



FIJI LAW REFORM COMMISSION

REVIEW OF FIJI'S DOMESTIC VIOLENCE LAWS 2004

## Background Paper

(Including a draft outline or Table of Contents of the Discussion Paper  
that will be disseminated in early September 2004)

**Introductory paper prepared for the mini workshop  
Held Tuesday 27 July 2004  
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Government Pharmacy, Jerusalem Road, Vatuwaqa, Suva.**

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## **Preface**

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The Fiji Law Reform Commission has been given the reference by the Attorney General and Minister for Justice to review the laws relating to Domestic Violence. The objectives are set out in the Terms of Reference issued in December 2003.

This preliminary paper is prepared as a tool for discussion purposes.

When the views, comments and suggestions of key stakeholders are canvassed, this paper will form the basis of a **Discussion Paper** which will present options for reform, to be widely disseminated in September 2004. Those options will be posed to the wider community in the community consultations to be held in October 2004.

For now, this paper is a basis to seek your views as a stakeholder who has first hand experience of these issues. The Law Reform Commission now invites your views and the benefit of your experience in this area.

Please note that this Paper is designed to encourage your participation. It is **not** the Final Report and does not represent the final views of the Commission.

## **The Review**

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Under Section 5(2) of the Fiji Law Reform Commission Act, the Attorney-General Hon. Senator Qoriniasi Bale issued the formal **Terms of Reference** for the review of Fiji's Domestic Violence laws to the Fiji Law Reform Commission on 15 December 2003. Cabinet had in April 2003 approved the inclusion of the review of laws relating to domestic violence in the Commission's work program for 2004-2005. The Terms of reference reads:

**Pursuant to subsection (2) (a) of Section 5 of the Fiji Law Reform Commission Act (Cap. 26) (the Act), I hereby refer the laws relating to Domestic Violence in Fiji, for review by the Fiji Law Reform Commission in accordance with subsection (1) of Section 5 of the Act.**

**The review is to be holistic and must include consideration of the following:-**

**The nature and extent of domestic violence as a social and gender problem.**

**The legal remedies available for complaints of domestic violence.**

**Any changes to the law which may be necessary or desirable to bring greater protection of women and children and other victims of domestic violence.**

**The need to give the Police and the Courts adequate powers to effectively protect women, children and others from domestic violence.**

**The steps that may be taken to bring the problem of domestic violence to greater public awareness.**

**Examination of relevant legislations in other jurisdictions and propose a suitable legislative arrangement on domestic violence for Fiji.**

**The Commission is to carry out consultations in accordance with its procedures.**

**The Reference envisages that there must be reforms and changes in the substantive and procedural laws in order to render the law appropriately responsive to community needs, values and aspirations and to protect victims of domestic violence, whilst at the same time attaining acceptable standard of treatment for offenders, victims and others affected by domestic violence.**

### *The Timeframe of the Review*

The Terms of Reference for the Review approved by the Attorney General states the following deadlines:

**The Commission is to submit its Report on the review with a draft Bill to the Attorney General and Minister for Justice before and on the 31<sup>st</sup> day of July 2005.**

### *Appointment of Consultants*

Pursuant to Section 5 (2) of the Law Reform Commission Act, the Attorney General appointed the following persons to advise the Commission with this review:

Maria Dimopolous – Domestic Violence Expert

Judy Harrison – Legislative Expert

Litia R Valesimede - Domestic Violence Expert

### **NZAID Support**

The Review has been facilitated by support provided by the New Zealand Government. Under this arrangement, NZAID has acknowledged, in its funding arrangement with the Fiji Law Reform Commission, that the FLRC will be administering the project.

*Fiji's National Strategic Development Plan 2003 - 2005*

The review objectives are also in furtherance of the concern articulated in the National Strategic Development Plan (SDP) 2003 – 2005 (Parliamentary Paper No. 32 of 2002) at Chapter 6.3, *Gender and Development*:

Increasing violence against women and children, especially domestic violence and sexual harassment, is of concern. Since 1995 the Police Department has introduced some measures in order to deal with this issue. Initiatives by the Police include the implementation of a zero tolerance or 'no drop' policy, gender sensitization training for police officers and the establishment of the Sexual Offences Unit. The Family Law Bill will provide additional safeguards for both women and children, particularly in divorce proceedings.<sup>1</sup>

The fifth policy objective of Chapter 6.3 is:

To educate the community and law enforcement agencies to prevent and eliminate violence against women<sup>2</sup>.

## **Project Management**

### *The Project Team*

The Project Team for this Review comprises the following persons:

Project Manager - Alipate Qetaki, FLRC Chairperson  
Acting Senior Legal Officer – Vukidonu Qionibaravi  
Acting Principal Legal Officer – Raijeli Tuivaga

### *The Project Advisory and Monitoring Committee*

A Project Advisory Committee (PAC) will be set up and their role will be to steer and monitor the review to ensure that it achieves its work plan and objectives.

The PAC will deal with the following matters:

- ☞ Monitoring the work of the Consultants
- ☞ Approval of costs and monitoring the finances of the project
- ☞ Advise the Consultants
- ☞ Consideration of draft reports and determination of other matters relating to the Reports for the project

### *Work Plan*

The Work Plan provides for the review to progress in three phases: One-preparatory (July – August 2004) ; Two – Consultation phase (Discussion Paper issued in early September and community consultations in October 2004); Three – Report and Bill writing.

<sup>1</sup> Page 61, Strategic Development Plan. Parliamentary Paper No. 32 of 2002.

<sup>2</sup> Ibid, page 62.

### *Consultations*

Consultations will be crucial due to the complex nature of the reference. There is a need to be sensitive and culturally appropriate to ensure that any proposal recommended will be effective (that is, practical and workable) within the unique environment that is the Republic of the Fiji Islands.

The Commission hopes to conduct comprehensive consultations for this reference. These will take place in October 2004. This will see the Commission visiting the Central, Northern and Western Divisions and holding public hearings and private meetings with stakeholders or people who work in this area in that particular community. The usual practice is to set up a public hearing at the Town Council chambers or District Offices or community halls. The Commission will also, where possible visit a community (Fijian village, Indian settlements, squatter settlements) and hold informal discussions with members of the community. A month before the Commission visits these places, the Commission will distribute its Discussion papers to contact organizations, who will act as focal points for this information. Advertisements will be placed in the radio and dailies alerting people as to where & when the Commission will be in the vicinity and call for people to come forth to make submission

### *Identified Reference Materials and Resources*

The following materials have been provided to the Advisors:

- ☞ Fiji statutes & Acts
- ☞ Local cases and judgments
- ☞ Local literature & articles & papers
- ☞ Surveys compiled by the Fiji Women's Crisis Centre & their Draft Bill submitted by FWCC
- ☞ Statistical Data from Police and FWCC
- ☞ Past FLRC Reports ( Sexual Offences Report 2000; Children's Report 2000, Family Law Report & Act, Police Powers.)

A bibliography will be annexed to the Final Report

### *International Conventions & Related Documents*

The international instruments to be taken into account in this Review include-

- ☞ The Universal Declaration of Human Rights
- ☞ CEDAW
- ☞ CRC

## **Background**

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### *The 1997 Constitution*

The review is pursuant to constitutional provisions on the prohibition of cruel, inhuman and degrading treatment at section 25 as well as the equality provision, Section 38 of the Bill of Rights.

### *The Taskforce on the Elimination of Violence Against Women and Children*

It is believed the Strategic Development Plan policy objective is the responsibility of the multi-sectoral Taskforce on the Elimination of Violence Against Women and Children (EVAWC Taskforce), established under the Womens Plan of Action 1998 – 2008. The Taskforce comprises both government and non government organizations and form the main stakeholder base for this review. It was the Taskforce that made representations to the Law Reform Commission for the initiation of this reference, and its inclusion in the Commission’s Work Plan for 2004 – 2005. It would be helpful for the Commission to cooperate with Civil Society Organisations, including Religious and Traditional institutions, as well as Non Government Organisations who have experience working with the problem of domestic violence and who can provide a broad insight into what both victims and perpetrators of domestic abuse need. Non-legal persons such as health and welfare workers may also be able to provide much-needed expertise and insights into possible ways to approach the problem.

### *Convention on the Elimination of all forms of Discrimination Against Women*

This review is also in furtherance of Fiji’s implementation of the Convention on the Elimination of Discrimination against Women<sup>3</sup> (CEDAW) which Fiji ratified in 1995. The UN Committee on the Elimination of Discrimination against Women after its review of the initial treaty implementation report from Fiji in January 2002 at paragraph 36 stated:

The Committee requests the State party to strengthen its initiatives to combat gender-based violence and adopt the proposed laws on domestic violence and sexual offences very early, prohibiting practices that legalize violence against women. In particular, it calls on the State party to reinforce its “no drop” policy by prohibiting the reconciliation of cases of rape and sexual assault on the basis of the “bulubulu” custom. The Committee recommends the early passage and entry into force of the Evidence Bill.<sup>4</sup>

### *Convention on the Rights of the Child*

This review also furthers Government’s obligation under clause 19<sup>5</sup> of the Convention on the Rights of the Child which it signed in 1993 and to heed the recommendation made by the United Nations Committee in 1998, when it examined Fiji’s first periodic treaty implementation report. At paragraph 37 of its Concluding Observations, the UN Committee on the Rights of the Child stated:

37. In light of article 19 of the Convention, the Committee further recommends that the State party take all appropriate measures, including revision of legislation, to prevent and combat ill-treatment

<sup>3</sup> Article 16 (Equality in family law). The UN CEDAW Committee has also recommended that States Parties adopt effective legal measures, including penal sanctions, civil remedies and compensatory provisions, to protect women against all kinds of violence, including sexual assault and sexual harassment in the workplace (general recommendation No. 19 (eleventh session), para. 24 (t) (i)).

<sup>4</sup> CEDAW/C/2002/1/CRP.3/Add.2

<sup>5</sup> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.



within the family, including domestic violence and sexual abuse of children. It suggests, inter alia, that the authorities set up social programmes to prevent all types of child abuse as well as to rehabilitate the child victims. Law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be developed, such as special rules of evidence and special investigators or community focal points.

Appropriate legislation to give effect to and reinforce the aforementioned international and national initiatives is of critical importance. It is clear that the law cannot be employed as a panacea for the ills of a complex social phenomenon such as domestic or family violence. However, when victims of abuse do turn to the law for protection, the law should be effective and efficient in its response. Having regard to the Constitution and the international commitments and obligations of the State towards ending violence against women and children, victims of domestic violence should be afforded the maximum protection by ensuring that the substance and procedures of domestic violence legislation are well tailored to the needs of those suffering abuse in a domestic context.

### **The nature of family violence**

Family Violence is a pervasive and lethal problem that challenges society at every level. It is found at all income levels and in all cultural and ethnic groups. Intimate family relationships create vulnerability, facilitate violence and its concealment exacerbates the effect of violence within these relationships. Violence within families is a threat to the development of children, whether experienced directly or indirectly. It threatens the stability of the family and violates a community's safety, health, welfare and economy by increasing social costs such as medical expenses and lost productivity.

The eradication of family violence would likely require the transformation of human society as we know it. Eradication or abolition is likely to be an impossible objective. However alleviation is possible as there are measures that can be taken or put in place to ameliorate the devastating consequences of family violence on abused family members, on children, and upon society as a whole. These include increasing public awareness of its existence and strengthening the effectiveness of services designed to cope with the effects of family violence in order to break this inter-generational cycle.

Family or domestic violence is a social problem that needs special attention, special preventive measures before it occurs, and special remedial measures. It is violence between intimates and the dynamics such as trust and dependency that occur in this setting make it unique from other assaults.

The Fiji Law Reform Commission does not have the solutions to reducing violence. From its preliminary information gathering and own research, it acknowledges that these offences are governed under the general criminal law statutes. Fiji does not have a separate legislation for domestic violence. These general assault laws do not specifically deal with domestic violence. Instances of family violence

are reliant on the intervention of police exercising their powers when a criminal offence is committed.

## **Domestic Violence as a social and gender problem**

Family or spousal violence is an issue that impacts across all strata of society. Its occurrence is built on unspoken assumptions which must be articulated if the issues are to be clearly understood and any proposal that is put forward is to provide a workable solution. The issue must be understood as a responsibility of the whole community and not just a problem for the parties involved and the police officers in attendance.

The World Health Organisation's World Report on Violence and Health at page 89 acknowledges that partner violence is increasingly seen as an important public health problem:

One of the most common forms of violence against women is that performed by a husband or an intimate male partner. This is in stark contrast to the situation for men, who in general are much more likely to be attacked by a stranger or acquaintance than by someone within their close circle of relationships. The fact that women are often emotionally involved with and economically dependent on those who victimize them has major implications for both the dynamics of abuse and the approaches to dealing with it.

Intimate partner violence occurs in all countries, irrespective of social, economic, religious or cultural group. Although women can be violent in relationships with men, and violence is also found in same-sex partnerships, the overwhelming burden of partner violence is borne by women at the hands of men.

### *Social Challenges*

Whilst the challenges are numerous in that we are dealing not just with the law but with a socialization process shaping who we are; a holistic approach is necessary for any intervention to be effective. Often the social problems associated with domestic violence are products of beliefs and ideas that communities hold about what families should be like and how we should relate to them. That is:

- *families are supposed to be loving* – but when family relationships turn out to be different from this, we have to confront this uncomfortable reality;
- *families need and deserve privacy* - which allows for the nurturing of both positive and abusive relationships, in which neighbours do not want to intervene even when extreme violence offers; and
- *families are entitled to be self-ruling* – meaning that decisions regarding everything from schooling and medical care to discipline and ways of

displaying anger are made within this environment, giving considerable control to the more powerful members of the family.

Tackling violence would be addressing and questioning the very tenets of certain values that make us (and we have come to accept). Identifying what is not acceptable and seeking to change these through education and awareness is key to changing attitudes and certain types of behaviour. This coupled with legislation and effective support services together provide a balanced approach to the problem.

### *Gender*

Domestic violence is violence between intimates. It occurs in relationships where there is an imbalance in power relations within the family setting. Most surveys or statistics provided by the Police and Fiji Women's Crisis Centre find that it is women who find themselves as victims of violence in the home. Children are also silent victims. There are also a number of male victims but statistics from police state these are in the minority.

It must be borne in mind that this review, while recognizing that it is a gender problem, it will also try to protection is offered to all possible persons who may be affected i.e. men, women and children.

Below are the statistics provided by the Commissioner of Police of Fiji for 1995:

#### **DOMESTIC VIOLENCE CASES – 1995**

	<b>Offence</b>	<b>No. of Cases</b>	<b>Domestic – Type of Involvement</b>
1	Murder	2	2 Husband & Wife
2	Act with intent to cause grievous harm	31	15 Husband & Wife 16 De Facto Relationship
3	Assault Occasioning Bodily harm	354	263 Husband & Wife 101 De Facto Relationship
4	Commonly Assault	72	44 Husband & Wife 28 De Facto Relationship
	Total	459	

Source: Fiji Police Force

### *Under – reporting of Domestic Violence*

The above statistics reflect cases which are reported. There is no exact knowledge of how many cases go unreported every year although there is belief that what is reported is roughly a portion of the extent. For those, that are reported, very few are pursued through the Courts.

Some of the factors that contribute to under-reporting by victims are the following:

- *community attitudes towards victims as over reacting*
- *lack of access to information and services including the police, legal help and the Court system*
- *previous experience with these service were not helpful*
- *fear of not being supported*
- *economic dependency on spouse*
- *fear of being hopeless without financial and emotional security*
- *no immediate punishment for those who commit domestic violence*

### *The health and economic costs of family violence*

Intimate partner violence is now also seen as a public health issue, although for a long time such crimes have been considered a private matter that did not warrant discussion in the public arena. There is now recognition that we need a joint or multi-sectoral approach to such violence.

In addition to its human costs, domestic violence places an enormous economic burden on societies in terms of lost productivity and increased use of social services.

The Governor of the Reserve Bank of Fiji, Mr. Savenaca Narube, presented a paper on the Economic Costs of Violence Against Women when launching the EVAWC Taskforce 2002 16 Days of Activism campaign. That paper identified the various ways that women contribute to the economy:

as 39%<sup>6</sup> of the formal workforce

as self-employed

women help sustain the family in subsistence living

women are home workers, freeing the productive members of the family for formal employment – the 1996 Census states that 42% of women are in this category, and the contribution to GDP can be substantial

Violence against women decreases the contribution of women already in the workforce to the economy, further, violence and the threat of violence discourages women from even entering the economy.

### **Direct Costs to the economy of Violence Against Women**

The direct costs identified include:

output is reduced if women cannot attend work;

productivity is lower;

the cost of medical treatment where there is injury;

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<sup>6</sup> Based on the 1996 Fiji Census of Population data

the cost to the police if they are called;  
 the cost of welfare;  
 if the offender goes to court, lawyers, prosecutors and Magistrates costs etc

### **The indirect economic costs of Violence Against Women**

Indirect costs include:

if women are unable to manage the house, then children may not attend school, etc  
 community responsibilities may not be met;  
 if violence leads to marital separation, there are additional costs to the couple, their children and society

There are also opportunity costs which are alternative uses for the money spent on the various direct and indirect costs outlined above.

### **Quantifying the costs**

There are many difficulties in quantifying the costs of domestic violence. There are many cases that are not reported, as discussed above. Further, hospitals, the police and courts do not record these costs separately. Opportunity costs are even more difficult to identify. There is no universal template to measure the costs of such violence.

The paper presented by the Governor of the Reserve Bank of Fiji above looked at a study undertaken in New Zealand in 1994 to measure the cost of family violence. That New Zealand study worked on three ratios: 1:4, 1:7 and 1:10 which translate to 25, 14 and 10 percent respectively. The following is the computation:

**Adoption of the definition of violence as any incident involving the occurrence, attempt or threat of either physical or sexual assault;**

**Mr. Narube used the middle ratio of 1:7, which supposes that 14% of women in Fiji have suffered from violence;**

**If that ratio is applied to the female population aged 15 years and over, this hypothesizes that 36,000 women of the Fiji population, based on the 1996 census have experienced violence;**

**Then the average cost of the violence for each victim is estimated by adopting one quarter of the New Zealand estimate of \$11,000, which is \$2,700 direct costs to the victim;**

**Multiply the average cost to each victim of \$2,700 x 36,000 estimated cases gives a total of FJD\$97 million of direct costs borne by the victim and their families;**

**The New Zealand study estimated the direct cost to government was \$22,000 per victim, a quarter of that is \$5,500 x 36,000 gives a total**

**of about \$200 million for law enforcement, welfare services and health care and so forth**

**Together, the direct costs of \$97 million to the estimated 36,000 victims and the cost to Government of \$200 million gives a total cost to Fiji of about \$300 million, which is about 7% of GDP.**

However this example is an oversimplification of an extremely complex exercise, which some may think is too low or perhaps too high. The estimate is very sensitive to the prevalence ratio used. For instance, if one uses the prevalence ratio of 1:4, or that one quarter (25%) of the female population suffer from violence, then the total costs increases to about \$500 million. If the prevalence ratio of 1:10 is used, the total cost is \$100 million. The cost of violence against women in Fiji can vary from \$200 million to \$500 million based on the prevalence ratio used.

### **Opportunity Costs**

The \$300 million calculated above by the Governor of the Reserve Bank is equivalent to:

- the government's budget deficit;
- the government total borrowing;
- the total government capital expenditure;
- the total income taxes expected to be collected;
- the total VAT estimated to be collected; and it is greater than the total budget allocated to all the law and order agencies of government in 2003.

The biggest challenge on the studies of violence against women is the lack of a central database where agencies are connected and share statistics a problem that is pronounced in developing countries like Fiji. Each department has its own separate statistics which are categorized in how they perceive the problem particularly by agencies such as the Police, Health, Judiciary, Department of Social Welfare.

### *The impact of domestic violence on Children*

Children are often present during domestic altercations and those who witness marital violence are at a higher risk for a whole range of emotional and behavioural problems, including anxiety depression, poor school performance, low self-esteem, disobedience, nightmares and physical health complaints.<sup>7</sup>

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<sup>7</sup> WHO World Health Report on Violence and Health

### *Violence Against Women*

The 1993 World Development Report estimated that worldwide, “violence against women is as serious a cause of death and incapacity amongst women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined.” As defined in the United Nations Declaration on the Elimination of Violence Against Women, violence against women is a prevalent harm to the rights, freedoms, health and welfare of women. It occurs in many settings and at many hands, including those of relatives, acquaintances, employers and the State.

47 population based surveys from around the world indicate that 10 - 69% of women reported being physically assaulted by an intimate partner. In Fiji, a national research conducted by the Fiji Womens Crisis Center indicated that 66% of women in Fiji have at some point been beaten by their partner. It further indicates that 30% of these women have been repeatedly abused.<sup>8</sup> Further, that 42% of the women surveyed that they had been abused during pregnancy.

### *Violence against women as a health issue*

At page 100, the World Health Report on Violence and Health states that:

Studies show that women who have experienced physical or sexual abuse in childhood or adulthood experience ill health more frequently than other women – with regards to physical functioning, psychological well being and the adoption of further risk behaviours, including smoking, physical inactivity and alcohol and drug abuse. A history of being the target of violence puts women at increased risk of:

- Depression;
- suicide attempts;
- chronic pain syndromes;
- psychosomatic disorders;
- physical injury
- gastrointestinal disorders
- irritable bowel syndrome
- a variety of reproductive health consequences

In the inaugural address to launch the *2003 16 Days of Activism against Violence Against Women and Children Campaign* of the EVAW Taskforce on 25 November 2003, the Minister for Health, Hon. Solomone Naivalu stated:

Battered women also run the risk of contracting STIs and HIV/AIDS. These women are often raped and sexually assaulted by their partners. If their husbands are having sexual relationships outside the marriage, they run a greater risk. The chauvinistic control of the male leaves the woman with little or no negotiating power over safe sex and

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<sup>8</sup> Fiji Womens Crisis Center: The incidence, prevalence and nature of Domestic Violence and Sexual Assault in Fiji.

contraception. This may lead to unwanted and repeated pregnancies. Preference for a boy child also subjects women to repeated pregnancies which has adverse effects on her health, reproductive and otherwise.

## **What protection can the law offer**

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### *Fiji Law Reform Commission's Family Law Report 1998*

The Fiji Law Reform Commission in the *"Family Law Report 1999: Making a Difference to Families"* recognised that the problem of violence in the family is a common and insidious one. Lack of access to legal protection often means that families, particularly women and children are at considerable risk from violent partners. The Family Law Act which comes into operation in July 2005 will have some jurisdiction to protect families by preventing contact between perpetrators and victims.

However, domestic violence was seen to be a specific issue and the report stated "the Commission intends in a future reference to make domestic violence a separate civil and criminal reference. Separate legislation is clearly necessary, making family protection and independent of stand alone action. This would ensure swift action by the Courts. A protection order could be brought even where the family breakdown is not imminent." [p.70]

Importantly the report recognised that family violence is cyclical and inter-generational if effective intervention is not undertaken. The report also recognised that clear and effective enforcement procedures are necessary, particularly in the transitional period when the community is coming to terms with the movement of these issues from the private domain into the public arena.

The Family Law Report further stated that any legislation that is to be brought into operation in Fiji to deal with Domestic Violence would *"work best with a clear and effective enforcement procedure. Currently the involvement of police in monitoring and enforcing non-molestation injunction orders are at best minimal. Police reluctance is often due to the thinking that such matters belong to a family domain that is private and sacrosanct."* [p. 71].

Attitudes that are so culturally inculcated will take a great deal of time to address and will need to be approached in a multi-faceted manner.

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