International Tobacco Control: Human Rights-Based Approaches

The Public Health Advocacy Institute at Northeastern University School of Law has developed a program for utilizing human rights instruments and procedures as an intervention that builds upon the Framework Convention on Tobacco Control to expand and strengthen tobacco control policy.

Activities made possible through a William Cahan Distinguished Professor Award from the Flight Attendant Medical Research Institute (FAMRI) to Richard A. Daynard at Northeastern University School of Law in partnership with the Public Health Advocacy Institute
Creating a New Model on the Human Rights-Based Approach to Tobacco Control

The Public Health Advocacy Institute’s ("PHAI") international program developed and put into practice a new model for tobacco control. PHAI utilized a human rights-based approach to implementing and monitoring the WHO Framework Convention on Tobacco Control ("FCTC"). This approach was used to advance legislative reform on tobacco as well as litigation and advocacy on behalf of women and children affected by the production, sale and consumption of tobacco. It also helped engage new partners around the world to focus on tobacco control as a part of their human rights mission. PHAI carried out innovative projects in support of its objectives to address the impact of second hand smoke on women and children.

A key outcome of this work was to envision and begin to implement a new paradigm to address and monitor tobacco control. This model taps the power of human rights treaty reporting mechanisms as an entry point to controlling tobacco and addressing the violations of the rights of women and children who are first or second hand users of tobacco.

The international human rights discourse is a universally accepted framework and is a powerful tool to advocate, articulate and monitor tobacco control progress as well as failures. It can be used as a benchmark for policymaking and advocacy. Framing tobacco control issues in rights terms creates opportunities for the vindication of those rights and triggers remedies for violations.

Linking the broader range of women’s right, children's rights, and social, economic and cultural rights with the FCTC highlights the ways in which these rights are inextricably interlinked, interrelated and indivisible. By stretching the potential of the mutually reinforcing nature of these norms, PHAI's model facilitates bridging the gaps in the FCTC. Linking human rights conventions with the FCTC norms provide a stronger discourse and sharpens the tools to monitor and implement the FCTC.

Resources Created

PHAI created a normative framework that located tobacco control within the human rights framework and explored the ways in which the different human rights treaties intersect in effective ways to combat tobacco in law and policy making, organizing, and human rights reporting. Two resources have been produced to date:


- A Manual for Human Rights and Tobacco Control Advocates was developed and selections were translated into English, Chinese, Vietnamese, Cambodian and Bhasa Indonesian. The manual was actively disseminated in different communities around the world.
Putting Theory into Practice – "Bottom up"

HAI’s model was used as the organizing principle to engage a variety of civil society groups representing women and children’s rights, health rights, consumer rights and tobacco control. PHAI and these groups explored ways in which this unique collaboration can augment and enhance tobacco control.

This model was put into action in China, Vietnam, Indonesia, Nepal, The Philippines, India, Bangladesh, Cambodia, Mexico, Georgia, and Malaysia. A project is pending in Russia. A "bottom up" approach puts in place new thinking for getting different social movements to work together.

Putting Theory into Practice – "Top down"

HAI developed a relationship with Convention on the Rights of the Child ("CRC") and Convention on the Elimination of Discrimination against Women ("CEDAW") committees to shape new understandings within the U.N. system. PHAI is committed to increasing awareness about the nexus between tobacco violations and human rights with U.N. human rights treaty bodies and U.N. Special Procedures.

To accomplish this, Rangita de Silva de Alwis of PHAI, who is a senior consultant with UNICEF and other UN agencies, discussed tobacco control as a human rights issue with relevant UNICEF staff members and the Chief of the Secretariat for the Convention on the Rights of Persons with Disabilities.

Professor Richard Daynard and Rangita de Silva de Alwis met with the Chairpersons and four other members of the expert body of the CRC and CEDAW to urge that these treaty bodies use their platforms to address the issues of tobacco control at pre-sessional meetings, at Constructive Dialogues and in the Concluding Comments/Observations the treaty bodies make as recommendations to the states party reports.

Professor Daynard also met with several of the U.N. Special Procedures (also known as "rapporteurs"), including most importantly with the Special Rapporteur on Health and Human Rights, Mr. Anand Grover. Other collaborations with the United Nations include the following activities:

- PHAI convened a dinner meeting in January 2008 to discuss tobacco control as a critical children’s rights with the CRC Chair and four treaty body members in January 2008 in Geneva. This was one of the first meetings at which the tobacco control advocates came together with the CRC Committee to discuss tobacco control a child rights issue. The CRC Committee invited the PHAI to submit a memo on tobacco and the CRC to the Committee.

- PHAI met with the CEDAW Committee Chair in July 2008 in New York. The CEDAW Committee Chair invited PHAI to submit a memo to the Committee on the
disproportionate impact of tobacco on women.

- PHAI met with Mr. Anand Grover, the Special Rapporteur on Health and Human Rights in October 2008. Plans are underway to organize a roundtable in Mumbai during the World Conference on Tobacco OR Health (March, 2008) to look at ways to inform his report to the Human Rights council

- A memo was forwarded to each committee highlighting the critical aspects of the CEDAW and their relevance to tobacco control.

**Reporting Under the Human Rights Treaties: Closing FCTC’s Gap on Reporting**

Because the FCTC is silent on implementation and reporting mechanisms, well established reporting mechanisms of the human rights treaties can step in to close the gap. These tools include periodic reporting requirements, individual petition procedures, and advisory jurisdiction. These resources could be creatively used to call upon governments to promote global tobacco control policies.

PHAI analyzed the reports of the states’ parties presenting before the CEDAW at the 21st Session in July, 2008. These reports included: Yemen, Tanzania, United Kingdom and Northern Ireland, Slovakia, Nigeria, Lithuania, Iceland and Finland. Tobacco control is of significant importance to the right to equality and the right to health of the CEDAW, CRC and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Tobacco control is also relevant when addressing issues of the best interest of the child including the food security of women and children, health rights of women and children and exploitative marketing to women and children.

PHAI’s memo to the CRC committee examined some of the highlights of the Sierra Leone, Georgia, Serbia, and Bulgaria State party reports to the treaty bodies and identified where tobacco control could be relevant. This included areas dealing with toxic substance, narcotics in children’s health, impact of tobacco on children’s health and women’s reproductive health, poverty, limited access to education and food security and the correlation to food and child labor in cultivation and manufacture and the use and misuse of women in advertising and marketing.

The memo also analyzed the significance of General Comment 4 which requires the States parties “to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.”

PHAI examined the pending reports to be reviewed by the CRC Committee at its next session (48th session) to urge the Committee to make references to tobacco control at in the Constructive Dialogues section and in Concluding Comments. PHAI also assessed state party reports and identified natural entry points for this tobacco control analysis. An examination of available data on the prevalence of tobacco and the gaps in tobacco control in the countries reporting before the CDEAW and CRC was conducted by PHAI and transmitted to the CRC and CEDAW committees in a brief memo.

PHAI urged the CRC Committee to include tobacco control as a list of issues when asking reporting states parties for more information. Over the years, the CRC Committee has asked the
reporting States Parties for more information on several areas including disaggregated data on adolescent health, child labor, and reproductive health. Adolescent health, for example, is an effective entry point to solicit more information from States Parties on the efforts made to reduce tobacco’s health impact.

Similarly, a focus on child labor provides an opportunity to examine the use of children in the plantation, manufacture, sale and marketing of tobacco. The CRC and the International Labour Organization (“ILO”) Worst Forms of Child Labour treaties (ILO 183) outlaw any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

**Advancing a New Model at the Treaty Body Level:**

**PHAI’s Key Recommendations:**

- Place tobacco control on the agenda for discussion at Constructive Dialogues and at pre-sessional meetings of the States parties;

- Create greater advocacy for recommendations on tobacco control in Concluding Observations and Concluding Comments to State party reports; and

- Advocate for a particular focus on tobacco control by Special Procedures especially the Special Rapporteur on Health. (PHAI will be developing a roundtable with the Special Rapporteur on Health in order to inform his mandate in Mumbai in March, 2009).

**Awareness Raising and Information Sharing:**

PHAI developed and disseminated several memoranda to the international tobacco control community on different forms of international tobacco control advocacy:

- Memo on how to integrate tobacco control into Universal Periodic Reporting (“UPR”) processes for countries that are due to report under UPR before the Human Rights Council.

- Memo on how to prepare reports to the CEDAW and CRC committees. These memos were circulated to tobacco control advocates whose countries were reporting before the CRC and CEDAW Committees. Although these shadow reports are still to be developed, PHAI’s memos help to raise awareness and work as education and advocacy. PHAI also developed and shared advocacy commentary on the upcoming state party reports to the different committees.

- Memo on how to inform the Special Rapporteur on Corporate Social Responsibility as developed and forwarded to different stakeholders.
**Human Rights-Based Approach to Tobacco Control: Theory and Practice**

**Theory**

PHAI developed a clinical course curriculum with course material to train law students at PHAI’s Public Health Legal Clinic at Northeastern University School of Law in Boston. Richard Daynard and Rangita de Silva train upper level law students to explore effective ways to cross fertilize health and human rights norms in theory and practice. The goal is for these students to work collaboratively with in-country advocates to assist in writing human rights reports focusing on tobacco control to be submitted to the CRC and CEDAW treaty bodies.

The course is divided into three modules. The first explains the human rights framework with special reference to the CEDAW and CRC. The second examines the articles of the FCTC and their relationship to the CEDAW and CRC. The final module develops a set of questions under the CEDAW and CRC provisions that can facilitate development of relevant responses by the students as well as women’s rights and children’s rights advocates. Once the responses are gathered they can be organized under the articles of the Conventions to fill in the gaps of the FCTC on state party reporting.

**Practice**

PHAI has initiated strategic and programmatic ways to translate a human rights-based approach to tobacco control into practice by broadening and expanding alliances and enhancing the participation of different civil society networks to consider human rights implications of tobacco control.

Working towards this goal, PHAI urged human rights groups, women’s rights groups and children’s rights groups who hitherto worked on independent and separate agendas to forge connections with tobacco control advocates to work collaboratively on cross-cutting issues. The final goal is to broaden tobacco control constituencies by building new and important allies and expand the frontiers of outreach to work together on collaborative agendas.

In addition to providing technical assistance to the drafting of tobacco control laws, PHAI also examined laws that affect women and children in any given country to identify entry points through which tobacco control can be addressed.

PHAI’s partnership interventions have been exciting well-received. They include:

1) **China’s Children’s Legal Aid and Advocacy Centre:**

As China’s premier youth advocacy centre, this children’s rights advocacy organization has a national presence of 700 volunteer lawyers throughout China. In 2001, the Centre filed the first lawsuit against tobacco companies in China, suing 24 companies for failing to warn children about the dangers of smoking on their websites. Although the case was dismissed on jurisdictional grounds, this initiative succeeded...
in prompting the State Tobacco Monopoly Administration to issue more specific regulations requiring warnings, and in publicizing the dangers of smoking.

The Center engaged in drafting recommendations to the revisions to the PRC Law on the Protection of Minors. PHAI provided technical assistance to this law revision process which culminated in a 2007 revision to the Law on the Protection of Minors: Article 37 of the newly revised law bans children’s exposure to second hand smoke in kindergartens and schools.

In January, 2007, PHAI and China’s Children’s Legal Aid Center developed a national conference on Tobacco Control and Lawyering and Advocacy Strategies in Beijing. The Conference brought together legal aid lawyers from 24 provinces in China and was one of the first conferences to explore innovative legal strategies to operationalize the newly enacted law on the Protection of Minors in compliance with the FCTC, the CRC, CEDAW, ICESCR.

As part of the follow-up action plan, participants to the conference created a network of lawyers who pledged to provide litigation support to children exposed to tobacco control in the different provinces of China. Further, the participants will advocate for implementing guidelines at the provincial level to enforce Article 37 of the newly revised Law on the Protection of Minors. PHAI will continue to provide technical assistance to these efforts.

Results: This initiative built capacity among China’s provincial level legal aid lawyers to protect the health rights of children; helped build a national tobacco control network of children’s legal aid lawyers that will help provincial level legal aid organizations to identify strategic opportunities for legal intervention; and supported draft national level and provincial level guidelines. The course materials on tobacco control and lawyering and advocacy skills for China were translated into Chinese and are being widely used as model materials by the different provincial level legal aid organizations in China.

Major Result: One of the major results of this program was the setting up of a network of provincial level lawyer to work on tobacco control guidelines in the provinces..

2) Developing Women’s Rights and Children’s Rights-Based Approaches to Controlling Tobacco in Indonesia

PHAI forged an alliance with the leading Indonesian Consumer Association (YLKI). In 2002, the Indonesian Consumer Association (YLKI) with four others NGO’s sued several television stations, major tobacco industries, and advertisement agencies for $ US 55 million for airing tobacco advertisements targeting youth. Even though YLKI lost the case, it was a powerful educational effort and helped raise public awareness.

In November 2006, an advocacy seminar organized by YLKI and PHAI brought together a multi-disciplinary group of civil society advocates drawn from the Indonesian Human Rights Commission (Komnas Ham); National Commission on Violence against Women (Komnas Permpuan); Mitra Perempuan (Women’s Health Rights Organization) and several progressive
faith based organizations including The Center for Religious and Community Studies (CRCS) to discuss a cross-fertilization of ideas on protecting women and children from tobacco and second hand smoke.

**Results:** The seminar and related activities helped incorporate international human rights norms (CEDAW, CRC, ICESCR) in national and local level advocacy, developed strategies to use the newly amended health law (and the provision on the prohibition of tobacco use in public spaces) as a legal basis for tobacco control; introduced models of comparative litigation to guide similar legal interventions in Indonesia; and built a powerful advocacy campaign around human rights norms. The materials developed by PHAI on advocacy skills on tobacco control were translated into Indonesian Bhasa and were widely disseminated to be used as model materials in future advocacy work.

One of the major results of this intervention was that it laid the building blocks and built the framework for a program that YLKI and other partner institutions developed with Tobacco Free Kids on litigation and advocacy.

3) Combating the Impact of Second-hand Smoke on Women and Children through Inter-Agency Collaboration in Vietnam

PHAI built a partnership with the Vietnam Women’s Union (VWU). As the largest women’s rights organization in Vietnam, the VWU operates at the central, provincial, district and commune levels which make it particularly effective for networking with women at all political levels throughout Vietnam. The VWU reaches across Vietnam’s 53 provinces to its estimated membership of more than 10 million women.

In April 2007, PHAI and the Vietnam Women’s Union brought together an impressive range of participants from the different departments of the Women’s Union, the Committee for Population, Family and Children, Hanoi Medical University, Ministry of Health, Ministry of Justice, Ministry of Transportation, Legislation Department, National Assembly’s Law Making Working Group; National Assembly’s Committee on Working Affairs; Government’s Office; Ministry of Justice; Ministry of Labor; War Invalids and Social Affairs Ministry; Ministry of Education and Training; Ministry of Agriculture and rural development, the Vietnam Fatherland’s Front, WHO, UNFPA, and UNDP to build a collaborative platform on effective interventions on tobacco control and the prevention of second hand smoke. Participants critically reviewed the current laws and programs on tobacco control within the framework of women’s and children’s rights in Vietnam and exchanged best practices and international benchmarks to enhance tobacco control in Vietnam.

**Results:** Participants developed recommendations to strengthen national laws and regulations on tobacco control. Flowing from the seminar, an advocacy campaign was built to raise awareness of the threat of secondhand smoke to women and children. The seminar helped build a taskforce of different government agencies; international organizations and civil society organizations on tobacco control. PHAI materials were translated into Vietnamese and widely disseminated to support new advocacy initiatives. The VWU’s seminal report on the Impact of Passive Smoking on Women and Children, which was sparked by PHAI’s collaboration, will be
used as the starting point for further research by the VWU. The newly passed Gender Equality Law of Vietnam, 2006 will provide another entry point for the control of second-hand smoking and the protection of women’s health by exploring how the equal protection provision and the right to health provision in the women’s law can include the right to a smoke free environment in the home and workplace.

A major result is that the Vietnam Women’s Union conducted its own investigation on the prevalence of tobacco among women, youth and children and developed its own report - The Impact of Passive Smoking on Women and Children, which was shared with several government agencies.

4) Enabling Legal Interventions to Reduce Secondhand Smoke in Bangladesh

PHAI built an important alliance with the Bangladesh National Women Lawyers’ Association (BNWLA), the premier network of women lawyers in Bangladesh. BNWLA’s stated mission is to advance the rule of law, gender equity and the rights of children in Bangladesh and has strong connections both at the national and local levels. BNWLA is the force behind the draft the Domestic Violence Law and the recent revisions to the penal code to criminalize acid throwing.

PHAI and BNWLA coordinated an important Roundtable on July 7, 2007 to initiate strategic legal interventions to encourage the Bangladeshi Supreme Court to direct the State to strengthen existing laws on women’s and children’s exposure to second hand smoke and tighten tobacco control enforcements in general.

**Results:** This workshop built capacity among leading Bangladeshi women lawyers to initiate strategic litigation on tobacco control as well as provide legal aid to women and children in cases dealing with exposure to tobacco; use international conventions, especially CEDAW and CRC to report on the gaps in tobacco control in Bangladesh.

A major result was that in the first CRC shadow report to the CRC Committee in 2007-2008, BNWLA noted the plight of child laborers in the tobacco industry.

5) Providing Technical Assistance to Tobacco Cause Lawyering in India

PHAI met with the Lawyers Collective, India, in June of 2006 and discussed assistance to the efforts initiated by this leading public interest law group to mount a legal tobacco control intervention.

**Results:** PHAI Shared experiences and insights in legislative and litigation trends in India and the United States; and researched critical comparative law materials on the limits of the rights to free speech to support the Lawyers Collective amicus brief against multi-state theatre owners who used free speech defenses to advertise cigarettes in theatres.
6) Advocating for Nepal’s Ratification of the FCTC

In August, 2006, PHAI supported and co-facilitated a seminar organized by the Non-Smokers Rights Association of Nepal. This seminar, attended by representatives of various advocacy organizations, bolstered the efforts of Nepalese civil society organizations lobbying for Nepal’s ratification of the FCTC.

**Results:** Nepal ratified the FCTC soon after the PHAI seminar in Kathmandu. The PHAI seminar also acted as a catalyst to an important public interest suit brought by advocacy groups challenging the advertising campaigns of the tobacco industry at sporting events.

7) Changing the Law in the Philippines

Richard Daynard, the President of PHAI, met with different civil society organizations including human rights organizations and the FCTC Alliance in the Philippines, parliamentarians, bar association members and academics in August of 2006 and 2008.

**Results:** PHAI provided technical assistance on tobacco litigation and legislation. In October of 2006, physicians affiliated with the Framework Convention Alliance for the Philippines filed a claim against Philip Morris for failing to include health warnings on the front of cigarette packs under provisions of 2003 legislation that went into effect in 2006. Recently (2/2009), an appeals court has denied a motion by Philip Morris Philippines Manufacturing, Inc., to dismiss a separate legal action by a cancer victim. Graphic warning legislation is under consideration.

8) Helping to Support the Anti-tobacco Law in Mexico:

In September 2007, PHAI staff met with Mexican congressional leaders who initiated the recent tobacco control bill and key representatives of the National Health Institute to provide technical assistance for the enforcement provisions with a special emphasis on the protection of the rights of women and children. PHAI provided technical support to the Mexico state Human Rights Commission and the Anti-Violence against Women Commission on the nexus between women’s rights and tobacco control. PHAI also met with government agencies in Nuevo Leon to raise awareness on the impact of second hand smoke on women and children.

**Results:** PHAI discussed recommendations for stronger implementing mechanisms in the tobacco control bill; developing effective advocacy on combating the risk of women’s and children’s exposure to smoke; and raised awareness on child labor in tobacco plantations and the link between food security and tobacco.
9) Advocating for the Health Rights of Youth in Georgia

PHAI brought together tobacco control groups with young political advocacy and political leadership groups in Georgia for a facilitated roundtable event.

Results: PHAI helped build the capacity of a key civil society interlocutor to advocate for the control of tobacco among youth.

10) Rights Based Approaches to Tobacco Control in Malaysia

A meeting was organized between PHAI and the Malaysian Bar Association’s Human Rights Commission. PHAI spoke with the leading members of the Human Rights Commission on the efficacy of human rights and tobacco related interventions in Malaysia.

The Women Development Research Centre (Kanita) at University Sains Malaysia, in Penang together with PHAI, organized a half-day seminar on a rights-based approach to tobacco control. The seminar brought together Malaysian Women’s Rights Groups, members of the Law reform Commission of Malaysia, public health organizations and tobacco control advocates to examine ways to integrate Tobacco Control into CEDAW Advocacy

Results: PHAI raised awareness of tobacco and human rights in Malaysia among leading members of the Malaysian Bar Association and the Women’s Rights advocacy groups. The meeting helped to cross fertilized advocacy groups working on tobacco control and human rights and built capacity to work together on related and cross cutting issues.

11) Bringing together Women’s Rights, Health Rights, Youth Rights and Tobacco Control Activists together in Cambodia.

Working together with Honorable Mu Schua and her NGO, Strey Khmer, which she founded when she was elected Cambodia’s first Minister of Women’s Affairs, PHAI convened a seminal workshop on March 17, 2008. As part of the celebration of Women’s Day, this conference focused on using the Women’s Rights Convention and the CRC to combat tobacco’s harmful effects on women and children in Cambodia. Our conference examined creative ways in which the human rights framework can be translated into concrete action through effective tobacco control legislation in Cambodia. This was followed by a radio interview and a daylong grassroots youth advocacy workshop at Kam Pot.

Results: PHAI raised awareness of tobacco and human rights in Cambodia among key women’s and children’s rights and advocacy organizations.

12) Russia – Engaging U.N. offices in Tobacco Control

PHAI will be working with the United Nations country offices in Russia to develop a tobacco control program in Russia in June 2009. While in
Russia, PHAI will meet with Kremlin officers to discuss tobacco control.

**Creating a Lasting Impact**

The success of any program must be judged by its multiplier effect and its ability to sustain the momentum unleashed by the program. PHAI has used every opportunity to introduce this new model to others working on international tobacco control. PHAI has helped define and shape the human rights and tobacco control discourse at conferences at the Harvard School of Public Health in 2006, in Lausanne at the Human Rights and Tobacco Control workshop in July 2008 and will co-convene a workshop on human rights and tobacco at the World Conference in March 2009 in Mumbai.

PHAI’s training materials are country specific and are developed in close collaboration with our partners who provide important feedback on context and relevance. The materials are also translated into the national language and made widely available. The training materials examine the laws in each country relating to tobacco control especially in relation to children and women. These materials are rich resources and explore concrete ways in which the human rights framework can be used to control and monitor tobacco use. These training materials ensure that our initiatives remain sustainable.

PHAI aspires to develop and publish a seminal resource tool on human rights and tobacco that can be used by lawyers, advocates and activists as an effective human rights guide to tobacco control. This resource tool would be made available in CD and downloadable form for easy dissemination around the world. This resource kit will include the following important tools:

- How can domestic groups develop shadow reports to the CEDAW and CRC Committees?
- How can domestic tobacco control activists to collaborate with women’s rights and children’s rights advocates to bolster tobacco control efforts?
- How can tobacco control advocates connect with the CEDAW and CRC Committees and provide them with periodic briefings on the status of tobacco control in countries reporting to the CEDAW and CRC Committees?
- How can tobacco control advocates build stronger alliances and constituencies that can work collaboratively on cross cutting issues?
- How can tobacco control be used as a way of advancing the Millennium Development Goals (MDGs)?
- How can tobacco control advocates work with equal rights advocates, parliamentarians and media personnel to advance this model?
- How can tobacco control advocates work with child labor organizations to bring a clear child rights perspective to tobacco control. Examine the ILO Convention on the
Prohibition and Immediate Elimination of the Worst Forms of Child Labor (No. 182)?

How can a more focused gender perspective and child rights perspective be brought to tobacco control laws and processes?

**Conclusion**

PHAI staff have been excited by the preliminary results of our development and implementation of a human rights-based approach to international tobacco control. It creates synergy and capacity among advocates and creates momentum toward state-specific tobacco control interventions, whether legal, legislative, regulatory, or educational.

This project is primarily staffed by:

Richard A. Daynard, J.D., Ph.D. – Professor of Law at Northeastern University and President of PHAI.

Rangita de Silva-de Alwis, LL.M., S.J.D. - Director of International Human Rights Policy at the Wellesley Centers for Women and Senior International Program Consultant to PHAI.

and

Mark Gottlieb, J.D., Executive Director of the Public Health Advocacy Institute, who managed the project.

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