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**UNDER INFLUENCE OR CONSENT: THE INVOLVEMENT OF WOMEN AND TERRORISM IN MALAYSIA**

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**ABSTRACT**

*On December 18 2013, Halimah Hussein, being the first woman to be detained and charged under the Security Offences (Special Measures) Act 2012 (Sosma) was reported still on the run. A warrant of arrest however has been issued by the High Court for the police to track her down but to no avail. She has been charged with another two men under SOSMA and were charged respectively for promoting and abetting in terrorist activities in Syria. On December 15 2015, it was reported that one Poziah Harun was charged under Section 130K (a) of the Penal Code for harbouring her husband who was a member of the Islamic State (IS) group. She pleaded guilty and was sentenced to six months imprinsonment. Rafidah Jumaat was charged under Section 130JB(1)(a) of the Penal Code for possession of books and documents on terrorism at Seri Manjung Magistrates’ Court, however no plea was recorded as the case has to be transfer to High Court. These are few names of women whom related to terrorism in Malaysia. In history, there were few other names appeared which related to the said crime. The aim of this article is to discuss and seek to understand the reason behind the involvement of women and terrorism namely in Malaysia. This article also touches on the rights of these women when being charged, arrested and sentenced under the preventive law of terrorism in Malaysia. Comparison of laws from other countries will also be point to discuss as to have better understanding in order to solve issue arisen. The significant of this study is to seek enhancement and improvement to the existing laws as to create awareness of the said crime.*

**Keywords**: *women, terrorism, rights, preventive laws.*

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**1. Introduction/Background**

Threat to the national security is now becoming the top priority issue of the nation. Following a series of terror-attack in the neighbor country, Malaysia steps up her security to counter the terror threat. "Increased security measures are in place at public places such as shopping malls and tourist spots, while extra precautionary actions will be implemented in border areas to prevent possible infiltration by terrorist elements," Malaysia's Inspector-General of Police Tan Sri Khalid Abu Bakar was recently quoted as saying 1. Malaysia is facing the same music as we can see the threat is growing each and every day throughout nation. Who can forget the invasion of intruders from Sulu at Lahad Datu, Sabah in 2013? The epic standoff ended up with 56 militants were killed together with 6 civilians and 10 Malaysian security forces. Following that, few arrests were made and charged in the Court including one woman, Norhaida Ibnahi, was jailed for 10 years after being convicted under Section 130K for harbouring a terrorist. She is a Filipino who has been living in Sabah. The then Deputy Chief of Police Tan Sri Khalid Abu Bakar believed there was as many as eight women participating in Sulu terrorist factions by one of the women was shot dead in clashes on 1 March 20132. Lately, we can see arrest and charges are made against militants or extremists suspect to be related to ISIS and other terrorist group.

While the enforcement is doing their best to protect the nation from the threat, the law-makers having sleepless nights to tighten up laws and security, discussion has been made by the observers in understanding the root of the issue. Analysis also found out that the group has evolved. Latest they found that women are also involved in the act. The involvement of women although not as great as the men, has now increased and becoming the front-liner in some attacks. Dr.Edit Schalaffer, Founder and Chairperson Women without Borders has announced how the women involvement had become a neglect issue to look into. “Mothers are on the forefront of a new security paradigm,” she says in the UNESCO Conference on “Internet and the Radicalization of Youth” held in Qu’bec (Canada)3. In her speech she expressed her concerns of the involvement of women in terrorist movement as a conflict of feelings that could be lead to “violent or channel the emotions to a productive way”.

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1 Srinivas Mazudaru, (2016). DW *http://www.dw.com/en/malaysia-steps-up-security-to-counter-terror-threat/a-18996395* (Assessed on 04/11/2016)

2 http://www.gmanetwork.com/news/story/298166/news/nation/timeline-of-the-sabah-crisis-february-to-march (Assessed on 11 November 2016)

3 Edit Schlaffer, (2016). UNESCO “*Edit Schlaffer: Mothers, the much needed but missing ally for counterterrorism”*. Her interviews were mixed with women whom are involved directly with terrorists’ movement; *“We learned this traveling from Pakistan to Bali meeting women who were concerned that in the aftermath of these attacks, their children would make the wrong choices. One mother for example, whose husband lost his life in the Bali bombings, is now dealing with the consequences for her son. In our conversation she explained how desperate she felt; and she struggled with guiding him away from feelings of revenge. He told her over and over again, 'I want to kill the people who did this to my father.' But later he decided not to become a terrorist, but a policeman. This shows how conflicted these youngsters are and how instrumental the mother's strength and voice of reason is to channel these emotions in a productive way. On the other side, are the mothers of the perpetrators. One such mother and a close partner of ours is Aicha el-Wafi, the mother of Zacarias Moussaoui, charged with involvement in plotting 9/11. She sent a message to the families of the victims apologizing for what her son had planned to do. She told me, 'I tried to show my son the path of respect and tolerance.' She struggled to see where she had gone wrong. Another woman, a Palestinian mother of a suicide bomber told me that when her son's shrouded body was delivered to her home she refused to celebrate his martyrdom as was expected of her. These women demystify the image we have of a mother of a terrorist. They would do anything to protect their children and prevent them from causing these atrocities. These women with whom I've worked over the years not only tell me their personal stories - their emotional struggles with their individual traumas -, but they already speak the language of security. After many of these conversations with mothers across the globe, I realized that they are on the forefront of a new security paradigm. They need to be the building blocks for a bottom-up security approach.”*

That is the concern of the issue in discussion. The involvement of women whether directly or indirectly is not properly attended to. Many of the reports that we have read, shows that the women involvement was either fear or under influence4. One example, Poziah Harun was charged under Section 130K (a) of the Penal Code for harbouring her husband who was a member of the Islamic State (IS) group. She pleaded guilty and was sentenced to six months’ imprisonment. Harbouring or in layman words, protecting an accused is a crime under the law. Of course here, the issue at stake is protecting the suspect of a terrorist group. Question is; what could be other possible way of a wife to do when her husband is injured? In such situation, is the woman has actually involve herself with the terrorist group?

The definition of undue influence under criminal law is not properly address as the usage of the term is more under the civil dictionary i.e contract law rather than in criminal law. But one could easily say that undue influence means without consent of the person or being forced as a victim. Looking at the criminal law term, the phase could easily be found in the elements of a crime itself from the concept of *mens rea* and *actus reus. Mens rea* means the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused; which literally leads to an act which comes with consent. Interestingly to say an act of wrongdoing, would that include to give a treatment to an injured husband or patient?

The issue will be discussed in the article. Moreover, the article likes to seek a discussion on the involvement of women particularly with the terrorists, militants’ or extremists group. The article will also look into the role of this women has in such movement and how far has the involvement went at such movement. The discussion will also involve existing laws and current issue especially that occurred in Malaysia.

**Women’s involvement in terrorism.**

The history of women’s involvement in terrorism can be trace long time ago. Over the years, the term of terrorism actually evolved gradually. We actually heard the term of extremists, separatists or militants, basically carries the same meaning. History also tells that the involvement of women is fewer compared to men but the impact still the same be it from the political point of view or the application of the law to this group.

In October 23, 2003 a group of heavily armed men accompanied by 19 women wearing traditional Muslim headscarves and bombs strapped to their waists seized about 800 hostages in a Moscow theater. The group whom was known as the Black Widow of Chechnya as found dead after 56 hours of hostages’ drama when the Russian special forces ended the siege5. There were few more reported events followed after the incidents including a dramatic Chechen terrorists surrounded a school and took over more than 1000 hostages. The standoff again ended with more 300 hostages and 32 terrorists died (CBS News, 2005). A study found out that most of the members of the group willingly joined the movements in contrary to what the society beliefs that they could be influenced by a Chechen rebel movement. In one chapter of the book titled “*Women Terrorists*” the writers stated and quoted that some studies suggested that the women involvement in the group was not at all a result from foreign influence but mostly in response to deeply traumatic personal experiences involving the death or near death by torture of a close family member.

In January 2002 in Jurusalem, a Palestinian woman Wafa Idris blew herself up in downtown of Jurusalem which killed few of Israelis army. Since then, female bombers were taken seriously where recruits of these people where in demand.

In Western, these group is better known as Revolutionists like the Zapatistas in the southern Mexico where more than one-third of the members are among the women. The vision of the group more or less is to reshaped the Mexican politics and challenged the stereotype of genders.

One common factor that is interesting to be at discussion is the similarity of the scenario for this involvement of women in terrorism. The first situation suggested that the involvement of women in terrorism is due to a long after-math of conflict of war that made them willingly join the group in order to fight for their freedom and their rights. The horror of long and vicious conflict of war has dragged these female leads to join the group as they belief that the law is no longer can be relied on. The second situation is more or less the same. The urge of being oppressed by a supreme force has encourage the female to become suicide bombers and they wanted to die as a fighter. These women were actually a patriot for their society. Nevertheless, the third situation creates a revolution in order for themselves to be heard by the government. Be as it may, all three situations suggest that the involvement of women are by consent and willingness due to the environment that they lived in. They must fight back, that is what in their head.

In such situations, the roles of these women would be different. In some part of the group, the women serve as the sympathizers as they carried out the violent act due to the struggle that they went through in their lives. Some acted as spies whom has been recruited and later exploited by the group or even worst by their own country. Most of the times they were known as warriors to their own group and society as they depicted as a freedom fighter or a defender of rights. Few will stand out as a dominant force whom carries ideology, leadership, motivation and strategy for their organization or group.

In Malaysia, the involvement of women in terrorism was not much in discussion. However, historically, there were few events that depicted the movements which involved women participation in radical movements in Malaysia.

Perhaps (pre-independent era) the earliest involvement of women in terrorism in Malaysia can be traced back in 1930. Shamsiah Fakeh was the leader of *Angkatan Wanita Sedar* (AWAS) and a prominent Malay leader of the Communist Party of Malaya (CPM) whom to said joined the party in 1948. With the banning of few other political radical and prior to the declaration of the Malayan Emergency followed by the mass arrests of left leaning Malay nationalists, Shamsiah retreated to the jungles and joined the predominantly Malay 10th Regiment of the Malayan People's Liberation Army of the CPM operating from Lubok Kawah near Temerloh, Pahang. When the 10th Regiment was forced to retreat together with the 11th and 12th Regiment to the Thai-Malaya border in 1953 after a series of military defeats beginning with the Battle of Padang Piul in 1949, Shamsiah joined the retreat and continued to fight as a guerilla until she was sent to the China for further education together with her husband, Ibrahim Mohamad, in 19566. Her action was such a threat not only to the nation but spread to the neighbors that she was banned to return to Malaysia until 1994. Communists was a huge threat to the nation that due to its threat the preventive measure was implemented hence born Emergency Regulations Ordinance 19487. After 12 years of fighting, with 4,338 lives were lost among the security forces and civilians (1865 of security forces and 2473 of civilians) and 6,711 communist terrorists8, the country finally achieved victory. The Emergency Regulations Ordinance 1948 was abolished. However, to maintain the security of the nation from any terror attacks, the government introduced and implemented the then Internal Security Act 1960 (ISA) under the authority granted by Article 1499 the Federal Constitution.

In October 21, 1994, the government of Malaysia has banned an Islamic based religion founded by Ashaari Mohammad and few members including the leader was arrested under ISA. The leader’s wife Khadijah Aam or 'Ummu Jah' was most influential women in the organization and has helped develop the Al-Arqam organizations based in the village of Sungai Penchala, Damansara, Selangor, Malaysia. The movement, also known as Darul Arqam, started life as a relatively small group that withdrew into its own fairly remote peasant-style, self-contained community that practiced strict adherence to an Islamic code and developed a home-based economy later then developed to become a threat to the country. The extremists were later found to be associated with a rebel group in Egypt and was preparing an armed rebellion. Although there was no specific attack from this group, the government has concealed the group to be suspected militants and was arrested under ISA. The founder died in 2010. Since his death, many attempts to revived the organization was made but not to avail. Ummu Jah, the wife of the founder, in her livings was identified as most influential person in the organization and has written two books on the organisation and the founder which was banned in Malaysia. She died in 2015. The ideology of the organisation was so great that it was believed to have followers around the world including Malaysia, Indonesia, Thailand, Jordan, Mecca and Arab Saudi.

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10 https://www.utusan.com.my/berita/jenayah/kronologi-tangkapan-militan-sejak-2014-1.78360 (Assessed on 07/11/2016)

11 http://www.sinarharian.com.my/mobile/semasa/69-rakyat-malaysia-sertai-militan-is-1.436520 (Assessed on 07/11/2016)

12 POTA was a much criticized Act since its implementation. POTA was passed by the Government on 7 April 2015 and being into effect in September 2015. Among the criticism of POTA is that it enables the Malaysian authorities to detain terror suspects without trial for a period of two years which slaughtered the rights of a person to be heard as stated in the Federal Constitution. POTA also does not allow any judicial reviews of detentions. Instead, detentions will be reviewed by a special Prevention of Terrorism Board. POTA was said as reincarnation of Internal Security Act (ISA) which had been abolished. It was tabled following the rise of ISIS and fears of terrorist threats in the nation.

In early 2014, at least 6 Malaysians were killed in Syria conflict. Ever since then, the government has committedly dealing with issues of Malaysians who were involved with militants. As reported in Utusan Online10 a number of arrest involving militants movements in Syria has been made. These arrests were including women involvement in terrorism. In October 4, 2014, a former student of Kolej Universiti Islam Antarabangsa Selangor (QUIZ), Syamimi Faiqah Sulaiman, 20, desperate to flee to Syria alone wants to marry militant Islamic state (IS), a former musician 90s, Akel Zainal befriended through Facebook. The arrest does not stop there. In October 8, 2014, police arrested a Malaysian woman's family for alleged links with international militant group IS in Iraq and Syria, in Airport klia2. From 13 to 15 October 2014 about 14 suspects, 12 men and two women who were, engineers, traders, event crew, chef, graphic designers, students and housewives were arrested in Shah Alam. Nine of them were prime movers IS cells. In October 31, 2014, a woman, Umi Kalsom Bahar, 25, was charged under Section 130J (1) (a) of the Penal Code on charges of trying to support the IS group in Sepang Sessions Court. In November 21, 2014, two women and a man aged 28 to 34 years old were arrested. In February 19, 2015, a 14-year-old girl suspected of trying to join the militant group in Syria, was arrested at the airport. In March 7, 2015, a 28-year-old housewife, was detained at KLIA for trying to depart to Syria to fight with IS. The Deputy Director of Counter Terrorism, Bukit Aman, Datuk Ayob Khan Mydin Pitchay has reported11 that about 69 arrests has been made and 12 of them were women. He was also said that the involvement of women in such movements is very alarming as the number increased every day. According to him, the involvement of these women in the militants group is to spread the ideology and propagandas. Their position is varied from cook to English teacher for the militants. Some also has the belief to be married with the militants in order to get approval from God.

Law as preventive measures

In Malaysia the most talked about preventive law present is POTA or Prevention of Terrorism Act 201512. However, POTA which has been implemented in September last year has not yet found its “victim”. A better approach can be seen in Security Offences (Special Measures) Act 2012.

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10 https://www.utusan.com.my/berita/jenayah/kronologi-tangkapan-militan-sejak-2014-1.78360 (Assessed on 07/11/2016)

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On December 18 2013, Halimah Hussein, being the first woman to be detained and charged under Sosma. She was charged for abetting13 in promoting the commission of the terrorist act. Halimah and the other two were arrested under s 414 of SOSMA for committing security offences. S 4 gave authority to the police to make arrest and detain any person whom he believed to be involved in security offence and the period of detention can be extended up to more than 28 days. SOSMA, which was enacted pursuant to art 149 of the Federal Constitution, merely regulated the trial of security offences but did not create the said offences. Instead such security offences were punishable under the Penal Code. Thus, Halimah who was arrested under SOSMA, were later separately charged for security offences under s 130G(a)15 of the Penal Code. In contrary, Halimah and the others later applied to set aside and/or permanently quash or stay the charges against them on the grounds that the charges were defective, confusing and ambiguous, that the charges were mala fides, frivolous, vexatious and an abuse of the process court, and finally that the SOSMA was unconstitutional. Halimah was later discharged not amounting to acquittal by the High Court since Halimah has not been appeared to Court for trial. Since then, a search warrant has been issued and Halimah was ever since to be found. Halimah is suspected to have flee the country and still actively involved with Tanzim Al-Qaeeda, Malaysia. Halimah is a widow with no children and has a degree in law from the International Islamic University Malaysia (IIUM) and is believed to be involved recruiting local people in militant activities before being sent overseas to carry out the mission violence.

Looking at the case above, Halimah was the first woman to be charged under SOSMA however fail to be sentenced. S 4 of SOSMA, clearly stated that, the arrest can be made without having any gender reference so long that the authority believed that the person is involved in a security offence. How do the prosecutions come to believed? That is not clear. Arrest made under SOSMA also do not discuss on how the offence is created but merely regulated the trial of the act. Hence, the charges have to be later tried separately under Penal Code which creates more loopholes which can be easily break by the accused person. Here again, the conflict arose since the charges can be later read under Penal Code, bail becomes discretion by the Court. So once the Court believes that the person is acquired to be bail, a bail will be granted. In this case, the bail was granted and Halimah abused it by jumping bail and never appeared in Court. Failure in having proper charges

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13 Halimah Hussein was arrested and charged with another 2 male accused; Yazid Sufaat and Muhamad Hilmi bin Hasim. She was charged for abetting the first accused in promoting the commission of the said terrorist act, which is an offence under s 130G(a) of the Penal Code which reads together with s 109 of the said Code.

14 S 4. Power of arrest and detention-Illustration: -

D is arrested for a security offence. After twenty-four hours of detention a Superintendent of Police extended his detention for another seven days. At the expiry of the seven-day period D was released but he was still needed to assist the investigation. Upon receipt of a report from the police officer, the Public Prosecutor may apply to the Court to attach an electronic monitoring device on D. The Court may allow the electronic monitoring device to be attached to D up to a period of twenty-one days.

15 Inciting, promoting or soliciting property for the commission of terrorist acts 130G. Whoever knowingly— (a) incites or promotes the commission of a terrorist act; (b) incites or promotes membership in a terrorist group; or (c) solicits property for the benefit of a terrorist group or for the commission of a terrorist act, shall be punished with imprisonment for a term which may extend to thirty years, and shall also be liable to fine.

later leads to Halimah’s discharged by the Court. The woman is still on the run and considered as most wanted person by the authority.

For some other case, Poziah Harun for example was charged under Section 130K (a) of the Penal Code16 for harbouring her husband who was a member of the Islamic State (IS) group. Poziah pleaded guilty to the charge and was sentenced to six months’ jail. According to the facts, she had brought her husband Zulkarnain Ghaz Abd Ghani, who just got back from Syria and involved in terrorist act in Syria, to a polyclinic to get treatment of his gun-shot wound. The charge when read include “fail to inform the authority of her husbands’ return and hide the reason behind the husbands’ injury”. Harbouring is read under S 130K (a) which means hiding or protecting a convict is an offence under the act. The facts do not suggest that Poziah was directly involved with the terrorist act but only assisting her injured husband. Interesting to note here a task of a wife to attend to an injured husband is an offence due to the husbands’ action. “During the proceedings, Kamardin said the guilt of the accused is still categorized as a serious fault though only intend to protect with her husband to seek treatment. The judge said the court took into account the confession even should the accused pleaded guilty at the beginning of the case because the accused can show his conversion.17”

Could the law be any different in other countries? In Australia’s Counter Terrorism Laws18, stated that a person is committing a terrorist offence even when the group or organisation was not listed by the government as terrorist group as long as that organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In the guide-book, prosecutor would need to prove beyond reasonable doubt to a court that the organisation is directly or indirectly engaged in terrorism. In addition, the prosecution would have to prove that the person either knows that the organisation is a terrorist organisation or is aware there is a substantial risk that the organisation is involved in terrorist activity.

The guide-book is a reference to the prosecutor in having a proper procedural to prosecute the terrorist. This will be read together when they are prosecuting the terrorist. Be as it may, the offence also does not have any preference gender when it comes to prosecute and punishment.

Since the numbers of Australian women joining the terrorist act is increased, The Government last year introduced a raft of legislation aimed at stopping would-be jihadists from travelling to the Middle East, including the Foreign Fighters Bill19. which made it illegal to travel to areas declared as terrorist zones without a specific humanitarian or family purpose. Australians found to be illegally visiting the region could face up to 10 years in prison. This is following the death of a 22-

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16 S 130K Harbouring persons committing terrorist acts.

Whoever harbours, or prevents, hinders or interferes with the arrest of any person knowing or having reason to believe that such person— (a) has committed or is planning or is likely to commit a terrorist act; or (b) is a member of a terrorist group, shall be punished with imprisonment for life, and shall also be liable to fine; or with imprisonment for a term which may extend to twenty years, or with fine

17 “Ibu kepada tiga anak dipenjara kerana bantu suami pengganas” http://www.malaysiakini.com/news/323447 (Assessed on 01/10/2016)

18 Attorney General’s Department of Australians’ Department.

19 Foreign Fighters Bill has made it illegal to travel to areas declared as terrorist zones without a specific humanitarian or family purpose.

year old woman from Gold Coast who was murdered within days of her arriving in Syria last year. She went to Syria in order to join the jihadists in the Syrian war but was executed in Aleppo.

Lori Berenson an American activist who later being convicted by the Peru Government in her association with the Túpac Amaru Revolutionary Movement (MRTA), a group which had tried to overthrow the Peruvian government by force and which was and is considered a terrorist organization by the Peruvian government. Her arrest and conviction, and the circumstances of her trials, provoked considerable attention in the United States and in Peru. She was later tried and sentenced to a life imprisonment which caused "a cause celebre for human rights campaigners and a symbol for leftwing social activists around the world.20" After completing her sentence, she returned to her family in New York in 2015. When being arrested, she had made an angry statement in which she said that MRTA was not a terrorist group but a revolutionary movement. She admitted however, knew few of the members of MRTA and had collaborated with them during her interviews and reports. According to the facts, she was tried in a closed courtroom by a military tribunal on a charge of treason against the Peruvian government. Under the anti-terrorist legislation, a Peruvian citizenship was not a requirement and hence, she was tried there for an act of treason and later collaboration with a terrorist group.

Conclusion.

It is not clear what contributes to the involvement of women in terrorism. However, it should not be taken lightly. It was reported in United Kingdom that, 315 terror suspects have been arrested in the past year, with dramatic increases in arrests of women and teenagers. 31% rise in the number of suspects arrested for international-related terrorism reflects an unprecedented effort by the police and security services to counter the threat from Islamic State and the flow of British citizens to and from Syria. It was once reported that more than 600 women had travelled from the West to join terrorists group. The number is shockingly increased from the West. Why did they join the terrorists group? The causes of their involvement can be different from one to another. Motivational from ideology of the objective of the group is the current trend. Fear and sympathizers are the latest tools from the group in recruiting the women. However, there were women whom directly involved with the group and has become leaders instead just followers or members. Here, their role and involvement would be even more radical. Even so, indirectly or directly, the involvement of women in the act cannot be neglected.

Be as it may, the law has to be inclusive, not on gender but has to be comprehensive. This is to avoid lacking of procedural defect in arresting or putting charges on the suspect. A procedural defect would be taken as a flaw of law and prosecution will not come handy. Prosecution has to have a full guide-book in order to have a proper prosecution and further to sentence. Ideology and propagandas throughout social network or any written communication must be taken carefully by laws. Since terrorism is a threat to the security in the country, laws must be specific to avoid doubt and lead to conflict. Even evidence can be an advantage and disadvantage to the prosecution shall it is not handled properly.

If ideology which motivates the people to join the terrorist act, hence the laws has to become a tool to prevent the ideology to reach the people.

20 Carroll, Rory (June 10, 2010). "Freed New Yorker who aided Peru rebels wants deportation". The Guardian. London.

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