap de Visser reminded that, whilst perhaps a bit dated, he had done an assessment of the FFC for the 20th Anniversary Conference and that based on the seminar discussion, a number of the issues he had raised back then have remained relevant. Please see Annexure B for more detail regarding the question and answer session.

4. THE INTERSECTION OF SOCIO-ECONOMIC RIGHTS, THE COURTS AND THE MANDATE OF LOCAL GOVERNMENT

Professor Jaap de Visser shared a presentation on the intersection of SERs, the courts, and local government mandate. His presentation mainly focused on legal, institutional aspects, specifically SERs as contained in the Bill of Rights, alongside the division of powers and functions outlined in Schedules 4 and 5 of the Constitution. Professor de Visser's input highlighted how court decisions have led to gaps in the IGFR architecture or instances where the IGFR system has not been flexible in incorporating the courts' findings. More importantly, the Constitution outlines the process for changes to the division of powers and functions, which includes a role for the FFC in assessing the financial and fiscal implications of such shifts. However, these constitutional prescripts are not being adhered to, but what is becoming apparent is how. Through various court cases, we see devolution through the courts and even instances where new rights are being established and assigned (example of the right to receive local basic services provided). Please see Annexure C for more detail regarding the question and answer session.

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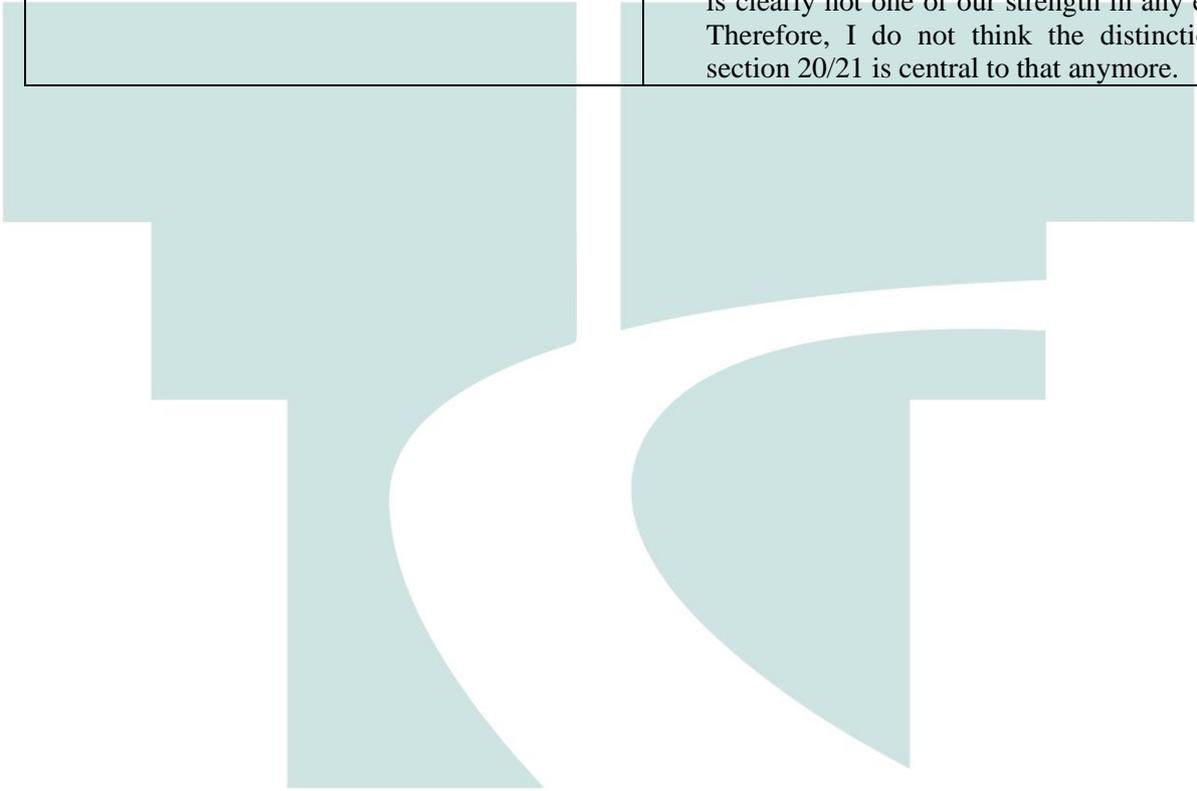
**Annexure A: Question and Answer Session Following Professor van der Berg's
Presentation
Discussion (Q/A)**

Comment	Responses
<p>Dr. Kay Brown</p> <p>There is a need to look at the outcomes in respect of teachers, so that through analysis we can measure the outcomes of the pupil. Is there work done on outcomes expected from teachers? What is the intersection between those outcomes and that of pupils? Do you have any insight on a new education delivery model – whereby we move towards e-teaching and invest in teacher assistants to increase capacity?</p>	<p>Professor Servaas Van Der Berg</p> <p>Alternative models of teaching are very difficult to deal with, because what is often found is that if you add more teachers to a school then teachers have more time on their hands – although the production function remains unchanged. However, it is not clear if one can make such structural shifts within the operations of the system randomly. The experience that we have now had with e-learning during covid-19 has opened up some possibilities that may generate productivity improvements. In contrast, it is early days to really rely on the outcomes we have had during covid-19, so we will have to give e-learning time and observe its proficiency.</p>
<p>Commissioner Michael Sachs</p> <p>As you reduce the teacher's salaries in real terms, would you not expect the quality of teaching to be affected – also looking at the point made, that when older teachers retire and are replaced by younger ones, it relieves fiscal pressure but also has a consequence for quality. Therefore, how do intend to lower the pay of teachers without negatively affecting the outcomes and further eroding SERs? To a broader extent we have a segregated system of education – hence, by looking at the interaction between the public and the private, is there no relationship between the extent of segregation in education and the quality of outcomes? In other words, can you really improve the public education system if it remains a ghettoised system? In the context of the budget that is being tabled, are there serious concerns that should be raised about the allocation of resources and SERs even acknowledging the point that we should be focusing more on the outcomes?</p>	<p>The pay-quality issue is very important. On the other hand, there has been strong rises in teacher salaries in the previous years; however, currently and in the future, pay-cuts are substantial unless if the economy can track back to its growth path so that fiscal resources are available and allocated to boost sectors accordingly. Because of the constant failures of the public educational system, we realised that it is the only reason that keeps pupils away from public schools. However, this is not the case with South Africa, as we have done quite well in maintaining the public education system as a real option for many pupils – and this has been possible, as public resources are supplemented with private fees; this is mainly done for only funding quintiles.</p>
<p>Commissioner Aubrey Mokgadi</p> <p>Regardless of the issues of educational quality being reinforced over the years, there has not been any positive outcome – as we currently still have schools that operate with distort infrastructure, and such is pit latrines and mud buildings. So, by looking at quality outcomes, can we still consider infrastructure as a contributor? In light of the pandemic, could there be a need for policy adjustment with regards to the issues</p>	<p>Infrastructure is key towards education as we often see that through teachers who work in schools where there is shortage of proper sanitation facilities or infrastructure is distorted – they lose motivation and sense of worth, which further leads to weaker teaching and affecting learners as well.</p> <p>From the years 2000 up to date, we see that there has been substantial progress in terms of</p>

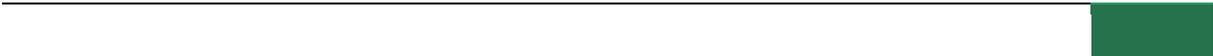
<p>of educational outcomes – mainly speaking to the aspect of quality?</p>	<p>learning, however, due to covid-19 there has been distortions in learning progress. On that note, one cannot really conclude if it necessitates policy updates or changes.</p>
<p>Dr. Mkhululi Neube</p>	
<p>Given the picture of poor outcomes in the South African education sector as compared to other countries, what is it that is different that these countries are doing – is it the quality of investment in education or the amount of investment in education in rand terms per pupil or better policy implementations? If you were to recommend 3/4 key factors which will enable South Africa to reverse this trend of poor educational outcomes; what would those factors be?</p>	<p>The huge educational outcome disparities witnessed between South Africa and other countries has to do mainly with the way the system functions and to some extent there may be issues at the policy level – in terms of institutional infrastructure. However, what really determines the success of an education system is what happens in the classroom; all other things are secondary to that. So, there is a need to improve the urgency in the system mainly relating to classrooms, such hours of learning, syllabus at hand and other academic factors.</p>
<p>Sasha Peters</p>	
<p>What is your view on the eminent shift of the ECD function to the department of basic education - as we know that ECD lays the basis for future academic performance, hence making it part of the formal education system does have its own merits. However, do you think placing ECD in the current strained DBE environment would not pose additional risks? Should the whole reform be slowed a bit?</p>	<p>At the moment there is a study underway to have a look at the institutional situation within the ECD. However, there is a danger (mainly on Grade R) in shifting the ECD, but it is not considered as the core function for the DBE. Altogether, Grade R might at a later stage be side-lined as it is not the core function of DBE.</p>
<p>Eddie Rakabe</p>	
<p>Does this notion or concern about the provincial fiscal squeeze hold – or is it a way of shifting the fiscal gap to the provinces? Would the education system be better off by assigning the entire function to the national government?</p>	<p>What is required in education to some extent is less experimentation with regard to major shifts in structures – as we have had too many experimentations around educational outcomes etc. The education system's improvement in the recent years is associated to some extent with stability (e.g. the syllabus that has been utilised for a couple of years) which has proved to be key. In summary, there is room for experimentation, however, I would not recommend it in any aspect.</p>
<p>Dr. Patience Mbava</p>	
<p>Why has it proved so hard to improve basic educational outcomes post democratic South Africa – mainly focusing on the dualistic system of education?</p>	<p>This has to do largely with how well our schools are governed, and for that we need to place greater emphasis on principals taking responsibility of what actually happens in classrooms (e.g. the day-to day operations and functions) and not only on the administrative functions of schools.</p>
<p>Commissioner Lourens Erasmus</p>	

Is the divide in education related to section 20-21 schools? Is it not time for schools to seek an alternative model where schools take the responsibility of merging their own resources?

The distinction of Section 20 and 21 schools used to be a problem, but many schools have been given greater function in this regard. However, there are still a lot of bureaucratic obstacles that often have more impact than simply being categorised as a section 20 or 21 school – e.g. in terms of how schools have to go about spending funds and reporting the expenditure. So, there are bureaucratic obstacles that still make it difficult to manage schools; and also considering that management is clearly not one of our strength in any event. Therefore, I do not think the distinction of section 20/21 is central to that anymore.



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**Annexure B: Question and Answer Session Following Professor Ajam's
Presentation**

Discussion (Q/A)

Comment and Responses	
Commissioner Michael Sachs	
The presentation has captured things so profoundly in terms of what we should aspire to be as the FFC. It was an excellent pointer to some of the issues that the Commission ought to address.	
Commissioner Lourens Erasmus	
It was a very insightful presentation, as it brought forth issues that the Commission needs to tackle head-on. What stood out was the point that the Commission has to see the bigger picture and not just follow popular new initiatives but also focus on the efficiency of what is already in place.	
Commissioner Aubrey Mkgadi	
From the point made that the Commission produces quality body of knowledge and enables access to the public, yet the public has no knowledge of the Commission. This is an issue of high concern that should motivate the Commission to transform into a reliable, credible organisation that is very dynamic, agile, swift and able to respond and provide practical advice that can be utilised to resolve issues that are facing the country. The presentation also spoke to one of the Commission's weakness, which is the production, packaging and management of research – and from this point here, the Commission accepts the given advice and will look into the organogram for improvements.	
Dr. Kay Brown	
The presentation is well taken, and it will help us plan on how to impose a balance between stakeholders' expectation and demands relative to the institution's research agenda and the theme at hand.	
Dr. Patience Mbava	Professor Tania Ajam
How does the Commission deal with intellectual capital of the research output - for instance if one of the Commission researchers utilises some of the Commission's research to publish into an academic journal, do they publish it as their own intellectual capital or do they use the name of the FFC?	It is important to distinguish between the recommendations reports of the FFC and the technical report, because in the technical report it is clear to see what the researchers' contribution is; whereas the report to Parliament on recommendations is an institutional report. Therefore, any publication must be from the technical report and the researcher can publish in their own name provided that they acknowledge the FFC, as they utilised institutional resources to achieve the outcome.

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**Annexure C: Question and Answer Session Following Professor de Visser's
Presentation**

Discussion (Q/A)

Comment	Response
Commissioner Michael Sachs	Professor Jaap De Visser
How does the dynamic of changing division of powers affect fiscal framework?	Prof Visser has indicated that it is about the vertical division, own revenue, equitable share, conditional grants that must be seen as a package not as a claim for more money. He further indicated that there are shifts in the user charges domain and this argument has been made often that the assumption that municipalities will be able to raise revenue through electricity charges and use some of that to cross subsidise other services is increasingly under pressure, because of the shifts in the electricity sector.
Dr. Mkhululi Ncube	
Local government issues are increasingly playing out in courts. Are courts taking over?	The courts are not necessarily taking over where IGFR fails, courts are taking over where politicians have failed. They also take over where political systems fail residents of the community, litigation on interventions and failures of municipality to deliver services
Eddie Rakabe	
<p>On the division of power and functions concurrency- are the costs justified to enforce justice civil SER, especially when it relates to concurrent functions and municipality in cases where national government insist on controlling the resource.</p> <p>For provinces which may want to provide services at higher standard of services than those which are set nationally- would national government be justified or does the Constitution allow for performance-based revenue allocation to municipalities or provinces which are providing services with standards above the nationally set?</p> <p>Should the FFC still conduct powers and function shift analysis in case where one finds the subdivision of responsibility within a function, especially through conditional grants which constitute some take over function?</p>	<p>The courts have been reluctant to enter too much in this debate because they recognise their limitations and their role, and they will generally defer to national, provincial, and local government assessments of fiscal and policy considerations except when there's a violation of a minimum requirement. With minimum standard imposed by SER being violated, Prof believes that's when courts are expected to step in.</p> <p>Furthermore, part of the SER paradigm prohibits retrogressive measures and insist on progressive realisation. Prof believes that minimum standards should be established, and they should be progressively improved over time.</p> <p>According to Prof de Visser the FFC's legislated role in respect of powers and function shifts must be asserted much more strongly as the FFC is there to ensure procedural rigour and to safeguard organs of state against unfunded mandates.</p>
Commissioner Aubrey Mokgadi	

<p>Is there any legal avenue that could link rights and responsibilities of fulfilment, where there is an expectation to fulfil the right and therefore an expectation that those who do so should have capacity and be able to do so?</p>	<p>The courts have decided to place a greater emphasis on ensuring that those responsible for fulfilling rights actually do as expected. Hence, there are court judgements and precedents on such issues.</p>
<p>Dr. Patience Mbava</p>	
<p>Perspective of trust and between the politicians and judiciary – How credible are the courts judgements and how do the public and politicians view these judgements?</p>	<p>Prof has made emphasis that courts have not necessarily taken over policy functions, he believes that would be wrong, because our courts are not equipped to take complicated policy decisions. On that note, he believes that the courts resolve a dispute that is brought to them and when that dispute revolve around a community that has left destitute by failures on part of government, then the court will test government actions against the standard of the bill of rights and if the government action fell short in the test of constitutional court unreasonable, then the court will declare that as it is so.</p>
<p>Sasha Peters</p>	
<p>In terms of cases, is there a practical guidance on the terms 'progressive realisation' and 'within available resources'?</p>	<p>There are comments and guidance by international bodies and from international commissions as a result of treaties that countries are party to – for example the international covenant on socio-economic and cultural rights - they issue regular comments on how we should interpret, analyse and implement SERs, but they remain quite high level.</p>

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