

# **Compiling the Status of African Union & Southern African Development Community Protocols in South Africa**



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# 1. Introduction

The Republic of South Africa began its official participation in the international arena from 1994 and since then has joined the Organization of Africa Unity (OAU), the Southern African Development Community (SADC), and the Non-Aligned Movement (NAM). It has also assumed membership in the United Nations and its specialized agencies such as the International Labour Organization (ILO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and was re-admitted to the Commonwealth.

In a lecture delivered at the University of Pretoria, in October 2011<sup>1</sup>, the South African president briefly described the four pillars that guide South African foreign policy as follows:

- Working with countries of the developing south to address shared challenges of underdevelopment in SADC and Africa;
- Promoting global equity and social justice;
- Working with countries of the developed North to develop a true and effective partnership for a better world; and
- Strengthening and transforming the multilateral system to reflect the diversity of nations, and ensure its centrality in global governance.

He also pointed out that the primary focus of South African foreign policy is the African continent.

In translating this, South Africa has been participating since 1994 in many African and SADC initiatives aimed at finding sustainable solutions to African political and economic challenges within the framework of the African Union (AU) and the Southern African Development Community (SADC). In this regard, many protocols and other instruments have been adopted to deal with various aspects of the African socio-economic and political challenges.

This research is aimed at compiling the status of protocols adopted by the African Union and the Southern African Development Community in South Africa with a focus on their signing and ratification as part of the implementation process of these protocols.

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<sup>1</sup> “Zuma decodes South African foreign policy”, in DAILYMAVERICK, 13 October 2011.

## 2. Presentation of the Republic of South Africa

The Republic of South Africa (RSA) is located in the southern part of the African continent. Surrounded by two oceans, the Atlantic Ocean on the west and south and the Indian Ocean on the east, it shares borders with six other African countries, including Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe.

Covering an area of 1,219,090 square kilometres and with an estimated population of 52 million people<sup>2</sup>, the Republic of South Africa is administratively subdivided into nine autonomous provinces, namely Eastern Cape, Free State, KwaZulu Natal, Gauteng, Limpopo, Mpumalanga, North-West, Northern Cape, and Western Cape. Gauteng and Free State are the two least populated provinces with populations of 13, 9% and 2, 4 % respectively.<sup>3</sup> South Africa's national currency is the Rand. The country is the biggest and most sophisticated economy on the African continent.<sup>4</sup>

The "Union of South Africa", as it was then known, gained independence from Britain on 31<sup>st</sup> May 1910. Apartheid was introduced by the National Party (NP) in 1948. The 1993 Constitution formally abolished Apartheid. This Constitution paved the way for the 1994 elections which were won by the African National Congress (ANC) which has since dominated South African politics.

The South African political system is a democratic one. It guarantees political pluralism and judicial independence. Human rights are enshrined in Chapter 2 of the 1996 Constitution under the Bill of Rights. The system is based on the principle of the separation of powers.

The President is the head of state and leader of the national executive and appoints a Deputy President and ministers. The National executive is accountable to Parliament, which consists of the National Assembly and the National Council of Provinces.

The legislative authority of the Republic is vested in Parliament while the judicial one rests with the Courts. The Constitutional Court is the highest court of the Republic and

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<sup>2</sup> Mid-2009 and UN 2009 estimates.

<sup>3</sup> See <http://www.info.gov.za/aboutsa/landpeople.htm> (accessed on 20 October 2010).

<sup>4</sup> See information provided by Statistics South Africa and South African Reserve Bank. Total GDP: R 1, 560 billion (2005/2006); GDP per capita: R 33,253 (2005/2006); Real GDP Growth: 4.9 % (2005/2006); Inflation CPI: 4% Annual average (2005/2006); Unemployment rate: 26.7% (September 2005); Budget deficit: 0.5% of GDP (2005/2006); External debt: US 53,091 Million (2006); Exchange rate: Rand per US\$ 7.50 (March 2010), 7.51 (October 2006), 6.3593 (2005), 6.4597 (2004).

the chief guardian of the Constitution. The Constitution also provides for the principle of cooperative government which merges; the national, provincial and local governments.<sup>5</sup>

All provinces may enact their own laws that are however subject to the national Constitution. Provincial executive authority is vested in the Premier who presides over the Executive Council. The provincial legislature elects the premier and exercises legislative power.

Conscious of its economic and political power, South Africa has the ambition to play a crucial role in the concert of nations in the African continent and the world.

South Africa, once a "pariah state" due to Apartheid, became an influential and respectable member of the Organization of African unity (OAU), (now the African Union)<sup>6</sup>. It hosted the AU inaugural summit held in Durban in July 2002 and SADC Summit in the same year. The last SADC Summit hosted by South Africa was in 2008 in Johannesburg.

South Africa was one of the five AU Member States that launched New Partnership for Africa's Development (NEPAD) in 2001 and subjected itself to the review by the African Peer Review Mechanism (APRM) in March 2003 following Ghana, Rwanda, and Kenya. It signed and adopted a number of AU and SADC instruments.

South Africa has hosted Secretariats of NEPAD and APRM in Midrand, Johannesburg Since their inception in 2001 and in 2003 respectively. .It also hosts the Pan-African Parliament (PAP) which was inaugurated on 16<sup>th</sup> September 2004. South Africa has become a prominent AU and SADC Member State and the voice of Africa in many international forums.

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<sup>5</sup> Chapter 3 of the 1996 Constitution.

<sup>6</sup>The AU Constitutive Act was adopted in Lomé, Togo, in July 2000. It entered into force in May 2001.

### **3. Background of the Research**

Protocols in international organizations are adopted by the highest decision making structures. In the African Union, the Summit of Heads of State and Government is the highest decision making structure that endorses decisions prepared by the Council of Ministers. In SADC, protocols are adopted the Summit of Heads of State and Government after they have been approved by the Council of Ministers.

The implementation of protocols however, lies in sovereignty of Members states through a process that requires the protocol to be signed and ratified for it to enter into force. The signing of a protocol is a commitment made by a member state to become party to the instrument without necessarily being legally bound by it. The ratification on the other hand is the step by which the member state agrees to be legally bound by the terms of that particular protocol. The ratification process entails following required national procedures. Each protocol determines the number of ratifications required and the timeframe after which it enters into force. In the majority of cases, this is 30 days after the least required instrument of ratification is deposited to the secretariat of the organization that has adopted the protocols.

The implementation of protocols is an indicator that can be used to assess the extent to which a member state's involvement in the achievement of the organization's objectives.

In the African continent, there is a concern that Member States of the African Union and Regional Economic Communities do not have a positive record with regard to the implementation of protocols they have adopted. This concern is exacerbated by the fact that African international organizations have not put into place functioning frameworks and mechanisms to ensure that the commitments made by member states in these organizations are implemented.

This concern prompted a consortium of 14 non-governmental organizations working in the African continent to initiate, a project aimed at analyzing the compliance of the African Union's (AU) member states with decisions taken by the AU in 2009. These organizations include the Southern Africa Trust, Fahamu, the Centre for Citizens' Participation in the African Union, AfriMAP, the Africa Governance Monitoring and Advocacy Project, the Open Society Initiative, the Civil Society Learning and Capacity Building Centre, the Al-Ahram Centre for Political and Strategic Studies, the Information and Documentation Centre for Woman and Child's Rights, the African Forum for Defence of Human Rights, the Centre for Advanced Social Science and the Citizens' Governance

Initiatives, the Institute for Democratic Governance, and Oxfam International. In its first phase, this project called "The State of Union" analyzed the compliance of 10 African countries with African Union protocols. South Africa was amongst the 10 countries analyzed in the first phase of this project.

The South Africa case study analyzed South Africa's compliance of 12 selected AU instruments. Eight of these are treaties whilst four are strategies, resolutions or plans of action. The AU instruments monitored were grouped in sections relating to human rights and governance, women rights, children and youth rights, agriculture, conservation of nature and natural resources, and health. Each instrument was analysed starting with its legal status and/ or its objectives. The study also considered the popularisation of each instrument and the factors impeding South Africa's compliance. The study report revealed that South Africa has taken significant steps to comply with the selected AU instruments, though much remains to be done. While commending South Africa for progress made, the report identifies gaps and makes recommendations. During the launch of the report, participants recommended the broadening of this investigation to all the protocols adopted by the African Union and expand this to include SADC protocols.

This research paves the way for such an investigation by identifying these protocols and by determining their status in South Africa.

## 4. Objectives of the Research

The main objective of this research is to compile protocols adopted by the AU and SADC and to determine their status as far as South Africa is concerned. This research is part of the broader investigation that will monitor the compliance of South Africa with AU and SADC protocols and will empower African citizens to hold their governments accountable on their commitments to these organizations.

The interest expressed in the findings made in the case studies by various stakeholders at the national and continental levels (donors, the African union Commission and national governments, etc) led the "State of the Union Coalition" to develop a five year project aimed at monitoring progress in national level implementation of AU and SADC protocols in Member states and to empower African citizens to participate in policy development, implementation and monitoring within the African Union and the Southern African Development Community.

According the State of the Union 2010 report, the lack of effective implementation of international or continental laws and policies has a direct impact on human development and economic indicators.<sup>7</sup> This impact is also the consequence of poor governance in Africa as well as weak capabilities of African citizens and civil society organisations to hold their Governments accountable for the decisions they take in multi-lateral spaces, particularly the AU and SADC. Currently, important policy debates concerning the livelihoods of African citizens do not involve broader public participation. Concerted public pressure and united political will are needed at both continental and national levels to make the AU and SADC a reality in the lives of ordinary citizens<sup>8</sup>.

Unless the gap between policy and practice is addressed, the policies developed at the level of the African Union and SADC will have no impact on the development, fundamental freedoms and human rights enjoyed by African citizens.

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<sup>7</sup> State of the Union report 2010 P9

<sup>8</sup> State of the Union. idem



## **5. Methodology**

The compilation of the status of AU and SADC protocols in South Africa involved a desktop research based on existing literature, official and unofficial reports from relevant state organs, agencies, non-governmental organisations (NGOS). This report is not a thorough investigation of the state of implementation of AU and SADC protocols by South Africa. The report also does not analyze the reasons that led South Africa to sign and ratify some protocols and to not do so for some others.

In terms of scope, this research is focused on presenting the status of protocols as far as signing and ratification are concerned and does not analyze the popularization and the implementation of these protocols. In addition, this research focuses only on protocols and not other AU and SADC binding instruments.

## 6. Status of AU and SADC protocols in South Africa

### 6.1. Status of AU protocols

The African Union was been established in 2000 following the determination of African leaders to take up the multifaceted challenges that confront the African continent and its peoples in the light of the social, economic and political changes taking place in the world. Among its objectives, the African Union is aimed at accelerating the political and socio-economic integration of the continent<sup>9</sup>.

Since the establishment of the African Union (AU), many protocols have been adopted. South Africa has become a member of the Organization of African Unity on 25 May 1994. As a member State, it was expected that South Africa accedes, signs and ratifies protocols adopted by this organization as an expression of its involvement in the process of African integration. Table below presents the status of the African Union (AU) protocols in South Africa.

**Table 1**

<b>N°</b>	<b>Protocols</b>	<b>Date of adoption</b>	<b>Date of signature</b>	<b>Date of ratification</b>
<b>1.</b>	General Convention on the Privileges and Immunities of the OAU	25 October 1965 (Accra)	-	-
<b>2.</b>	Phyto-sanitary convention for Africa	13 September 1967 (Kinshasa)	-	-
<b>3.</b>	African Convention on the Conservation of nature and natural Resources	15 September 1968 (Algiers)	-	-
<b>4.</b>	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	10 September 1969 (Addis Ababa)	-	15/12/1995
<b>5.</b>	Constitution of the Association of African Trade	18 January 1974 (Addis	-	-

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<sup>9</sup> Constitutive Act of the African Union

	Promotion Organizations	Ababa)		
<b>6.</b>	Inter-African Convention Establishing An African Technical Co-operation Programme	1 August 1975 (Kampala)	-	-
<b>7.</b>	Cultural Charter for Africa	5 July 1976 (Port Louis)	-	-
<b>8.</b>	Convention for the Elimination of Mercenarism in Africa	3 July 1977 (Libreville)	-	-
<b>9.</b>	Additional Protocol to the OAU General Convention on Privileges and Immunities	June 1980 (Freetown)	-	-
<b>10.</b>	African Charter on Human and People's Rights	June 1981 (Nairobi)	09/07/1996	09/07/1996
<b>11.</b>	African Rehabilitation Institute (ARI)	17 July 1985 (Addis Ababa)	-	-
<b>12.</b>	African Charter on the Rights and welfare of the Child	11 July 1990 (Addis Ababa)	10/10/1997	07/01/2000
<b>13.</b>	Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa	30 January 1991 (Bamako)	-	-
<b>14.</b>	Treaty Establishing the African Economic Community	3 June 1991 (Abuja)	10/10/1997	31/05/2001
<b>15.</b>	African Maritime Transport Charter	June 1994 (Tunis)	-	-
<b>16.</b>	African Nuclear-Weapon Free Zone Treaty	July 1995	11/04/1996	13/03/1998

<b>17.</b>	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	9 June 1998 (Ouagadougou)	09/06/1999	03/07/2002
<b>18.</b>	OAU Convention on the Prevention and Combating of Terrorism	14 July 1999 (Algiers)	14 July 1999	07/11/2002
<b>19.</b>	Constitutive Act of the African Union	11 July 2000 (Lome)	08/09/2000	03/03/2001
<b>20.</b>	Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament	2 March 2001 (Sirte)	14/03/2002	03/07/2002
<b>21.</b>	Convention of the African Energy Commission	11 July 2001 (Lusaka)	11/08/2005	-
<b>22.</b>	Protocol Relating to the Establishment of the Peace and Security Council of the African Union	09 July 2002 (Durban)	09/07/2002	15/05/2003
<b>23.</b>	Revised African Convention on the Conservation of Nature and Natural Resources	11 July 2003 (Maputo)	-	-
<b>24.</b>	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa	11 July 2003 (Maputo)	16/03/2004	17/12/2004
<b>25.</b>	Protocol of the Court of Justice of the African Union	11 July 2003 (Maputo)	16/03/2004	17/12/2004
<b>26.</b>	Protocol on the Amendments to the	11 July 2003 (Maputo)	16/03/2004	16/03/2004

	Constitutive Act of the African Union			
<b>27.</b>	African Convention on Preventing and Combating Corruption	11 July 2003 (Maputo)	16/03/2004	11/11/2005
<b>28.</b>	Protocol to the OAU Convention on the Prevention and Combating of Terrorism	02 July 2004 (Addis Ababa)	07/03/2005	25/03/2007
<b>29.</b>	African Union Non-Aggression and Common Defence Pact	31 January 2005 (Abuja)	24/01/2006	-
<b>30.</b>	Charter for African Cultural Renaissance	24 January 2006	-	-
<b>31.</b>	African Youth Charter	2 July 2006 (Banjul)	07/05/2007	28/05/2009
<b>32.</b>	African Charter on Democracy, Elections and Governance	30 January 2007 (Addis Ababa)	-	-
<b>33.</b>	Protocol on the Statute of the African Court of Justice and Human rights	1 <sup>st</sup> July 2008 (Sharm El – Sheikh)	-	-
<b>34.</b>	African Charter on Statistics	4 February 2009 (Addis Ababa)	-	-
<b>35.</b>	Protocol on the African Investment Bank	4 February 2009 (Addis Ababa)	-	-
<b>36.</b>	African Union Convention for the Protection and assistance of Internally Displaced Persons in Africa (Kampala Convention)	23 October 2009 (Kampala)	-	-
<b>37.</b>	Constitution for the African	16 December	-	-

	Civil Aviation Commission – AFCAC (revised version)	2009 (Dakar)		
<b>38.</b>	Revised African Maritime Transport Charter	26 July 2010 (Kampala)	-	-
<b>39.</b>	African Charter on Values and Principles of Public Service and Administration	31 January 2011	-	-

Source: [www.african-union.org](http://www.african-union.org)

## 6.2. Status of SADC protocols

The Southern African Development Community (SADC) was established in 1992 after the adoption of the constitutive Treaty in Windhoek, thus succeeding the Southern African Development Coordination Conference (SADCC), in existence since 1980. It has been designed as regional governmental organization aimed at promoting collaboration, economic integration and technical cooperation throughout the southern African region<sup>10</sup>. The decision making structures are the Council of Ministers and the Summit of Heads of State and Governments of the Members State.

South Africa is not a founding member state of the Southern African Development Community. It acceded to the SADC Treaty on 29 August 1994 just after the first democratic elections in this country. This accession was ratified on 14 September 1994 by the Parliament.

According to Article 5 of the Treaty establishing the Southern African Development Community, objectives of this organization are, among others, to “provide sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration”<sup>11</sup>. In order to achieve these objectives, the strategy adopted by SADC `strategy is, among others, to harmonize

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<sup>10</sup> AMOS, S. “The role of South Africa in SADC regional integration: the making or breaking of the organization”, in *Journal of International Commercial law and Technology*. Vol. 5, Issue 3 (2010), PP-124- 131.

<sup>11</sup> Treaty of the Southern African Development Community. Art 5.

political and socio-economic policies and plans of Member States. Protocols are among the instruments to harmonize the political and socio-economic policies of member states.

Since its establishment, SADC has adopted various protocols in various areas. Table 2 below presents the list of SADC protocols and their status in South Africa:

**Table 2**

<b>N°</b>	<b>Protocols</b>	<b>Date of adoption</b>	<b>Date of signature</b>	<b>Date of ratification</b>
<b>1.</b>	Protocol on Defence, Peace and Security Cooperation	Blantyre, 14 August 2001	14 August 2001	6 August 2003
<b>2.</b>	Protocol against corruption	Blantyre, 14 August 2001	14 August 2001	15 May 2003
<b>3.</b>	Mutual Defence Pact	Dar es Salaam 26 August 2003	26 August 2003	11 July 2005
<b>4.</b>	Protocol on Trade	Maseru, 24 August 1996	24 August 1996	24 December 1999
<b>5.</b>	Protocol on Shared Watercourse Systems	Johannesburg, 28 August 1995	28 August 1995	26 November 1997
<b>6.</b>	Protocol on Education and Training	Blantyre, 8 September 1997	8 September 1997	14 May 1999
<b>7.</b>	Protocol on Culture, Information and Sport	Blantyre, 14 August 2000	14 August 2001	30 Mars 2004
<b>8.</b>	Protocol on Tourism	14 September 1999	14 September 1998	14 May 1999
<b>9.</b>	Protocol on Energy	Maseru, 24 August 1996	24 August 1996	29 April 1999
<b>10.</b>	Protocol on Extradition	Luanda, 3 October 2002	20 March 2002	16 June 2003
<b>11.</b>	Protocol on Finance and Investment	Maseru, 18 August 2006	18 August 2006	4 February 2008
<b>12.</b>	Protocol on Fisheries	Blantyre, 14	14 August	24 July 2003

		August 2001	2001	
<b>13.</b>	Protocol on Forestry	Luanda, 3 October 2002	3 October 2002	24 November 2003
<b>14.</b>	Protocol on Health	Maputo, 18 August 1999	18 August 1999	4 July 2000
<b>15.</b>	Protocol on Combating Illicit Drugs	Maseru, 24 August 1996	24 August 1996	22 July 1998
<b>16.</b>	Protocol on Legal Affairs	Windhoek, 7 August 2000	7 August 2000	-
<b>17.</b>	Protocol on Mining	Blantyre, 8 September 1997	8 September 1997	29 April 1999
<b>18.</b>	Protocol on Mutual Legal Assistance in Criminal Matters	Luanda, 3 October 2002	3 October 2002	16 June 2003
<b>19.</b>	Protocol on Transport, Communication and Meteorology	Maseru, 24 August 1996	24 August 1996	24 December 1997
<b>20.</b>	Protocol on Tribunal and the Rules of Procedure	Windhoek, 7 August 2000	7 August 2000	-
<b>21.</b>	Protocol on Wildlife Conservation and Law Enforcement	Maputo, 18 August 1999	18 August 1999	31 October 2003
<b>22.</b>	Protocol on the Control of Firearms, Ammunition and Other Related Materials	Blantyre, 14 August 2001	14 August 2001	27 January 2003
<b>23.</b>	Protocol on Gender and Development	Johannesburg, 17 August 2008	17 August 2008	-
<b>24.</b>	Protocol on Science, Technology and Innovation	Johannesburg, 17 August 2008	17 August 2008	-
<b>25.</b>	Protocol to Treaty Establishing the SADC	Windhoek, 17 August 1992	Acceded on 29 August 1994	



	on Immunities and Privileges			
<b>26.</b>	Revised Protocol on Shared Watercourses	Windhoek, 7 August 2000	7 August 2000	8 January 2002
<b>27.</b>	Protocol on the facilitation of Movement of Persons	Gaborone, 18 August 2005	18 August 2005	4 February 2008

Sources: [www.Tralac.org](http://www.Tralac.org)  
[www.sadc.int](http://www.sadc.int)

### 6.3. Interpretation of the result

International organizations are established for member states to cooperate on specific matters because there is a conviction that putting together efforts will increase the capacity to deal with the challenges associated with the development of countries. Regional instruments such as protocols can be used to address these challenges.

Protocols are the result of negotiation and bargaining among member states in an effort to harmonize their views on specific matters. Once adopted, the members have to sign it. The signing of a protocol is an expression of the political will that the member state accepts the whole or part of the content of this protocol and accepts to be bound by it. Then this must be approved by the relevant national institution responsible for ratification. This is the process by which a member state accepts a protocol to be enforceable in the country.

In democratic political systems, the signing of protocols is a competency of the executive branch (government) whereas the ratification is a competency of the legislative branch of the state (Parliament).

While protocols are adopted at the level of the international organization, the implementation of these protocols is done at the member state level even though some organizations have put in place mechanisms to enforce the protocols in the member states. Therefore, implementation of protocols can be one of the indicators to assess the extent to which a member states is committed in the organization. It has also become an indicator to assess a country level of governance.

As far as South Africa is concerned with the African union and the Southern Africa Development Community, the compilation of the status of the protocols adopted by these organizations shows that South Africa has signed 18 out of 39 protocols adopted by the African Union. On the 18 protocols signed, 16 have been ratified.

With regard to the Southern African Development Community, a total of 27 protocols have been adopted. Of this number, South Africa has signed all the protocols and has ratified 22.

As said above, this result does not mean that South Africa is a model in terms of the implementation of SADC protocols. Further studies need to be conducted in order to track how South Africa is implementing SADC protocols because it has been observed that in African international organizations, the political will seems to stop at the signing phase of the protocols but very less is done in terms of ratification and mainly the domestication and popularization of these protocols.

## **7. Conclusion**

This research focused on the status of African Union and SADC protocols in South Africa. The aim was to compile all the AU and SADC protocols and provide their status in terms of signing and ratification by South Africa. As such, this research did not investigate how South Africa is implementing these protocols. It did not also analyze the reasons for which some protocols were signed and others not, this being reserved for further studies. This compilation just gives a tool for tracking South African compliance with AU and SADC instruments.

The status compiled in this research shows that South African has signed less than half of the protocols adopted by the African union (46%) and has ratified 16 of them. This result also reveals that South Africa has signed and ratified almost all of the SADC protocols (89%). This study did not investigate why other protocols have not yet been signed and reasons the remaining two have not been ratified.

The status of signing and ratification clearly a very commendable work by South Africa but a lot remains to be done in terms of translating the signed and ratified instruments into policies.

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