

PRELIMINARY STATEMENT

Voters' commitment and concerted institutional efforts strengthen Liberian democracy in successful run-off

Monrovia, 28 December 2017

Summary

This preliminary statement is delivered before the completion of the election process and covers the period from 13 October to 27 December 2017. The final assessment of the election process will depend also on the conduct of the remaining stages, in particular, the tabulation of results and the handling of post-election day complaints and appeals.

- Throughout the process leading to the Presidential election run-off, political parties remained committed to the promotion of non-violent elections and the rule of law indispensable to the strengthening of Liberia's democratic institutions. Despite the uncertainty arising from the delaying of the second round initially announced for 7 November, Liberian voters and citizens showed patience and played a key role in the conduct of peaceful elections.
- EU EOM observers assessed the conduct of the polling day positively. The secrecy of the ballot was preserved and assisting voters in finding their correct Polling Place (PP) visibly improved in comparison with the 10 October elections. Candidate representatives were present to follow the polling. The EU EOM continues to observe the tallying of results throughout the country.
- During the complaints and appeals period following the 10 October elections, and despite some delays, rights of access to a fair hearing and rights of appeal were largely respected in line with Liberia's Constitution and international obligations. Overall, and despite some variance in procedures and administration of cases by Hearing Officers (HO of the National Election Commission (NEC)), hearings were conducted in a broadly inclusive and transparent manner.
- Although a key 6 November Supreme Court (SC) decision (Stay Order) prohibited the NEC from holding the presidential second round on 7 November (run-off) until a complaint from a political party was finally adjudicated, the granting of the order afforded due process to the complainants. On 7 December, the SC lifted the Stay Order, deciding that there was a lack of tangible evidence from the complainants. The NEC announced a new election date of 26 December (rescheduled run-off), albeit subject to conditions with which NEC demonstrated clear efforts to comply.
- Planning and preparatory actions by the NEC to ensure a successful second round were
 undertaken in an overall efficient manner. Following the lifting of the Stay Order,
 ECOWAS deployed a technical support team to assist the NEC in an SC mandated
 clean-up of the FRR. Action was undertaken to remove duplicate records and resolve
 voter card numbers shared by multiple voters.

- Throughout the campaign period, political rallies and gatherings remained non-violent. Parties were able to freely exercise their rights to freedom of expression, assembly and movement. The atmosphere of campaign events was mainly enthusiastic.
- Campaign finance issues attracted lesser attention than during the previous stages of the process. This situation was evidenced by the contestants' low level of compliance with reporting obligations and a lack of enforcement by the main oversight institution the NEC. An effective implementation of campaign finance regulations would have been instrumental to levelling the playing field.
- Freedom of speech in the media was respected during the campaign period. An
 increased polarisation contributed to selective coverage in some media. The stateowned radio demonstrated a reasonable balance of airtime allocation between the
 candidates in news bulletins, representing an improvement on coverage during the first
 round. However, in leading talk shows, it did not evenly inform the public.
- Civic and voter education was impacted by the Stay Order, the short time between the SC ruling and Election Day, as well as scarce funding for civil society organisations (CSOs); election-related civil society initiatives focused strongly on peace promotion targeting youth.

The European Union Election Observation Mission (EU EOM) has been present in Liberia since 1 September 2017 following an invitation from the Liberian authorities. The Mission is led by Chief Observer, Maria Arena, Member of the European Parliament. In total, the EU EOM deployed 74 observers from most of 28 EU Member States plus Norway, across the country to assess the electoral process against international obligations and commitments for democratic elections as well as the laws of Liberia. On Election day, observers visited over 298 Polling Places.

The EU EOM remains in country to observe post-election developments and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.

Preliminary Findings

The second round of the election to the Presidency was held on 26 December 2017 following the resolution of complaints and appeals filed in the wake of the 10 October ballot. Throughout the process leading to the run-off, political parties remained committed to the promotion of non-violent elections and the rule of law indispensable to the strengthening of Liberia's democratic institutions. Despite the uncertainty arising from the delay of the second round initially announced for 7 November, Liberian voters and citizens showed patience and played a key role in the conduct of a peaceful electoral process.

Whereas both contending parties have elaborated a detailed platform outlining their respective priorities for the country, they failed to publicise it among the general public. In the absence of public debates and considering that political messages mainly revolved around the personality of the candidates, voters have not enjoyed an issue-based and policy forward looking election.

Complaints and Appeals

Following the first round of the elections, numerous complaints were filed to relevant NEC Magistrate Election Offices (MEO) across Liberia, challenging results or the conduct of the elections. The majority were filed by individual House of Representatives (HoR) candidates, while there were three party complaints (relating to their respective HoR, Presidential and Vice-Presidential candidates): All Liberian Party (ALP), Liberty Party (LP) and Unity Party UP¹.

During the complaints and appeals period, and despite some complications, rights of access to a fair hearing and rights of appeal were largely respected in line with Liberia's Constitution and international obligations. Overall, and despite some variance in the application of procedures and administration of cases by NEC HOs, hearings were conducted in a broadly inclusive and transparent, with most cases being ruled within constitutional timelines².

Most complaints were ultimately dismissed, either by 1st instance HOs, the NEC Board of Commissioners (BoC), or on final appeal to the SC³. Primarily a lack of both reliable evidence and adequate witness testimony contributed to the failure of many complainant cases. Some political parties had deployed many party agents to polling places across Liberia on 10 October, but such agents' activities in most cases provided no substantive support to

¹ The UP action came by way of civil procedure intervention in the LP case before the NEC Chief Dispute Hearing Officer and, in particular, after a BoC appeal decision on 28 October to admit the party to the case, notwithstanding that they were without the period allowed by law for filing a complaint.

² International Covenant on Civil and Political Rights (adopted 16/12/1966) 999 UNTS 171 (ICCPR), at Article 25, General Comment 25, paragraph 20. ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01), (hereafter ECOWAS Protocol), at Art 7.

³ Some 86 complaints were filed in all. 20 cases, decided by first instance NEC hearing officers, were appealed to the NEC BoC and, of those latter cases, a further 6 proceeded to the Supreme Court on appeal.

allegations raised⁴. Certain complaints and appeals, lacking in evidence, unnecessarily burdened the complaints and appeals process.

A much-publicised complaint, and connected proceedings, raised allegations of fraud, irregularities and unconstitutionality, leading to the Stay Order. Although this prohibited the NEC from holding the run-off until the complaint was finally adjudicated, the granting of the order afforded due process to the complainants⁵. The Stay Order prompted much public concern and speculation as the complainants pursued their grievances by various judicial means. The NEC withstood this challenge. On 7 December, the SC lifted the Stay Order owing to a lack of tangible evidence from the complainants⁶. Subsequently, the NEC announced the rescheduled run-off. A lack of preparedness in the handling of cases by some legal professionals contributed to the undermining of several complaints.

Although the SC decision of 7 December rejected the plea for a re-run of the 10 October election or a further extension of the Stay Order, it imposed some requirements in advance of a second round (the SC Conditions). These included, among others, a full clean-up of the Final Registration Roll (FRR), that the FRR be published and distributed to all Magistrate Election Offices (MEO) and Polling Places (PP) and that NEC officials refrain from biased public statements⁷. In advance of the rescheduled run-off, the EU EOM observed that HOs were briefed on the SC conditions and, overall the NEC demonstrated clear efforts to comply⁸. On 21 December, the SC struck out a Bill of Information seeking another stay – this time against the rescheduled run-off – and, in so doing, noted the NEC was engaged in a process of clean-up of the FRR as mandated and, further, was proceeding within its constitutional mandate in setting the rescheduled run-off.

Some other technical issues crystallised through the course of various election complaints, including on appeal timelines. Notwithstanding clear efforts by all adjudicating bodies to deal with complaints expeditiously, the constitutional timescale for addressing complaints, following the Stay Order, could entail overlaps with the prescribed date for presidential inauguration. The possibility arises if a complaint, coming after the rescheduled run-off, uses most of the time available for such matter to be determined⁹.

While legal complexities contributed to delays and some misunderstandings, the identification of such issues now presents an excellent opportunity for essential remedial actions for future

⁶ Brumskine, Karnwea and UP vs NEC, SC, 7 December 2017.

⁴ This was also a concern expressed by the SC, drawing attention to the need for political parties to provide sufficient and reliable evidence to support complaints.

⁵ LP v NEC, 6 November 2017.

⁷ The SC issued eight directions in all. In addition to those mentioned above, the NEC was required to - 1) fully comply with the standards of publications of the FRR as outlined in the court ruling, 2) prohibit persons not appearing on the FRR from voting. 3) limit any addendum to those listed in the NEC Polling and Counting Manual 4) restrict the right of poll watchers to vote only where registered and appearing on the FRR. The final direction lifted the Stay Order.

⁸ In its 7 December ruling, the NEC Communications Officer was, fined and detained for 2 days for contempt, having been found by the SC to have made public statements on the FRR in conflict with the SC conditions on the need for a clean-up.

⁹ LP v NEC, 6 November 2017. The SC, granting a Stay Order, found the Constitution mandates a complaint be determined prior to a run-off but within the time line provided in Article 83 (as amended in 2011) (a period of up to 58 days after the announcement of results with a variable no of additional days, under civil procedure rules, including a three-day period for applications for SC re-hearings).

elections. Elements of several important SC rulings should be proactively employed as a basis for future amending of electoral legislation or implementation of guidelines as well as further developing training practices for election stakeholders.

Election Administration and Voter Registration

Despite the interruption to operations following the Stay Order, suspending NEC activity between 6 November and 7 December, the planning and preparatory actions by the NEC to ensure a successful second round were undertaken in an overall efficient manner, although some shortcomings remained.

Measures taken by the NEC following the 10 October elections, contributed to an improved management of the flow of voters during the rescheduled run-off. The first round was characterised by long disorganised queues of voters, making it difficult for some voters to cast their ballots in their assigned Polling Place (PP); others might have become discouraged and might have turned away. To address these issues, the NEC initiated remedial actions, including the recruitment and training of an additional 385 queue controllers to verify the Voter Card (VC) numbers and direct voters to the correct PPs. Additionally, posters were printed featuring the index of the VC numbers, to further help voters in identifying their correct PP.

Arrangements, including the dispatch of the ballot papers, were well underway in the days prior to the Stay Order, stopping all NEC election preparation activities. Notwithstanding, the NEC remained ready to recommence its operations subject to the resolution of complaints. In this regard, the NEC continued certain non-preparatory activities that did not fall within the realm of the Stay Order, such as the administration of cases relating to the first round.

The lifting of the Stay Order enabled the NEC to recommence its work for the 26 December election, although the NEC had to address the SC conditions as part of its final preparations. These conditions included the exclusion of persons not appearing on the FRR from voting ¹⁰. Among the immediate actions launched by the NEC was the publication of a revised Polling and Counting Manual to reflect the SC instructions on voter eligibility. However, these guidelines were only finalised on 21 December, when the training of poll workers was already being conducted.

Prior to and on 10 October, the NEC announced an inclusive approach by permitting voters with a valid voter card, and who could not find their record on the FRR, to vote by the insertion of their names on the FRR addendum. However, the SC ruling of 7 December constrained the NEC from this approach in the rescheduled run-off. Consequently, a voter holding a valid registration card must be found on the FRR in order to vote.

Between 26 November and 6 December, ECOWAS deployed a team to assess and report on the FRR, which was becoming a focus of attention in complaints before the NEC and at the SC. ECOWAS concluded that, despite some issues in need of rectification, the FRR "can be used for a credible election". Following the lifting of the Stay Order, ECOWAS deployed a

¹⁰ Exceptions related only to NEC Officials, polling staff, security personnel and drivers and escorts of international observers not appearing on the FRR, who were permitted to vote in an addendum provided for in the NEC Polling and Counting Manual

technical support team to assist the NEC in the SC mandated clean-up of the FRR¹¹. Action was undertaken to remove duplicate records and resolve voter card numbers shared by multiple voters¹². Commenting on 21 December, the SC, cognisant of the work being undertaken, considered the activity as a "good beginning"¹³.

This additional work, compounded by an increasingly compressed timeframe due to constitutional deadlines¹⁴ and calls from some stakeholders for the NEC Chairman to step down, resulted in considerable pressure on the NEC. Despite this, the NEC proceeded with election preparations in a determined and timely manner.

Campaign Environment

During the first days of the run-off election campaign period starting on 12 December, the EU EOM observed low-key canvassing activities across the country, mainly focusing on door-to-door campaign and community meetings. Whereas representatives of both contending parties indicated a limited availability of campaign funds, the culture of hands-out to communities and high level of campaign monetisation continued to prevail.

Throughout the campaign period, political rallies and gatherings remained non-violent. Parties could freely exercise their rights to freedom of expression, assembly and movement. The atmosphere of campaigns was mainly enthusiastic, with events punctuated by the distribution of gifts. EU EOM observers reported, however, a few instances of aggressive rhetoric at times drawing near to inflammatory speech.¹⁵

The two political parties engaged in canvassing activities enjoyed more space and a greater flexibility in the organisation of their events than during the first round. However, a level of uncertainty in the campaign schedule, together with the lack of standardised procedures for political parties to submit their calendar of public events, implied an *ad hoc* co-ordination of rallies with a potential for conflicting activities.

Campaigning intensified closer to Election Day, with some major events organised in counties with a large number of registered voters. Public meetings were frequently the occasion for defeated candidates and parties to declare their support to either of the presidential tickets. The official endorsements and abstentions announced by high-profile political leaders often revealed diverging positions within a same party. EU EOM observers also noted several instances of local candidates actively campaigning for a presidential ticket different from the

¹⁴ Constitution provides that the new President terms commences at noon of the "third working Monday in January" (Art. 50 of the Constitution). This provision is differently interpreted by interlocutors, indicating that the deadline for asserting the end results and swearing of the new Head of State is 15 or 22 January 2018.

¹¹ Technical assistance between ECOWAS members, such as Liberia, is provided for in the ECOWAS Protocol. ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security Art. 4 (2).

¹² During this process, it was identified that these concerns affected 211 of 5390 PPs. A total 361 of 2,183,629 records were removed in the clean-up, while 420 new voter cards were issued.

¹³ Bill of Information ruling, SC, 21 December 2017.

¹⁵ For instance, during a UP rally on 20 December, the standard-bearer of the All Liberian Party (ALP), after announcing his endorsement of the former, used aggressive language to describe the alleged interference of the President in the electoral process, referring to her as an "evil hand" and a "dangerous woman in society".

one backed by their respective national standard-bearer, thus shaping a campaign where personality-based choices dominated over party affiliation.

Campaign Finance

In between the two election rounds, campaign finance issues attracted lesser attention than during the previous stages of the process. This situation was evidenced by the contestants' low level of compliance with reporting obligations and a lack of enforcement by the main oversight institution – the NEC. An effective implementation of campaign finance regulations would have been instrumental to levelling the playing field.

The period following the announcement of first-round results is key in terms of campaign finance reporting and disclosure as it carries the deadlines for submission and publication of contestants' financial reports¹⁶. Being due respectively 15 and 30 days after the announcement, the financial statements were expected on 3 November and were to be published on 18 November at the latest. Yet, only some 14 out of 1004 candidates (less than 2 per cent) have submitted accounts to date and the NEC did not make their reports available for public consultation as demanded by the law. Although having the mandate to apply penalties in case of non-submission of financial statements¹⁷, the NEC has not imposed any sanctions so far, further contributing to an already low level of enforcement.

Media

Freedom of speech in the media was respected during the campaign period¹⁸. An increased polarisation contributed to selective coverage of one or other candidate in some media. This added also to increasing bias and misinformation in reporting, with an adverse impact on the right of the voters to be accurately informed. Given the diversity of the media, this observed trend was mitigated by some varying availability of alternative sources of information.

The state-owned radio ELBC¹⁹ offered fairly equitable news about the two candidates. This represented an improvement on coverage provided during the first round. In its mostly neutral news bulletins, airtime allocation to UP (13 per cent) and CDC (10 per cent) was reasonably balanced, while the largest share in the news went to the Government (32 per cent), the

¹⁶ This reporting deadline is applicable to all HoR contestants and to those presidential/vice-presidential candidates who did not qualify for the second round. The financial reports shall include statements on assets and liabilities as well as accounts of campaign contributions and expenditures.

¹⁷ Non-submission of financial statements is an election offence "subject to a fine and/or the withholding of certificate to take seat until the requirement is fulfilled, or banning a candidate from participation in subsequent general elections". NEC Campaign Finance Regulations 2016, art. 20.2.

¹⁸ The EU EOM resumed monitoring on 12 and ended on 24 December, last day of the campaign for the run-off. A total of 15 media outlets were monitored, including eight radio stations: ELBC, Prime FM, Fabric FM, Truth FM, Capitol FM, UNMIL radio, OK FM, and King's FM, as well as two television channels, LNTV and Power TV, and the newspaper titles: Daily Observer, Front Page Africa, The Inquirer, New Democrat and The Analyst. Other media such as radio Shiata FM and The News newspaper were also monitored, but not included in the sample.

¹⁹ Liberia Broadcasting System (LBS) operates the state-owned radio station ELBC (the only Liberian broadcaster with national reach) and the television channel LNTV. Radio is the most important source of information and television the least used.

President (20 per cent) and NEC (19 per cent). However, in leading talk shows, it did not evenly inform the public. There was an absence of equal airtime in leading talk shows, with largely positive contents in favour of UP (41 per cent), while CDC received 9 per cent. On the state-owned television channel LNTV, the UP dominated the news coverage, while talk shows provided limited discussion and debate of either candidate.

The EU EOM observed that within the monitoring period none of the contending candidates used the free-of-charge airtime made available for political advertisement at the public radio and TV channels of Liberia Broadcasting System (LBS). However, UP contracted the LBS for campaign live coverage, subject to a fee, while the CDC campaign was covered live by other radios, also subject to payment. Both candidates enjoyed additional coverage on the privately-owned radio stations and print media from outlets partisan to each of the political parties.

Party leaders used social media to convey key messages and campaign activities. Those were also used to circulate fabricated facts to create a negative perception against the opponent party or the NEC. A new media company, KMTV, and some radios and newspapers, present online and on social media, provided commentary-free Facebook live streaming of key electoral events enabling instant broad access to information including the diaspora. However, limited access to Internet in parts of the country curtailed access to those channels. Prior to the NEC announcement of the rescheduled run-off date, false information and derogatory contents were observed on social media seeking to denigrate adversary candidates. This caused alarm and was perceived as a potential trigger for disruption of peace and stability. The President condemned the misuse of social media and called on citizens to remain responsible and tolerant of diverging opinions.

While isolated incidents of attacks against journalists by alleged partisans were seen by stakeholders as an attempt to frighten and force the press into self-censorship, it did not appear to have an impact on the generally free media environment. At the time, Press Union of Liberia (PUL) made a statement in defence of the right to speech and addressed the media, calling on all professionals to adhere to the Code of Ethics for Liberian Journalists. PUL reiterated the later statement on Election Day.

Human Rights

The National Muslim Council and Inter-Religious Council (IRC) condemned declarations of endorsement of one of the candidates by a Muslim group and stressed its impartiality. The IRC and Muslim CSOs took part in peace-promotion, election monitoring and domestic observation in counties with high Muslim population²⁰.

Tactile ballot sleeves were provided in the run-off for facilitating the right to vote for visually impaired voters. EU EOM observers assessed 70 per cent of PPs as accessible and 75 per cent of PPs with suitable layout for voters with reduced mobility. While polling staff were trained on the utilisation of tactile ballot sleeves, the short time-frame and low resources available resulted in very little specific voter information. Disabled people organisations made efforts to

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²⁰ ICCPR, Art. 26, 27.

engage the NEC on further improvements for better accessibility of PP and preferential treatment, yet received little response²¹.

Opposition to homosexuality and same-sex marriage was voiced by one presidential candidate²². The campaign environment was not conducive to advocacy for concerns of the LGBTI community²³.

Given that the NEC has not made arrangements for the vote of detainees, according to authorities' estimates, 2500 to 3000 persons were not able to vote²⁴.

Women's participation

Women, compared to the first election round, had less visibility in the process and activities, leading up to the rescheduled run-off, including campaign events observed by the EU EOM.

Lack of funding affected targeted civic and voter education by the NEC and CSOs. The NEC, due to lack of funds and the short time-frame, either cancelled the recruitment of gender-mobilisers or used them for a shorter period, mainly for posting the FRR, at times accompanied by limited civic and voter education. In an effort to ensure the collection of gender-disaggregated data, the NEC reinforced the importance of filling in and returning the Gender Data Capturing Sheet from the PPs in polling staff²⁵.

Civil Society and Domestic Observers

CSOs, in part in cooperation with government institutions²⁶, remained actively engaged in monitoring the electoral process. For many CSOs the Stay Order interrupted the flow of election-related activities. Some shifted to peace promotion, conflict mitigation and dialogue, with the main target group and focus becoming youth²⁷. After the 7 December SC ruling, civic and voter education was re-launched.

Two national civil society alliances observed the phase leading up to the run-off, contributing as well with research reports and press statements: The *Election Coordination Committee* (*ECC*), which gave recommendations for the process with two press statements, and deployed 1100 observers on Election Day, including 89 mobile observers. The *Liberia Elections Observation Network* (*LEON*), published a citizen opinion survey, made a press statement and observed with 128 LTOs and 900 STOs. Other initiatives included election observation integrated in activities of human rights monitoring and early warning and response

²¹ Convention on the Rights of Persons with Disability, Art. 29, ICCPR Art. 25.

²² Joseph Boakai, UP, Frontpage Africa, 19 December 2017.

²³ Lesbian, gay, bisexual, transgender and intersex (LGBTI), ICCPR, Art. 26.

²⁴ ICCPR Art. 14, 25.

²⁵ CEDAW, Art. 7 and 4.

²⁶ Active were especially the Independent National Human Rights Commission, the CSOs West African Network for Peace Building with Women of Liberia Mass Action for Peace, Angie Brooks International Centre - Women's Situation Room, NAYMOTE Partners for Democratic Development, Federation of Liberian Youth, and the National Union of Organizations of the Disabled.

²⁷ Amongst other activities, on 11 December, the Forum for Political Party Youth League, accompanied by the Federation of Liberian Youth, IRC and international stakeholders came together to sign the Liberian Youth Peace Declaration, followed by dialogue activities in several counties.

mechanisms, by the Independent National Human Rights Commission, West Africa Network of Peacebuilding, and the Women's Situation Room/Angie Brooks International Centre with women's CSOs.

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Election Day

The EU EOM made 339 observations on the election day (comprising 32 opening, 278 voting and 29 closing observations). At observed openings, 78 per cent of PPs started on time. Seven PPs opened with a delay of up to 30 minutes, mostly due to unpreparedness of the PP staff. Nevertheless, the overall assessment by observers of the conduct of the opening procedures was "very good" (53 per cent) and "good" (47 per cent).

The overall conduct of the voting was assessed as "very good" (55 per cent) or "good" (43 per cent) despite isolated reports on minor procedural imperfections (for example, not applying indelible ink on voters' fingers). In 64 per cent of the observed PPs, there were two or more female members of the polling staff, while in 29 per cent of PPs there were three or more such polling staff. 16 per cent of Presiding Officers were women. In 95 per cent of PPs, the secrecy of the ballot was preserved.

Observers also noted sporadic cases of voters being turned away because their record did not feature on the FRR. However, this appeared mostly due to voters arriving at the wrong PP within the same Voting Precinct. Importantly, EU EOM observers also noted that the polling staff advised voters on verifying their record on the FRR posted outside the PP. This facilitated voters to go to the correct PP - an improvement on the first round of elections.

CDC was represented in all PPs observed, while the UP was present in 99 per cent of cases. Domestic observers were present in 33 per cent of observed PPs - a decrease by half from the first round.

In all closing observations, the PPs closed on time or soon thereafter and no queuing of voters was reported. EU EOM observers assessed that closing and counting procedures were "very good" (52 per cent) or "good" (45 per cent) with some challenges on filling forms by polling staff.

After PPs counting procedures were concluded, EU EOM observers continued to follow the process of the return of election results and the intake of the election material at the tally centres throughout the country. On 27 December, NEC commenced the tally process, which at this stage is still ongoing. The EU EOM will continue its observation until the process is completed.

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