

# Democratic reform of police – any lessons for Kenya from South Africa?

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## 1) Introduction

- a) This paper attempts to put forward some lessons for democratic reform of the police in Kenya. While the paper draws on international literature on the subject it is grounded in the South African experience following the election of South Africa's first democratic government in April 1994.

## 2) Key elements of police reform in South Africa

- a) In South Africa the new police service was created out of 11 police services established in terms of apartheid policy<sup>2</sup> and this required that questions of integration and reorganising command structures and personnel be given priority. Other key aspects of the reform process included:
- i) Addressing issues to do with the demographic representivity of the police service in terms of representation of different population groups as well as of men and women;
  - ii) The introduction of a new system of labour relations;
  - iii) Improving accountability and the regulation of police conduct including provision for parliamentary oversight, the creation of national and provincial secretariats, and the creation of an civilian oversight agency, the Independent Complain's Directorate;
  - iv) Addressing community hostility to police through the creation of community policing forums and the adoption of community policing as the operational philosophy of the South African Police Service;
  - v) Changing police symbols such as the rank system, uniforms, insignia and the colour of police vehicles;
  - vi) Improving access to police services particularly in communities that had previously been discriminated against under apartheid.
  - vii) Other measures included: the introduction of a new selection system; the revision of the basic training curriculum; introduction of a human rights training programme; introduction of a code of conduct; development and introduction of an anti-torture policy; the

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<sup>2</sup> Roughly 80% (about 112 000) of the police incorporated in the new police service were from the South African Police while the remainder (roughly 29 000) were from 10 homeland police services (Rauch, 1998, appendix).

reorganisation and retraining of public order police; introduction of new weaponry.

### **3) Democratic reform**

- a) Democratic reform is essentially the development and implementation of reform measures which support the creation of a police service which (i) is orientated towards meeting the needs of civilians and institutions in a democratic society for policing services of a high standard; and (ii) is guided by principles of accountability, integrity, respect for human rights, non-discrimination, impartiality, fairness and professionalism.
- b) Key to the process of democratic reform is to focus the police on understanding the needs of the general public in terms of the provision of policing services, and motivating and supporting police in meeting these needs. This focus is different from that under an authoritarian system where police are compromised by political interference and by the expectation that they will serve certain sectional interests. Democratic reform therefore involves freeing the police from politics and supporting them in becoming responsive to the broad needs of the public.
- c) Democratic reform requires not only that police conform to new norms but also that they learn new ways of doing their work. It is absolutely essential that reforms which support adherence to human rights are integrated with measures to assist police to learn the skills which will enable them to do their work effectively within the constraints imposed by human rights standards. If this is not done the police will revert to their old way or they will simply become de-motivated and ineffectual.

### **4) The danger of an over-ambitious reform agenda**

- a) One of the biggest dangers is that overseas models will simply be used as a template for reform. The difficulty with this is that it takes no account of the current economic and social realities of the country and police agency in question.
- b) Reform measures therefore need to be based on an assessment of (i) the current status, performance and capacity of the police service and of other bodies which perform a policing role; (ii) the potential of personnel within the agency to change and improve their practise; (iii) the available capacity in the police and more broadly to support the process of change (iv) other social or political factors which are relevant.
- c) A reform programme should be developed with an understanding of the possibilities and constraints imposed by the above factors and should incorporate both (i) short term measures which will build confidence

amongst the police and public; and (ii) more systemic longer term measures aimed at overall reform of the policing system.

## **5) Depoliticising the police service**

- a) Police leadership must commit themselves to the principles that police will support democracy whilst remaining outside of, and not interfering with, politics.
- b) Support for democracy incorporates: (i) Supporting and protecting rights to freedom of speech, thought and assembly and to peaceful protest; (ii) full accountability to government and to the people via representative and other structures; (iii) the use of police powers against political groups only when there is evidence that they are involved in violence, or conspiracies to commit acts of violence, and subject to review of police actions by an independent judiciary.
- c) Government's primary control over the police should be the law. It should also have the authority to require conformity by the police to specific publicly announced policies arrived at through a process of consultation.
- d) Other than in ways outlined in the previous two paragraphs the police need to be protected from political interference and from being used to serve party political interests, and should be forbidden from prejudicing legitimate political party interests, or furthering such interests, in the performance of their duties, and from holding office in political organisations.
- e) The chief of police should have operational command of the police. In return for their relative autonomy the police must observe a high level of accountability.
- f) Both police leadership and senior politicians must support the need for depoliticising the police service.
- g) A joint parliamentary committee should have oversight over all intelligence and undercover activity to ensure that this is not used for partisan political purposes.
- h) The constitution and legislation should support freedom of assembly and association. A key task of the police (public order policing function) should be that of supporting the holding of peaceful demonstrations.

## **6) Equity and Non-discrimination**

- a) In so far as the police are not representatives of the broad public, this will undermine their chances of establishing legitimacy, and public trust, and may affect their ability to act in an impartial manner. Dealing

with the composition of the police service is therefore important, in terms of a commitment to the principle of non-discrimination, on a symbolic level, and in ensuring the development of an ethos of professionalism.

- b) Questions of equity and non-discrimination need to be addressed both in relation to the legacy of discrimination against racial/ethnic groups and gender discrimination and the legacy of discrimination needs to be addressed both (a) internally, in terms of employment and promotion practises and (b) externally by means of ensuring that police services are provided in a manner which is equitable and non-discriminatory.
- c) If the police service has historically discriminated in favour of certain groups, it will not be possible to find short term solutions to imbalances, especially amongst the higher ranks of the service.
- d) Corrective measures should include a combination of (i) a firm commitment to non-discrimination in employment and promotion practices; (ii) developmental support to selected police officers from groups previously discriminated against to enhance their prospects for promotion.
- e) There should be oversight of employment and promotion practise by a non-partisan multi-party committee.

## **7) Personnel**

- a) There are essentially two options in terms of personnel. Either to retain personnel or to recruit new personnel.
- b) Relying on old personnel has the consequence that the potential for reform is limited by the capacity of these personnel to learn and apply new lessons. It is also likely that some of these personnel will resist change and continue to adhere to old norms and standards.
- c) If there is a long history of corruption, the retention of old personnel will carry the risk that corruption permeates all levels of the organisation.
- d) Relying on new personnel has the consequence that at the point where the reform process is initiated the police service is constituted by inexperienced personnel;
- e) Some kind of combination of these two approaches is needed. Preferably this should at least incorporate (i) Reselection or vetting so that those strongly implicated in corruption and brutality, and those incapable of performing police duties, are excluded, and (ii) A systematic approach to new recruitment based on development of the training system.

## **8) Development of the training system**

- a) A more developmental approach aimed at ensuring the quality of newly recruited personnel is to develop and strengthen the (i) recruitment and (ii) basic training system.
- b) The objective should be:
  - i) To develop a basic training system which has the capacity to provide good quality training to a modest number of carefully selected new recruits on an annual basis. The objective should be to impact on the composition of the police service over roughly a decade rather than to change the composition of the police service overnight.
  - ii) In addition the training system should support the emergence of suitably skilled managers and supervisors in terms of a similar developmental approach.
  - iii) The capacity of the training system also needs to be enhanced in order for it to provide in service training to existing members of the service regarding the performance of police duties.

## **9) Human Rights**

- a) Unless the introduction of a human rights framework is directly integrated with measures to support police in improving performance of their duties while observing human rights standards, human rights will largely be seen as impeding the police.
- b) Rather than providing training in the theory of human rights the best way to improve the capacity of the police to do their work in terms of a human rights framework is to (i) support them in learning how basic policing is carried out in a manner consistent with human rights, and (ii) hold managers and supervisors accountable for ensuring that they are doing this.
- c) Key components of the support which should be provided to them should include:
  - i) Training around the basic responsibilities of (i) charge office and custodial personnel; (ii) patrol personnel; (iii) detectives; and (iv) public order police, in policing in a democratic system.
  - ii) Promoting learning and personal growth amongst police in interpersonal skills and communication along with the practical knowledge on community policing, good practise in working with witnesses, victim sensitivity, statement taking and the dynamics of interpersonal conflict;
  - iii) Support around the exercise of police authority and the use of force which promotes learning and improving practise in this regard (this includes addressing questions of police safety);

## **10)The rank structure and system**

- a) The rank structure is potentially one of the biggest long term obstacles to establishing an effective police service. Perhaps the most valuable reform measure that could be introduced in terms of the potential to develop a police system which operates effectively is to create a system where rank is related purely to the function which one performs in the organisation.
- b) This means that improvements in conditions of service related to good performance and length of service need to be separated from promotions in terms of the rank structure.
- c) Unless this happens the police reform process will become paralysed and trapped as a result of confusion and conflict over lines of authority and responsibility, and managers and supervisors will be unable to assert their authority.
- d) This will also enable police who enjoy policing work to continue to work in the field rather than being forced to become managers if they wish to improve their remuneration.

## **11)Development of the management and supervisory levels**

- a) Being able to provide training, support and assistance to managers and supervisors depends partly on whether one is able to clearly identify people who are performing managerial and supervisory roles. The types of training and support which can potentially be of most benefit to them include:
  - i) In the case of managers – basic organisational skills including the productive use of management meetings; improving the quality and use of crime information to improve police strategies; community relations and community policing; proactive management to improve police integrity, conduct and performance.
  - ii) In the case of supervisors – basic supervisory skills in policing; proactive discipline management.

## **12)The disciplinary system**

- a) One of the consequences of reform is often that changes need to be made to the disciplinary system to bring this in line with other reforms in the labour field.
- b) However these reforms have the potential to drag out over an extended period of time particularly if a series of changes are made to the disciplinary framework.
- c) As a consequence one of the side-effects of reform may be a collapse in discipline (even in a context where the existing disciplinary system leaves a lot to be desired) manifested in a further proliferation of corruption.

- d) The framework for the disciplinary system should be consolidated early on in the reform process in order to minimise this effect.
- e) Even if this is achieved however a lot of work will still need to be done to empower police managers and supervisors to implement discipline, and to hold them accountable for this.

### 13) **Accountability and transparency**

- a) Accountability needs to address issues both of (i) police performance; and (ii) police conduct and adherence to human rights standards.
- b) Enhancing accountability includes (i) improving the capacity of government institutions to hold police accountable; (ii) improving the capacity of the police to collect and analyse information; (iii) establishing an oversight body to ensure that possible or alleged wrongdoing by police is investigated effectively and (iv) supporting the development of research capacity and research access in relation to the activities of the police.
- c) Governmental structures may find it difficult to hold the police accountable. This is partly because of (i) the difficulty and complexity in evaluating the performance of the police and the tendency to focus on recorded crime as a way of evaluating this (ii) the governmental culture in which officials and members of parliament are often unwilling to ask probing questions or be critical of government departments.
- d) In addition to these factors a major obstacle to this is the absence of internal accountability in police organisations. Police managers often do not know what police are doing and their ability to collect and analyse information about the police is often very poor.
- e) Politicians may also be reluctant to hold the police accountable in relation to human rights standards, as they may be afraid of losing public support. Police leaders therefore need to commit themselves to human rights standards irrespective of whether there is pressure from politicians for them to adhere to these standards or not.
- f) However despite the difficulties of evaluating their performance it is imperative that the police be required to open themselves to scrutiny by other structures of government, including parliamentary structures and the courts.
- g) Key issues for scrutiny also need to include (i) intelligence and undercover activities and (ii) employment and promotion practises.

### 14) **The law and professional standards**

- a) Accountability to the law means that the police enforce the law equally in terms of a uniform set of standards rather than being directed by the whims of politicians, or ethnic or other biases. It also means that they can be held accountable if they violate the law.
- b) While the idea of accountability to the law is important in relation to the need for police to treat people equally, the law is something of blunt instrument. Several legal concepts such as the concept of 'reasonable suspicion' which are directly relevant to the work of the police, are difficult to define and to hold the police accountable to. In addition the the exercise of police discretion is necessary for effective policing and cannot be regulated by law.
- c) The standards set by the law are in some ways quite low. Professions such as the medical or teaching profession set their own standards on the basis of ideas of professional conduct. Developing a policing system based on pride and respect for what the police stand for, requires developing a set of professional standards which represent good practise on the part of the police, and in terms of which the law merely represents the minimum standards which police must adhere to.

## **15)Oversight mechanisms**

- a) While politicians may struggle to be effective in holding the police accountable, the creation of an oversight agency can considerably strengthen the reform process and give teeth to efforts to hold police accountable to new standards.
- b) The primary job of the oversight agency is (i) to promote improvements in internal systems of control (ii) to ensure that steps are taken if the internal systems are not doing their work, and (iii) to motivate police to ensure that this is done. This is not only for pragmatic reasons (particularly in a developing country it is unrealistic to expect that there will be massive resources available to finance civilian oversight) but primarily for reasons to do with effective management of the police (managers cannot manage an organisation effectively if the systems of internal control are taken out of their hands).
- c) The oversight agency will however only be able to fulfil its role effectively if it has strong investigative, monitoring and audit powers and capacity as well as proper resourcing. Without adequate powers and capacity the oversight agency will be unable to properly scrutinise police or promote their accountability. However the reason for providing it with these powers is so that it can intervene if the police are not willing to exercise proper internal control. The purpose is not to take over responsibility for the internal control functions which includes receiving complaints, investigation, and discipline.

- d) The oversight agency should therefore have the legal authority to intervene and take over internal investigations. If it has this power this will serve to motivate police to improve internal systems.
- e) Creation of strong oversight therefore needs to be accompanied by efforts to create/strengthen internal systems of control within the police service.
  - i) While the oversight agency should invite members of the public to lodge complaints with it, it should simultaneously ensure that the police improve their own complaints reception facilities.
  - ii) In addition the police should develop a strong internal investigative division. It is imperative that high standards be applied in selecting the membership and leadership of this division. Its investigations must be subject to scrutiny by the oversight agency.
  - iii) Regarding the disciplinary system see also section 12 above.
- f) The oversight agency should have the authority to designate categories (e.g. shootings where people are killed or injured, deaths in custody, deaths as a result of police action, allegations of torture or other assaults) in terms of which prompt reporting by the police to the oversight agency is mandatory. Breach of mandatory reporting requirements should be a disciplinary offence.
- g) The police agency must also report to the oversight agency on a regular basis regarding the work of the internal investigative and disciplinary systems.
- h) Issues to do with the location of the oversight agency should be dealt with in the process of constitutional and legislative reform. Provision should be made for the oversight agency to be autonomous relative to the police.

## **16)The need for a research capacity**

- a) For governmental structures to be able to hold police accountable in a meaningful way and to engage effectively in questions of policy relating to the police they will need to be supported by a policy research capacity. This may be located in government but researchers from universities and civil society can also assist government in holding the police accountable.
- b) The tendency of police, and even government, may be to restrict research access. Government and the police should rather find ways of interacting with researchers so that the relationship is mutually beneficial and the access of researchers to the police is enhanced.
- c) The oversight agency may be well positioned to make policy recommendations. However in order to do so it will also need to develop a research capacity.

- d) In addressing the structure of systems of accountability and oversight attention should also be given to questions of the location and development of a policy and research capacity.

## **17)Corruption**

- a) While there are a range of abuses associated with the police the most important abuses which need to be monitored and tackled are police corruption and brutality;
- b) Police corruption takes a wide variety of forms and is particularly difficult to monitor because it is often 'consensual'. Furthermore when extorting money from people, the police tend to focus on marginal people who have no influence in society. Statistics on reports of police corruption are meaningless as an indicator of levels of corruption. It is therefore necessary to use research and intelligence gathering techniques to expand understanding on the nature and occurrence of corruption.
- c) While improving internal and external systems of investigation and discipline are important to tackling corruption, these need to be complemented by other measures including (i) proactive values management within the police; and (ii) promoting attitudes and practises amongst community members which support police integrity.
- d) Proactive values management incorporates (i) consistently sending a clear message to police about the standards of conduct which they must adhere to, and (ii) supporting adherence to these standards through management and supervisory conduct and practise.

## **18)Brutality and torture**

- a) While brutality often goes hand in hand with corruption, police who are not corrupt and are dedicated to their work are often also brutal (i.e. consciously and deliberately use unlawful violence against suspects).
- b) This partly reflects the problem that doing police work in a committed and effective manner within the framework set by human rights standards and law requires high levels of skill, and that many police are ill-equipped to work in this kind of way;
- c) Brutality is often also associated with the belief that the only way to get the job done is through extra-legal means. The difficulty in the context of a police service emerging from an authoritarian past is that this type of belief may pervade not only the lower ranks of the police but also the management levels, as well as influential sections of government.

- d) There therefore needs to be a strong emphasis on supporting police in developing skills and understanding which will enable police to break from the habit of relying on brutality and torture. This can be accomplished both through the training system and through an approach from supervisors and managers which encourages police to learn from examples of good practise.
- e) Support to police in improving their ability to use witness evidence, which includes general improvements in practise in working with victims and witnesses, is important in enabling police to improve their practise in crime investigation and move away from the use of torture.
- f) Ensuring that the legislative framework provides very clear definition as to legitimate grounds for the use of lethal force for purposes of arrest is integral to addressing a legacy of police violence.
- g) In addition police leaders, managers and supervisors should ensure that principles around the use of force are clearly communicated to police members. For this purpose there may also be benefit in developing an organisational statement of principles relating to the use of force by the police.

## **19) Responding to crime reports**

- a) The Western model of rapid response is not achievable in a developing country context where there are major resource constraints.
- b) In addition rapid response does not achieve much in most cases reported to the police. A rapid response capacity can be useful in a very small proportion of cases. However in order for these cases to be identified the radio control room (if there is one) needs to be able to identify these cases.
- c) However the police should aim for reliability in their response to crime. This should incorporate (i) identifying categories of crime where the police will undertake to report to crime scenes; (ii) a radio room which responds to crime calls promptly and courteously (iii) providing details to callers as to the time which it will take for the police to arrive at the scene (iv) informing callers as to any steps which they should take prior to the arrival of the police.

## **20) Community policing and partnerships**

- a) Community liaison strategies can be one way of enabling community members to feel that their concerns are being heard by the police. Police should see these both as a way of informing themselves about community perceptions and concerns, but also as a way of communicating their concerns and perceptions to people, and addressing unrealistic expectations of the police.

- b) Requiring that the police set up a community consultation forum can be one way of bridging gaps between the police and community members. However these can easily become static and bureaucratic structures which do little to promote communication between police and community members. Police should therefore find different ways of communicating with community members such as targeted meetings with identified groups in the community, and encouraging police officers to establish contact and rapport with community members in areas where they are deployed.
- c) Focusing on relationships with the community is important, and if handled in the right way, can yield benefits in terms of improved public cooperation with the police. However improvements in public attitudes and cooperation will also depend on broader improvements in the quality of service provided by the police.
- d) Improving standards in dealing with complainants/victims and witnesses are also part of improving community relations, and will complement other community orientated measures.
- e) Reaching out to the community can provide the building blocks for partnerships which can provide support and assistance for the police. However there is a risk that these relationships may also become relationships of patronage so there must also be clarity about the ethical parameters of these relationships.

## 21) Reserve policing

- a) Community policing and partnerships with the community should not be confused with the involvement of community members in policing activities as a reserve police.
- b) Reserve policing may appear to be a cost effective way of expanding the numbers of police. However unless there is full development of management and supervisory systems in the police, the police will not be able to exert proper authority and control over reserve structures.

## 22)The police and crime prevention

- a) During the reform process there may be pressure for the police to take on a more 'crime prevention' orientated role;
- b) The main way in which the police can prevent crime is through targeted operations based on good quality information about the nature of the crime problem. These operations will usually also involve a law enforcement dimension;
- c) The police role in and responsibility for crime prevention should not be confused with the broader need for 'social crime prevention' measures,

such as programmes for youth, which are best implemented through agencies other than the police.

### **23)The legitimacy of the reform process**

- a) The police reform process will quickly lose legitimacy unless it incorporates measures which will improve police morale, and public confidence in the police, in the short term.
- b) Improving police morale will require some attention to the conditions of service of police. However improvements in conditions of service need to be linked to improvement in service to the community.
- c) Improvements in public respect and attitudes, linked to improvements in the service provided to the public, will also contribute to improving police morale.
- d) An initial modest framework for improving police service to the community is through:
  - i) Developing, publicising and putting into action a realistic framework for the responsibilities of (i) charge office and custodial personnel; (ii) patrol personnel; (iii) detectives; and (iv) public order police.
  - ii) Teaching police to behave in a manner which is respectful of people's dignity – this applies to the public generally, including crime suspects, but particular emphasis should be given to ensuring that police engage with victims and witnesses in a respectful manner;
  - iii) When police are called or approached by members of the public – they should provide clear information to people about whether and how the police can assist them;
  - iv) Improving police capacity to respond to crime reports and to take the basic appropriate steps at the locations which they are called to;
  - v) Ensuring that police take forms of violence against the person, including violence against women, seriously (see also X (5e) below);
  - vi) Targeted and visible anti-crime operations.
- e) Forms of support to the police which focus on addressing the stresses which they are exposed to in their work, as well as the stresses resulting from the process of reform and change, can also be of value.

### **24)Measuring police performance**

- a) Several factors including (i) improved public confidence in the police and greater reporting of crime, (ii) possible increases in crime, and (iii) improved police practise in recording crime, have the potential to contribute to increased levels of recorded crime.

- b) If the main way in which the performance of the police is evaluated is in relation to reducing crime, increases in recorded crime will therefore create the impression that police reform is failing.
- c) Criticism of the police which is focused on recorded crime will also encourage police not to record crime.
- d) Arrest levels are also in themselves not a good measure of police performance. Pressure on the police to improve performance may simply lead to an increased number of arbitrary or petty arrests if this is one of the primary ways in which police performance is measured.
- e) Rather than recorded crime and overall arrest levels it is therefore imperative that from the start other, more meaningful, measures of police performance be emphasised (see Leggett, 2003).

## **25) Prioritising and targeting**

- a) Crime will tend to be concentrated in certain areas. Initially it makes sense to identify 'high crime areas' and focus on enhancing police capacity to tackle key crime problems in these areas;
- b) Effective targeting of anti-crime operations requires that the police make good use of information to identify crime problems which most contribute to feelings of insecurity. In order for police to do this they need to improve their capacity to collect, record and analyse crime information.
- c) If steps are being taken to improve the capacity of police to collect crime information, it may be worthwhile to motivate the public to report crime. However this requires that: (i) police and government leaders are willing to engage with the public about what appear to be increases in levels of crime; (ii) the police create ways for people to report crime which are 'user friendly'; (iii) the police be willing to be honest with community members about their ability to deal with cases and the likelihood of cases being 'solved'; (iv) community members be motivated to report crime out of a sense of civic duty and not only where they think they will benefit in some way.
- d) Community liaison strategies (such as the use of consultative forums) are one way of enabling community members to feel that their concerns are being heard by police. However the police need to make use of a broader range of sources of information in order to generate good quality information about crime.
- e) While police need to improve their services in dealing with violence against women initially this can only be done through ensuring that victims are treated in a respectful manner and by responding promptly to reports. Improving the ability of police to tackle the problems of

domestic violence and rape in a more rigorous manner can only be undertaken as part of a long term programme to improve overall policing skills. Furthermore these problems also need to be tackled through other social awareness programmes which fall outside of the domain of the police, and possibly through law reforms.

- f) Other crime problems such as street robbery (mugging), which contribute significantly to feeling of insecurity, are easier to tackle in terms of orthodox police strategies, and may be worthwhile targets for anti-crime operations early in the reform process.

## **26)The prosecutorial system, courts and diversion**

- a) Unless reforms are also made aimed at improving the capacity of the prosecutorial system and the courts, as well as improving the capacity of prisons and the use of forms of diversion (particularly for young offenders), improvements in the functioning of the police may simply lead to bottlenecks in the system.

## **27)Starting anew**

- a) Democratic reform depends on a police leadership which is committed to the reform process and on support from national political leadership.
- b) Creating a new police service out of an old one is a difficult and lengthy process. It involves making a commitment in good faith to change, being willing to learn from successes and failures, and being committed to pursuing the reform process despite resistance and conflict.
- c) Changes at the symbolic level like the adoption of new uniforms, or a new name for the service, or even the use of new colouring on police vehicles can be an important step in signifying a break with the past.
- d) Even if a certain amount of effort is made to cleanse the police service of personnel who are tarnished by extensive involvement in corruption and brutality there will still be officers who are not completely 'clean' who will be admitted to the new service.
- e) Police and government leaders must be emphatic regarding the fact that a new police service is being established, that the new service will place its emphasis on building public confidence and respect for the police, and that this requires that members observe new standards of conduct, that they will be held accountable for this, and must commit themselves to upholding these new standards.

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