

Environmental Rights Defenders at Risk in Peru June 2014

Front Line Defenders visited Peru in February 2014 and travelled extensively in the Cajamarca and Cusco regions. This report is based on field research and interviews with independent human rights defenders and civil society organisations. A 12-minute video accompanying this report is available at frontlinedefenders.org/peru-reportonhumanrightsdefenders

Since the early 1990s, Peru's extractive industry has grown exponentially. By the end of 2013, Peru was the world's second largest producer of silver and copper and the fifth largest producer of gold. Mining licences have been awarded for vast parts of the national territory. As of December 2013, mining concessions in the Cajamarca region accounted for 45.2% of the territory and in the Cusco region for 21.6%.¹ The areas included in these concessions are home, to a large extent, to a rural population including *campesinos* of indigenous origin, which relies on subsistence farming. Local communities have denounced the lack of consultation on mining projects, irregularities in the appropriation and transfer of communal land, as well as the dramatic consequences of mining on the environment, the local flora and fauna, the health and livelihood of local communities and on their traditional way of living. Rivers have been polluted, water courses have dried up, communities have been displaced. They also denounce that the rural population received little, if any, economic benefit; despite the presence of mining activities in Cajamarca for the last 20 years, 51.9% of the population lives in poverty, the highest poverty rate in the country.²

Cajamarca is home to the Yanachoca mine, South America's largest gold mine, which has been in operation since 1994. Plans are underway for several new so-called 'megaprojects' that extend over very large areas. Local opposition is very strong, in particular against the Conga gold mining project, owned by US-based Newmont Mining, *Compania de Minas Buenaventura* and the World Bank's International Finance Corporation.³ Throughout the Cajamarca region, signs saying 'Conga No Va' (No to Conga) and 'Agua Si, Oro No' (Yes to Water, No to Gold) are a common sight. The Conga project includes the construction of four water reservoirs to compensate for the drying up of four natural lakes. However, environmental human rights defenders (HRDs) insist that, if the project is implemented, in addition to the four lakes, 27 lagoons, 700 springs, 60 watering channels, 80 drinking water systems, and 214 wetlands will disappear, with disastrous impact on the environment as well as on access to water. They also contend that the construction of four reservoirs will not address the wider impact on the ecosystem and will pose a problem of long-term sustainability of the reservoirs, especially once the mining company leaves the area.

Opposition to the growing impact and presence of extractive industries has resulted in intense social protests in the areas affected. The Conga project was eventually suspended in November 2011 and has yet to resume, and other projects were dropped. Protests have been accompanied by violence, including by protesters, and excessive use of force by police and military forces. In July 2012, protests against the Conga project were violently repressed and the government declared a state of emergency in three provinces in Cajamarca.⁴ In the city of Celendín, four

1 Observatorio de Conflictos Mineros, 13º Informe, December 2013, available at http://www.cooperaccion.org.pe/OCM/XIII_OCM_2013-12-12br. The figures refer to mining concessions, not to the actual exploitation of such concessions.

2 Instituto Nacional de Estadística e Informática (INEI) 2014.

3 See <http://www.newmont.com/node/4937>.

4 A state of emergency had previously been declared in December 2011 in four provinces of the Cajamarca region.

protesters were killed when the police and army used live ammunition. Two anti-mining protesters were killed in May of the same year in Espinar, in the Cusco region, during protests against the Tintaya copper mine operated by Xstrata Tintaya S.A., a subsidiary of Glencore Xstrata, which is headquartered in Switzerland.

In parallel to growing social protests, since 2002 a number of legislative measures have been passed. While some were positive, including the 2011 Law on Prior Consultation,⁵ which requires prior consultation with local indigenous communities before any infrastructure or projects are developed, others have affected the right to protest and encouraged impunity for police violence.

In this tense context, environmental HRDs who carry out legitimate and peaceful activities in the defense of the rights of indigenous or *campesino* communities have been the direct target of death threats, physical attacks, surveillance, stigmatisation, smear campaigns, and judicial harassment. Reports from the *Coordinadora Nacional de Derechos Humanos* (CNDDHH) found that, in 2012 alone, 70% of the attacks reported in Peru against HRDs were to environmentalists and those working on indigenous issues.

This report includes a selection of the numerous cases brought to the attention of Front Line Defenders' delegation.

1. Criminalisation of environmental rights defenders

Nearly 400 protesters and HRDs, including community leaders, are facing court proceedings at the time of writing, initiated by mining companies, their staff or the public prosecutor. They are based on charges such as rebellion, terrorism, violence, usurpation, trespassing, disobedience or resistance to an official order, obstructing public officers, abduction, outrage to national symbols, criminal damage, causing injury, coercion, disturbance or other public order offences including obstructing roads.

Over the years, several HRDs have faced dozens of lawsuits, either civil or criminal. In the vast majority of these cases, court proceedings were eventually dropped or ended with the acquittal of the HRDs, which attests of their frivolous or unfounded nature. Lawsuits and charges against HRDs appear to have been used as retaliation for the role of the accused in the protest movement rather than due to a genuine violation of the law. Once such case is that of Mr **Milton Sanchez Cubas**, Secretary-General of the *Plataforma Interinstitucional Celendina* (PIC): he has faced approximately 50 court proceedings but has never been convicted.

Even when ending with an acquittal, however, court proceedings succeed in hindering the work of the HRDs concerned, affecting their reputation and furthering the view – often upheld by national media – that they are violent extremists. This is especially the case when accusations of terrorism, rebellion or violence are levied.

On 31 May 2012, the Executive Council of Judicial Power ordered that all cases related to social protests from the regions of Cusco and Cajamarca be moved to other court districts, namely Ica and Chiclayo.⁶ This decision was motivated on the basis that social tensions would prevent the effective administration of justice. However, Ica and Chiclayo are far away from Cusco and Cajamarca. The move seriously affected access to justice and the right to defence due to the limited financial means of the defendants, the difficulty of travelling to distant areas and ensuring the presence of lawyers.

2. The security apparatus: use of the army, immunity and police as private security

In September 2010, the President of Peru issued Legislative Decree No. 1095, which permitted the

⁵ Law N° 29785, *Ley del derecho a la consulta previa a los pueblos indígenas u originarios*. The law was passed by parliament in August 2011 and promulgated in September of the same year. Regulations on the implementation of the law were adopted by government in April 2012 (*Decreto Supremo* N° 001-2012-MC).

⁶ See Executive Council of Judicial Power's Administrative Resolution 096-2012-CE-PJ.

deployment of the armed forces in public security operations, including in connection to protests and demonstrations. The decree also regulated the use of force, including lethal force, permissible to deal with 'hostile groups'. The United Nations (UN) Special Rapporteur on human rights and counter-terrorism expressed concern and stated that the definition of 'hostile groups' in the law is so wide that it could encompass social protest movements not carrying any weapons.⁷ Furthermore, the decree established the jurisdiction of military courts in relation to any illicit conduct by soldiers during protests. Civil courts will therefore be barred from hearing cases of human rights violations committed by the military against civilians, which has obvious implications in terms of the impartiality of the court.

Law No. 30151, promulgated in January 2014, granted members of the armed forces and the national police exemption from criminal responsibility if they cause injury or death, including through the use of guns or other weapons, while on duty. Human rights groups, both nationally and internationally, the Human Rights Ombudsman (*Defensoría del Pueblo*) as well as the UN High Commissioner for Human Rights all expressed deep concern about the law. In the words of the *Instituto Libertad y Democracia*, the law equates, in practice, to a "licence to kill".⁸

In December 2013, a report unveiled the existence of agreements between the national police and several mining companies to provide 'extraordinary additional security services'.⁹ These agreements allow mining companies to request additional services from the police, including the rapid deployment of larger units on the occasion of social protests. Under such agreements, the police conduct routine patrols on behalf of the companies aimed to "prevent, detect and neutralise" threats. In effect the result is that the police acting as a private security agency for the companies.

The 2009 decree on which such agreements are based provides for 'institutional extraordinary additional services' to be agreed by the company and the police force.¹⁰ However, it also allows 'individualised extraordinary additional services' to be agreed by and provided for directly by individual police officers while off duty, who are remunerated directly by the company that hires them. The implications of such a regime on the impartiality of the police force as a whole and of individual police officers are obvious. The perception that the police force is on the side of mining companies and against the community is compounded by the reported use by police of means and resources, including vehicles, provided by those companies.

3. Use of violence by police

There have been numerous reports of excessive use of force by police during protests as well as use of violence during arrest or the subsequent detention of HRDs. Among the HRDs interviewed, there was a clear perception that police violence had increased following the adoption of the law guaranteeing immunity from prosecution to police and the armed forces.

On 18 March 2014, police forcibly dispersed, including through the use of live ammunition and tear gas, a group of protesters that had gathered in the lagoons Seca, Negra, Mishacocha, and Mamacocha, in Cajamarca. Protesters were shot and tear gas was used by officers of the *División Nacional de Operaciones Especiales* (DINOES). Reportedly, DINOES officers subsequently set the campsite on fire by torching clothes, equipment and food belonging to the protesters.

On 28 May 2012, human rights defenders Messrs **Jaime Cesar Borda Pari** and **Romualdo Tito**

7 A/HRC/16/51/Add.3

8 <http://derechoshumanos.pe/2014/01/idl-con-licencia-para-matar-sobre-el-proyecto-de-ley-de-impunidad-para-pnp-y-militares-que-maten-o-hieran/>

9 See *Police in the Pay of Mining Companies. The responsibility of Switzerland and Peru for human rights violations in mining disputes*, published by Coordinadora Nacional de Derechos Humanos, Derechos Humanos Sin Fronteras, Grufides, and Society for Threatened People, available at https://ia601903.us.archive.org/14/items/InformeSobreConveniosEntreLaPnpYLasEmpresasMineras_441/Inf_ConvP_NP_eng.pdf

10 *Decreto Supremo que aprueba el reglamento de prestación de servicios extraordinarios complementarios a la función policial*, N° 004-2009-IN.

Pinto were detained by DINOES agents in the province of Espinar, Cusco, on fabricated charges of illegal possession of arms. During their two-day detention, the HRDs were ill treated and beaten, forced to remove their shoes and hit on the heels. Jaime Cesar Borda Pari was working at that time as programme coordinator with the Catholic Church's *Vicaría de Solidaridad de Sicuani* (VSS) and Romualdo Brito was member of the *Vicaría*.

On 4 July 2012, environmental rights defender and founder of the *Grupo de Formación e Intervención para Desarrollo Sostenible* (GRUFIDES), Mr **Marco Arana Zegarra** was violently arrested and beaten in police custody in Cajamarca. Videos and photos taken at the scene show police forcing Marco Arana to the ground and dragging him off by the neck. Surrounded by a squadron of riot police, Marco Arana was taken to the central police station where he was again beaten and initially refused communication with his lawyer. When two lawyers were eventually allowed to visit him in prison, they were also assaulted. The human rights defender was released later that day.

4. Surveillance

Most of the HRDs interviewed believed that they were, regularly or occasionally, under physical or electronic surveillance. Some of them received confirmation of surveillance from contacts from within the intelligence services. Furthermore, in December 2013 *Anonymous Peru* hacked servers of the Ministry of Interior and uncovered evidence confirming surveillance and monitoring, without court approval, against environmental human rights defenders in the Cajamarca region.

Circumstantial evidence of surveillance also comes from security incidents suffered by HRDs. In a recent example, the home of Ms **Ivett Sanchez**, secretary of GRUFIDES, was broken into on 8 November 2013, and the home of Dr **Mirtha Vasquez Chuquilín**, also a member of GRUFIDES, was broken into twice, on 24 November and 15 December of the same year. In all three instances, no valuables were stolen, which led them to believe that they were incidents meant to intimidate. They occurred while the human rights defenders as well as people living with them were away, which suggests that the break-ins were planned and preceded by surveillance of their movements. In 2006, evidence emerged of a surveillance operation against GRUFIDES by individuals linked to a private security contractor working for the Yanacocha mining company.¹¹

5. Stigmatisation, smear and the role of media

HRDs, both in the capital and in the regions of Cajamarca and Cusco, expressed frustration at the fact that only relatively small and local media report on their environmental and human rights concerns. Mainstream national media appear to portray protesters and environmental HRDs as a small minority of violent extremists. While there has been use of violence by individuals involved in the protest movement, this view ignores the widespread and peaceful local opposition to the mining projects and the peaceful and legitimate work carried out by human rights defenders.

Public statements by authorities labelling HRDs and protesters as bandits, terrorists or as being involved in narco-trafficking have contributed to the negative media portrayal. In one notable case, footage was released of Mr **Milton Sanchez Cubas** of PIC¹² carrying a flag saying '*Conga No Va*'; as the flag was red, and red was the colour used by guerilla group *Sendero Luminoso*, this was used to accuse the human rights defender of being a terrorist sympathiser.

In another example of alleged misinformation, a photograph of protesters gathered around an electric pylon was released with commentary stating they were about to pull down the pylon and damage the electricity network. According to a HRD interviewed, who was at the scene, the picture was taken when protesters were running away from a police who were charging at them, and they had gathered behind the electric pylon as protection.

11 <http://www.larepublica.pe/06-12-2006/evidencias-vinculan-empresa-forza-con-operacion-el-diablo>. See also <http://grufidesinfo.blogspot.ie/2006/12/presentan-pruebas-del-espionaje-contra.html>

12 See section 1 above.

6. The *Ronderos Campesinos* as environmental rights defenders

The *Rondas Campesinas* (Peasant Patrols) developed in the 1970s in the rural areas of the north Andean region, and played a crucial role in the recognition of communal property of the land. The *Rondas* are recognised by Article 149 of the Constitution of Peru and by Law N° 27908, which defines it as a “democratic and autonomous” Andean communal institution exercising functions of local government, administration of justice, conflict resolution, and public order.

In the tense context of the Cajamarca region, the *ronderos* play an important role in defending the rights of the community to land and water and have been involved in the anti-mining protests. This has resulted in efforts being made to discredit the *Rondas* and limit its authority. In addition to proposals to alter their legal status, many *ronderos* have faced death threats, surveillance, physical attacks, defamation and lawsuits, including on charges such as 'psychological harm to the mining company'.

Mr **Ydelso Hernandez Llamo** is the president of the *Central Unica Nacional de Rondas Campesinas del Peru* (CUNARC), the *Rondas* national body. He has faced 45 lawsuits on account of his legitimate and peaceful work as a *rondero* and a human rights defender. While five of them remain pending, all others were eventually dropped or he was acquitted. Among the fabricated accusations are involvement in the guerilla groups *Sendero Luminoso* and *Movimiento Revolucionario Túpac Amaru* (MRTA), and rebellion against the State. He suffered numerous physical attacks, arbitrary arrests, intimidation and death threats. Most recently, on the night of 18 February 2014, while returning to Cajamarca city from a protest in the highlands, unknown people in another vehicle followed him and tried to force his car off the road. On 17 April 2014, he was held with two colleagues by traffic police while transporting construction material for a communal house in the lagoons. They were brought to the police station of Chanta, despite the fact that they had committed no crime or infraction; their lawyer, who reached them immediately, was not allowed to intervene. They were released without charge at night, after many hours. In light of the persistent pattern of harassment, Ydelso expressed fears that more trumped up charges may lie ahead and that drugs or firearms may be planted in his home or vehicle, as occurred to other HRDs.¹³

Another emblematic example is that of Mr **Manuel Ramos Campos**, member of the *Rondas* in the locality of Tambo and secretary of *Organización del Frente de Defensa del Tambo*. Manuel Ramos has faced nearly 50 lawsuits, forty of them already closed, on charges ranging from obstruction or resistance to authority, usurpation, trespassing, damage, disturbance. Manuel Ramos expressed fears for his family and relatives. His son, a policeman, faced pressure at work, endured fabricated disciplinary proceedings and was transferred twice to a remote location because of his father's legitimate and peaceful work. On numerous occasions Manuel Ramos reported being approached by unknown individuals who introduced themselves as being sent by Yanacocha and asked what his price was, or his life would be at risk. In February 2014, during a confrontation with protesters in the highlands of Cajamarca, DINOES officers were reportedly heard shouting “kill him, shoot him” referring to Manuel Ramos. During the same month, he received a call from a private number warning him that he would be killed and his family harmed.

Mr **Edy León Benavides Ruiz**, President of the *Organización del Frente de Defensa de Bambamarca*, has faced approximately 30 court proceedings. Numerous other *ronderos* faced charges and lawsuits on account of their work for the environmental and land rights of their communities .

In May 2014, the Inter American Commission on Human Rights (IACHR) granted precautionary measures to 46 community leaders and members of the *Rondas campesinas* of Cajamarca.¹⁴

¹³ See section 3 above.

¹⁴ InterAmerican Commission on Human Rights Resolution 9/2014 of 5 May 2014.

7. Targeting of journalists

Local journalists reporting on police abuses or reporting in a way favourable to those opposed to mining have also been subjected to threats, surveillance, detention, criminalisation, physical attacks as well as confiscation or theft of equipment.

One of those targeted is Bambamarca-based journalist Mr **César Estrada Chuquilín**, reporter in the programme “*Pulso Informativo*” on Radio Coremarca. In December 2012, he revealed that signatures purportedly showing local community support for mining had been obtained fraudulently. On 28 July 2013, he was visiting the Conga site to report on a protest, when a group of policemen and other individuals in orange safety vests, who appeared to be Yanacocha workers, blocked him. He was insulted, kicked and hit in the head with the back of a rifle, leaving him unconscious. His camera, cell phone and wireless modem were all taken.

On 13 February 2014, police officers visited César Estrada's home at 4 am and questioned him about protests in the Valle Laguna Azul. Later that day, at approximately 12 pm, when he was in Valle Laguna Azul to report on the protests, he was assaulted by police officers. He required hospitalisation in Celendin due to the injuries he sustained. His camera and laptop were taken away. On the same day, his Facebook account was hacked and a post appeared on his profile saying “I sold myself because I like money”. On 21 February 2014, he was notified of charges for alleged theft and financial irregularities. His family has not been spared; his father received death threats on account of his son's work, including in February 2014. César Estrada is one of the beneficiaries of the precautionary measures granted by the IACHR on 5 May 2014.

Mr **Vidal Merma** is a journalist and human rights defender from Espinar, Cusco, where he has been working to expose human rights violations related to extractive activities. Since 2011, he has been recording testimonies by communities and individuals affected by mining. He has faced prosecution and surveillance by police officers, intelligence personnel and community members supporting mining companies. In January 2013, he was assaulted by a group of individuals from Alto Huancane: his mobile phone, camera and video camera were stolen and he was threatened. He was also dismissed from his job at a municipal radio station because of his reporting.

8. Women human rights defenders

In addition to the same risks faced by their male colleagues, women human rights defenders face gender-specific risks and violations. Harassment, smear campaigns, physical and verbal attacks, threats of sexual violence or death, attempted forced evictions and criminalisation have all been reported against WHRDs working on mining issues in Peru.

Ms **Máxima Acuña de Chaupe** is a member of the *Asociación de Mujeres en Defensa de la Vida* and the *Unión Latinoamericana de Mujeres* (ULAM), and has become a symbol of the local community's struggle against the Conga project. Ownership of her land is disputed by the mining company, which claimed to have acquired the land in Tragadero Grande, Sorochuco, in Cajamarca. Because of the dispute, her resistance and her role in the movement opposing the mining project, she has been subjected to threats, raids on and destruction of her property, and physical violence both against herself and her family. The Chaupe family is among the beneficiaries of the precautionary measures granted by the IACHR on 5 May 2014.

Ms **Elizabeth Cunya Novillo** is a member of *Asociación de mujeres protectoras de los páramos, ecosistemas frágiles y cuencas de agua* (AMUPPA), an organisation working for the protection of forests and the right of access to water in the province of Huancabamba, in the Piura region. She has been facing harassment, surveillance, death threats, rape threats, criminalisation and defamation for her human rights work for a number of years. In 2013 alone, she was attacked in February when picking up her child from school; in May, the AMUPPA's office was broken into and a message saying “women go home, don't go on with this” was left painted on the wall; in August, she was followed by unknown men on a motorbike, and shortly after she received pictures of

herself in her home – confirming that she was under surveillance; in December, she received phone calls warning her: “we know your steps, we know your children”. Similar instances of surveillance and intimidation occurred in February, March and April 2014. She has also faced nine court proceedings, five of which closed while four remain pending.

A number of AMUPPA members were also victim of threats, intimidation and attacks. In November 2010, human rights defender Ms **Aurelia Romero**, from the village of Cajas Canchaque in Huancabamba province, was shot in her groin and leg by police during a raid in her house, and remained permanently disabled as a result. Officers told her she was a terrorist for opposing private investment, an enemy of the country, and that she did not deserve life.

9. Trade unionists

Mining employees attempting to create independent trade unions have also been targeted.

In late 2013, Xstrata Tintaya S.A., which operates the Tintaya Antapaccay copper mine in Espinar, Cusco, reportedly dismissed 35 technical and administrative employees after they joined a newly established trade union. The *Sindicato de Trabajadores Funcionarios de la Compañía Minera Antapaccay* obtained registration on 27 November 2013. The *Sindicato* declared that between 29 November and 2 December, all 35 members of the union were dismissed from their jobs.¹⁵ It reported that they were offered to be reinstated in their positions on condition that they abandon the newly formed union – which 28 of them did. One of the employees reinstated in his position subsequently applied to the Regional Labour Department for the union to be de-registered, despite not having authority to do so.¹⁶

The Secretary-General of the *Sindicato*, Mr **Cosme Bayona Carazas**, and the other four members of the executive committee refused to disown the union, and brought court proceedings against the dismissal and in defense of the union, which remain pending. An inspection by the Ministry of Labour carried out in February 2014 concluded that there had been a violation of the right to unionise.¹⁷

10. Recommendations

Front Line Defenders expresses its deep concern regarding the situation of human rights defenders working on human rights and environmental issues related to the extractive industries in Peru. All documented instances of intimidation, death threats, physical attacks, surveillance, stigmatisation, smear campaigns, and judicial harassment appear to be directly related to legitimate and peaceful work carried out by the HRDs concerned, in particular in supporting the local communities opposed to mining projects and their impact on their environment, territory and livelihood.

Front Line Defenders urges the Peruvian authorities to prioritise the protection of human rights defenders working on issues related to the extractive industries, and in doing so to:

- (a) Carry out an immediate, thorough and impartial investigations into all reported instances of harassment and targeting of environmental human rights defenders; in particular, ensure that an independent inquiry takes place without delay on all claims of use of violence by police during arrest and in custody;
- (b) In light of the extraordinary use of lawsuits and court proceedings against human rights defenders, the vast majority of which ended in favour of the defendants, consider measures

15 See http://dhsf-cusco.blogspot.ie/2014/01/derechos-humanos-sin-fronteras-denuncia_9.html

16 Front Line Defenders has seen copies of the relevant documentation, including the letter of dismissal of the *Sindicato*'s Secretary-General, letters of the reinstated employees renouncing their membership (on the basis that they were misled to believe that they were joining a civil association), and the request for the registration of the *Sindicato* to be declared null and void.

17 See www.larepublica.pe/06-03-2014/informe-del-mintra-senala-que-minera-antapaccay-vulnero-derecho-laboral and <http://dhsf-cusco.blogspot.ie/2014/03/trabajadores-despedidos-por-glencore.html>.

- to avoid the abusive use of the judicial system in unfounded or fabricated proceedings;
- (c) Review Administrative Resolution No. 096-2012-CE-PJ due to its serious impact on access to justice and the right to defense, and reinstate normal jurisdictional criteria;
 - (d) Repeal Law No. 30151 on the exemption of members of the police and the armed forces from criminal responsibility for deaths or injuries caused and ensure that there is no impunity for serious human rights violations;
 - (e) Review Legislative Decree No. 1095 and ensure that only members of the police fully trained in the policing of protests are deployed on such occasions;
 - (f) Review Decree No. 004-2009-IN regulating extraordinary additional security services by police with a view to maintaining the necessary impartiality of the police force, and consider establishing an independent inquiry into the policing of social protests and police impartiality in relation to mining companies;
 - (g) Take measures to ensure that public officials, including members of the government, refrain from making public statements or declarations that stigmatise and undermine the legitimate role played by human rights defenders, and encourage public recognition of the important role they play in democratic societies;
 - (h) Review without delay the claim made by the *Sindicato de Trabajadores Funcionarios de la Compañía Minera Antapaccay*, and take all necessary measures to ensure the full respect of workers' right to establish and participate in trade unions;
 - (i) Take all necessary measures to fully comply with the precautionary measures granted to *campesino* community leaders and the *Ronda campesina* of Cajamarca by the InterAmerican Commission on Human Rights in its Resolution 9/2014 of 5 May 2014;
 - (j) Consider establishing a protection mechanism for human rights defenders at risk which responds effectively to their protection needs, including through the incorporation of a gender dimension to meet the protection needs of women HRDs and their families.

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