Interns' Policy Report

Transitory Migrants and Asylum Seekers in Macedonia: Human Rights Concerns?





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Abbreviations

EU – European Union

ICESCR - International Covenant on Economic, Social and Cultural Rights

MYLA - Macedonian Young Lawyers Association

- OSCE Organization for Security and Cooperation in Europe
- UNHCR United Nations High Commissioner for Refugees

1. Introduction

After the break-up of Yugoslavia, Macedonia managed to gain independence with no bloodshed. However, following the violent conflict in Kosovo in 1999, Macedonia experienced an armed conflict initiated by ethnic Albanian insurgents within its territory. Yet again, the country managed to pull ahead, and enter a new phase of Euro-Atlantic integration by becoming a candidate for EU membership in 2005. This point of reference initiated a new era in the field of migration in Macedonia. The country faced the need for a series of adjustments as the EU acquis required various legislative frameworks to be put in place including the area of migration. The Law on Foreigners and the Law on Asylum and Temporary Protection were adopted accordingly. It is important to note that this research will not enlist a full and comprehensive analysis of each article of these laws, but instead, it will focus on those articles relevant for the research and applicable to potential violations of human rights on the territory of Macedonia.

Newly emerging migratory trends and patterns in Macedonia became evident in the past five years, and the adoption of the Resolution on Migration for the period of 2009-2014 illuminates this. EU now considers Macedonia as an emerging transitory route for undocumented migrants from various backgrounds, travelling from Greece on their way into other EU member-states. As it is evident that migration policy of Macedonia and EU respectively fail to stop these trends, it has become increasingly clear that migrants on the territory of Macedonia, regardless of legal protections in place, face various difficulties. With focus on cases of undocumented immigrants using Macedonia as a transit route or seeking asylum, this research specifically attempts to uncover and deduce human rights violations and causes of serious human rights concerns.

In 2009, the Government of Macedonia deployed a country migration profile report which stated that according to the records of the Ministry of Interior, in the period from 1990 to August 2008, a total number of 87775 illegal border crossings have been registered, indicating that most of them included Albanian citizens (52 797 persons), Romanians (21 578), Macedonians (4133) and citizens of the FR Yugoslavia (3457), with peak years in 1992, 2000, and 2001.¹ These years directly correlate with the break-up of Yugoslavia, and the war in Kosovo at the end of the century. However, as numbers of illegal crossings from the aforementioned directions have diminished since 2002, and given that already at this

¹ Government of the Republic of Macedonia. *Republic of Macedonia Migration Profile*. (Government of the Republic of Macedonia, January 2009). 22.

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point certain variations of migrants' backgrounds have been noticed,² this research thus focuses on the period since then. With respect to this, Macedonia has worked diligently on creating a comprehensive framework on migration with utmost respect for international standards of human rights protections and EU requirements, as explicitly enumerated in the Resolution on Migration Policy of Macedonia 2009-2014.³ Thus, this research shall assess the rate of success in terms of implementing the given principles and policy measures.

Contemporary situation with regards to undocumented migrants in Macedonia has never been more concerning. The trend of transition through Macedonia has continued with a number of well-established routes, and the number of migrants has started to soar. Given that assortment of undocumented migrants come from territories characterized by various political and economic instabilities, one is bound to note that the pressure upon Macedonia's borders are simply going to aggravate. Recent police raids close to the northern border with Serbia have provided insufficient short-term measures that fail to address the problem at hand significantly, and still leave migrants vulnerable and unprotected. As Macedonia continues to chase EU integration, migration policies of these entities become inexplicably linked. Most notably, addressing undocumented migration becomes a concern of international proportions, and current perception of the issue is that providing effective remedies will require multilateral efforts, regionally and globally.

Furthermore, migration research in the region is rather insufficient and provides little adequate analysis of various components of the phenomenon. Macedonia represents a microcosm of migration problems in the region. Regional initiatives have been established but in many instances remain simply inadequate or even counterproductive. There is an obvious lack of coherence between country's migration policies and capacities to implement those. Not only do migrants find a way to use Macedonia as a transit route illegally nonetheless, migrants also remain vulnerable and exposed to potential human rights violations.

² Government of the Republic of Macedonia. *Republic of Macedonia Migration Profile*. (Government of the Republic of Macedonia, January 2009). 22.

³ Government of the Republic of Macedonia. Resolution on Migration Policy of Macedonia 2009-2014. (Government of the Republic of Macedonia: December 2008). 5.

2. Migration Policy and Areas of Concern

Macedonia's geographic position, as the bordering country of two EU member states, Greece and Bulgaria, has in recent years seen an increased wave of migration through its territory. Looking at historical migration trends in the region as a whole and Macedonia in specific, one notices that this part of the world has, for the most part, been a source of emigration, and as such, policies of EU towards it have reflected this actuality. However, in recent years, as EU has fought diligently against undocumented migration coming through Greece and Italy, Macedonia has become a popular transit route. Seasonal patterns evident from the Greek-Turkish border have also translated onto the northern border of Macedonia with Serbia, where most notably, the detections of undocumented migratis in 2011 were more than four times higher compared to 2010.⁴

Though Macedonia, and the Western Balkans as a region is not a desirable destination for immigrants, its position near the EU, combined with lack of or very generous visa regimes make it attractive for undocumented migrants to use this route on their way to the EU.⁵ In terms of countries of origin transiting through Macedonia, there is no single predominant trend that can be considered as the most concerning, and migrants originate from countries such as Afghanistan, Pakistan, China, countries of Middle East and Northern Africa, as well as from the countries of Sub-Saharan Africa.

The European Commission denoted a deal of success in its 2013 report on Macedonia;⁶ however the EU is still examining Macedonia's full capacities. EU has been insisting on the need for Macedonia to have readmission agreement with all the EU member states. On the other hand, though it seems unreasonable that Macedonia with 2 million inhabitants could be an immigration treat for the EU, it is more than obvious that the

⁴ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *Western Balkans: Annual Risk Analysis 2012.* (Warsaw: FRONTEX, April 2012). 19.

⁵ EUROPOL, FRONTEX. Determining the High Risk Routes Regarding Illegal Migration in the Western Balkan Countries. (EUROPOL, FRONTEX, 2007). 8.

⁶ European Commission. The Former Yugoslav Republic of Macedonia: Implementation of Reforms Within the Framework of the High Level Accession Dialogue and Promotion of Good Neighborly Relations. (Strasbourg: European Commission, April 2013).

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EU wants to make sure that Macedonia is not a perfect transit country for the undocumented migrants that are trying to get in some of the EU countries using this route.⁷

2.1. Institutionalization

Despite the fact that Macedonia has a number of laws regulating migration, and the Resolution on Migration, the Government of Macedonia does not have yet a specialized agency with the role of migration management, but instead different ministries cover different migration issues and dimensions. The government bodies that deal with different aspects of migration consist of the Ministry of Interior, Ministry of Labor and Social Policy, Ministry of Foreign Affairs, Agency for Diaspora and State Office for Statistics. Ministry of Foreign Affairs generally deals with the entry and exit of foreigners. Agency for Diaspora works on the attainment of status and rights for emigrants from Macedonia and provides assistance for their cultural development.⁸ The National Center for Border Administration has been established to provide greater efficiency in preventing irregular migration and to increase coordination in the exchange of information, and it includes members of the Ministry of Interior, The Ministry of Finance, Agriculture, Forestry and Water Supply as well as the Customs.⁹

The Ministry of Interior is the main decision-making body with regards to migration related issues. It deals with the issues of asylum by determining the status of the applicant, the entry and exit of Macedonian and foreign migrants along with the Ministry of Foreign Affairs.¹⁰ It also includes a Sector for foreigners and immigration with a transit centre, a Unit for asylum, a Sector for wider affairs, foreigners and the travelling of Macedonia's citizens, and a Sector for border affairs which deals with border management.¹¹ The Ministry of Interior is the decision-making body in reference to different articles of the Law on foreigners. For instance, the decision on denial of entry of a foreigner into the Republic of Macedonia shall be brought by the Ministry of Interior, under Article 23 of this Law, and the competent authority is not obliged

⁷ Center for Research and Policy Making. *Strengthening Cross-border Cooperation in the Western Balkan Regarding Migration Management: Macedonia.* (Skopje: CRPM, February 2008). 8.

⁸ International Organization for Migration. *The Former Yugoslav Republic of Macedonia Migration Profile*. (Ljubljana: IOM, September 2007). 29.

⁹ Ibid. 30.

¹⁰ Ibid. 29.

¹¹ Ibid.

to explain the reasons taken into consideration for such decision.¹² Furthermore, the Ministry holds all the records with regards to migration, including records on visa applications, as well as information relating to the Reception center for foreigners, and even fingerprints taken.

The Ministry of Labor and Social Policy is concerned with social rights of migrants and is in charge of accommodating asylum seekers with lodging and other basic needs. Even though there are no specialized governmental agencies covering asylum, the Ministry of Labor and Social Policy is one of the two ministries working on it.¹³ Within the frame of its competencies referring to the prevention and protection of victims of trafficking in human beings, the Ministry of Labor and Social Policy provides support and protection of victims of trafficking with the assistance of other relevant government bodies. This assistance consists of preliminary evaluation of the needs, referral to shelter of victims of trafficking, collecting necessary documentation and coordination of protection.¹⁴ However, these measures relating to the issue of providing social rights to migrants and building capacities towards achieving better policy in fighting trafficking in human beings will certainly require better financial capabilities, more technically sound equipments, and well trained personnel.

2.2. Legislation

This part of the research will cover the Law on asylum and temporary protection, and focus will be made on the importance of a number of articles specifically relevant for the scope of this research. Macedonia, as previously noted, has ratified numerous international frameworks covering the rights of migrants, including the 1951 Convention relating to the status of refugees and the 1967 Protocol relating to the status of refugees. Given these international, binding conventions, the right of asylum is protection granted by the Republic of Macedonia, under the

¹² The Republic of Macedonia. *The Law on Foreigners*. Official Gazette of the Republic of Macedonia No. 35 dated 23 Mart 2006. Official translation issued by the Ministry of Interior. Article 24.

¹³ Migration, Asylum, Refugees Regional Initiative. *Migration Questionnaire*. (2006). 26.

¹⁴ Republic of Macedonia Ministry of Labor and Social Policy. For Preparation of a Regional Review and Evaluation in the Context of the 15th Anniversary of the Adoption of Beijing Declaration and Action Platform in 2010.

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conditions and in the procedure defined by this Law, to persons who are officially recognized refugees, and to persons under subsidiary protection.¹⁵

Article 21 of the Law covers the right to interpreter for every single migrant seeking asylum. Given that many asylum seekers in Macedonia come from a variety of language backgrounds, it is safe to assume that this article poses a significant challenge for the country. In specific, when the asylum seeker does not understand the language of the procedure, the Section for asylum shall provide an interpreter for that person in the language of his country of origin or in the language he understands, with the Ministry of Interior covering the costs for the interpreter.¹⁶ The interpreter is bound to ensure confidentiality of the data learned during the procedure, and Article 22 specifically covers the issues of publicity during the procedure.¹⁷ Asylum seekers are also entitled to an interpreter of the same sex, within the boundaries of possibilities.¹⁸ It is important to note that this sub-chapter only covers the existing legislation. The actual implementation of this and other specific articles will be covered in the following sub-chapter.

Finally, Article 54 covers the issue of healthcare, and given that many asylum seekers have travelled for very long periods of time, and are extremely vulnerable by all accounts, this is a very important provision within this Law. Until the acquisition of the capacity of an insured person pursuant to the Law on health insurance, the recognized refugee has the right to basic health services, same as the citizens of the Republic of Macedonia.¹⁹

¹⁵ The Republic of Macedonia. *Law on Asylum and Temporary Protection*. Official Gazette of the Republic of Macedonia No. 19, Year: LXV, 13 February 2009. Unofficial Translation. Article 2.

¹⁶ The Republic of Macedonia. *Law on Asylum and Temporary Protection*. Official Gazette of the Republic of Macedonia No. 19, Year: LXV, 13 February 2009. Unofficial Translation. Article 21.

¹⁷ Ibid. Article 22.

¹⁸ Ibid. Article 21.

¹⁹ Ibid. Article 54.

2.3. Policy Concerns and Human Rights Violations

Noting that asylum seekers and undocumented transit migrants face different violations, this portion of the chapter will be used to synthesize all the previous information in order to portray the state of these groups of migrants in Macedonia. If the migration policy of Macedonia fails to stop undocumented migration in the place, and if migrants enter the territory nevertheless, it is important that the treatment they receive is in accordance with the highest level of international human rights and legal domestic protections.

2.3.1. Asylum Process

The number of asylum seekers in Macedonia has rapidly grown since 2008, reaching its highest number yet in 2011, when according to the data from the Institution for accommodation of persons seeking asylum, 811 immigrants asked for asylum and were placed in the center.²⁰ After a slight decrease in 2012, by the middle of July of 2013 the numbers soar up and will most likely go over a thousand (1000) immigrants seeking asylum in Macedonia, specifically since the recent events in the Middle East, in particular in Syria, have catalyzed a new wave of refugees.²¹ Prevailing number of immigrants are still men. However, as the number of immigrants has generally increased, the number of women and children has also gone up. The significance of this trend comes into play when accommodating the needs of these immigrants, as women and children are usually more vulnerable than men, and often require special attention.²²

Asylum Center²³

The Center for asylum is under the jurisdiction of Ministry of Labor and Social Policy, and as such it provides those residing there with food and other basic needs. It is important to know that the decision-making with regards to the center and asylum seekers is still in the hands of Ministry of Interior. Upon arrival at the center, every immigrant goes through a medical screening as designated by the rules and procedures of the center.

 ²⁰ Interview with asylum center management. Kaltrina Selimi, Irhad Strika. (Skopje, 16 July 2013).
²¹ IOM. "IOM Feasibility Study". (Vienna, Sarajevo, January 2013).

²² Interview with asylum center management. Kaltrina Selimi, Irhad Strika. (Skopje, 16 July 2013).

²³ Information about the Center obtained through the interview with asylum center management. Kaltrina Selimi, Irhad Strika. (Skopje, 16 July 2013).

Following this specific procedure intended to address any pressing health concerns and clear the immigrant for stay in the center, s/he is given an appropriate accommodation. This center is an open-type center, and migrants can come and go as they please, given that the curfew is 10 p.m. All absences must be reported and migrants have 72 hours to report their whereabouts, after which they give up their right of stay. However, this rule leaves space for leeway, and migrants who have been gone for longer than 72 hours, can simply report back and yet be admitted. In instances when these immigrants leave the asylum center in order to leave Macedonia and move towards the EU, they immediately fall under the jurisdiction of the Ministry of Interior and are dealt with accordingly.

150 available beds, with maximum of 6 per room, have always been more than enough to accommodate all those seeking asylum in Macedonia (maximum of 147 have been occupied at one point).²⁴ However, given that we are seeing an incremental increase in the number of those seeking asylum in Macedonia, it will be important to monitor this number and ensure that to all those in need will be given appropriate accommodation. The Center is divided into sections based on gender and age groups. Construction of the center started in 2003; in 2006 it became operational and already in June of 2008 it started with the first accommodation of asylum seekers.²⁵ Another important dimension to consider is the fact that accommodating a greater number will entail more work to be carried out by the staff of the center and it will certainly require further financial capabilities. It is significant to note that the capabilities of the Center would be expanded upon need, and should more beds and more facilities be required; this request will be met with an adequate response.²⁶

Within the center, there are civil society organizations that operate – namely the Macedonian Young Lawyers Association (MYLA), the Red Cross and the Jesuit Refugee Service. Their support consists in unconditional free legal help for asylum seekers, computer equipment, gardens and so on. UNHCR provides help in form of equipment, accessories, beds and material assets, and also covers expenses for the young lawyers association, who have an office in the reception center.²⁷

²⁴ Interview with asylum center management. Kaltrina Selimi, Irhad Strika. (Skopje, 16 July 2013).

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

MYLA has initiated cooperation with the Croatian Legal Center in Zagreb, Informative Legal Center in Ljubljana and Belgrade Human Rights Centre on the regional project of common regional electronic database where all requests for asylum would be recorded and shared regionally.²⁸ This form of communication can address various regional deficiencies, specifically problems arising out of the fact that some migrants make multiple asylum requests, one in each country along their journey. The state can also facilitate the direct communication between MYLA and the Asylum Centers, as to ensure that numbers and all the statistical information are matching. Furthermore, MYLA has showed its capabilities on the issue at hand, and the state ought to fully support them, both financially and logistically. Another possible help for MYLA would be an attempt to establish a pool of potential guardians, readily available for juveniles seeking asylum.

Areas of Concern

Two major aspects of the asylum process for migrants are the knowledge of legal procedures and rules behind the process, and actually understanding the language of communication. It is the duty of the state to ensure that those two dimensions are well respected and followed through. Providing legal help to asylum seekers is extremely important in ensuring the viability and the effectiveness of the process. However, the asylum-seeking-migrants in Macedonia are becoming more and more diverse, coming from a wide range of Asian and African countries.

One of the major criticisms, as indicated by MYLA is the longevity of the asylum procedure.²⁹ The state could, in cooperation with MYLA attempt to create a more fast paced procedure for all the asylum-seekers in the country. This could ensure that more cases are processed while giving less time to migrants to take advantage of the help Macedonia provides.

Language diversity amongst these migrants is immense. Most migrants travel and arrive in groups, and there is usually a member of the group who speaks English or French, acting as a translator for the other migrants. One of the ways MYLA bridges this gap also is by using Google

²⁸ Macedonian Young Lawyers Association. Interview by Kaltrina Selimi, Irhad Strika. (Skopje, 29 July 2013).

²⁹ Macedonian Young Lawyers Association. Interview by Kaltrina Selimi, Irhad Strika. (Skopje, 29 July 2013).

translate as a tool, and though translation can still be limited and potentially wrong, it allows for some sort of direct communication between an individual migrant and a person providing legal help.³⁰

Though it is certainly true that people working with asylum seekers are making the most out of the given resources, one cannot but notice that the lack of official translators for numerous languages can often represent a significant problem. For one, those migrants who are serving as translators provide no reliable source of translation, and can also act as human traffickers – therefore, behaving and translating in their best interest. Migrants who speak no language common with people leading them through the process might have to share some very personal information (medical history, family information, private experiences, and political, religious and sexual affiliation) with migrants translating for them. This can lead to discrimination, conflict and alienation of migrants within the center. Adequate communication with migrants is crucial, as such measures can ensure that the asylum procedure is conducted fairly, and that it assists authorities in identifying the migrant who has no documents, and determining if they are vulnerable and have supplementary needs.³¹

2.3.2. Specific Rights' Violations

The most prominent gathering and a crossing point for transitory migrants has become the municipality of Lipkovo. Lipkovo has two relevant villages, one village Vaksince, and another, a border village Lojane, where migrants arrive after reaching Tabanovce using the route from Greece through Gevgelija.³² However, as Tabanovce is better controlled than Lojane, migrants use a close proximity between Lojane and the Serbian border (only around 300 meters). Ever since the trend has been observed, the increase of undocumented migrants has not slowed down. The municipality held an extraordinary meeting which was attended by the Municipal Council, OSCE and representatives from the Ministry, coming up with few conclusions regarding migrants' stay at the Center for asylum seekers, because the conditions in which they live in the mountains are in contrast with the basic human rights protections.³³ Undocumented immigrants enjoy almost no protections while transiting through Macedonia,

³⁰ Ibid.

³¹ IOM. "IOM Feasibility Study". (Vienna, Sarajevo, January 2013).

³² Duraku, Sadulla. Interview by Kaltrina Selimi, Magdalena Lembovska, Irhad Strika. Mayor of Lipkovo Municipality. (Lipkovo, 25 July 2013).

and they face many food and health concerns.³⁴ They are also not welcome and are often abruptly marginalized by locals who offer no help, regardless of the needs of these immigrants. The current situation seems to be getting worse each day, and as undocumented immigrants receive more attention from policy makers and police itself they seem to find themselves simply more endangered and more vulnerable. The response towards undocumented immigrants seems a worrying matter for Macedonia - there could be further marginalization, criminalization and increased exercise of force towards immigrants.³⁵

It is important to notice that this research acknowledges the fact that undocumented immigrants pose certain security threats for Macedonia and locals however, the main concern of this research is first and foremost the difficulties they face in their migration routes. Given their very modest financial means, they usually fail to eat well and intake enough healthy nutrients for the long journeys they undertake. Macedonia has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has obliged itself towards respecting all individual articles of the convention. Article 11 covers the right to adequate standard of living, including the right to adequate food, while Article 12 covers the right to health. However, migrants in Macedonia have been made more vulnerable by the recent police raids that have taken them to the woods for hiding with almost no access to means of proper food intake. These problems create further complications with regards to their health situation and potential diseases they can encounter. It is very likely that they might incur some diseases and injuries, and very often women and children travelling along might find themselves in bad shape because of the severity of the journey. Severe weather conditions, especially during hot and dry summers, and during severe winters create humanitarian concerns as these immigrants have very little access to necessary resources.³⁶

Another concern regarding undocumented immigrants comes in form of their connection to human traffickers. Migrating from their homes all the way to Europe usually requires serious amounts of money which leaves, immigrants with minimum financial means necessary for their basic needs. In cases they are unable to fully cover the fees for services, they can fall victims to these organizations, and end up working for them until

³⁴ Mehmeti, Selam. Interview by Kaltrina Selimi, Magdalena Lembovska, Irhad Strika.Head of the Lojane community. (Lipkovo, 25 July 2013). ³⁵ Ibid.

³⁶ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Western Balkans: Annual Risk Analysis 2012. (Warsaw: FRONTEX, April 2012). 27.

they repay the debts. Recent trends show that there are increasing numbers of third country nationals who are acting as guides for other immigrants transiting through Macedonia.³⁷

3. Concluding Remarks

This policy paper focuses on undocumented immigrants using Macedonia as a transit route and/or seeking asylum and the potential areas of concern with regards to their human rights. Using various reports by relevant organizations, analyzing Resolution on Migration Policy of Macedonia 2009-2014, and aforementioned Law on Foreigners and the Law on Asylum and Temporary Protection, this research aims to build a picture of existing frameworks and how they ought to address undocumented migration and/or asylum seekers in various circumstances. It is important to strike a balance between ensuring basic protection of migrants' rights and addressing relevant factors enabling this type of migration through Macedonia. Should the number of transitory migrants in Macedonia increase, aforementioned health, food and other related concerns will only become more of an issue.

Addressing undocumented migration is a concern of international proportions, and effective remedies will require multilateral efforts, regionally and globally. However, as already pointed out, regional cooperation on issues of undocumented migrants and asylum-seekers has been rather insufficient, giving way to various loopholes and disadvantages in addressing specific policy concerns. As MYLA has initiated the development of a regional database for all the asylum cases, countries in the region ought to fully support this and similar initiatives necessary to augment this project. Macedonian policy makers must understand that Macedonia is becoming a hotspot of transitory migration and for those exact reason, they ought to initiate a stronger regional cooperation through relevant civil society organizations and international organizations.

Another aforementioned concern with regards to asylum cases is the lack of official translators. Providing sufficient translation through these procedures is of utmost importance. This is yet another example of how regional cooperation, as well as the support from the countries and resources of EU can be beneficial. IOM's Feasibility Study from January of 2013 recommends having an all time access to a pool of regional/EU

³⁷ Annual Report of the National Rapporteur for 2011, available at:

http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/annual_report_of_the_national_rapporteur_2011.pdf

translators who would provide assistance in asylum cases, and would most likely ensure that procedural matters are fully adhered to. When possible, Macedonia can use and/or build bilateral agreements with countries of origin who represent a significant proportion of asylum cases in Macedonia in order to ensure standards indicated in the Law on Asylum and Temporary Protection.

To conclude this policy paper, it is important to note that the present framework in Macedonia, aligned with the EU standards simply requires better implementation in the majority of cases. While reiterating this, one ought to realize that the protection of migrant's human rights and the effective implementation of migration policy as a whole go hand in hand, and thus, efforts put forward need to head in the direction of developing stronger ties with regional governments and various regional organizations and initiatives on addressing issues at hand.

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