

Viet Nam and the Convention to End All Forms of Discrimination Against Women

An Alternate Report for Viet Nam from Independent Civil Society on the status of the implementation of the Convention to End All Forms of Discrimination Against Women (CEDAW) in Response to the Committee's Lists of Issues and Questions in Relation to the Combined Seventh and Eighth Periodic Reports of Viet Nam

Co-authored by Boat People SOS (BPSOS) and Vietnamese Women for Human Rights (VWNHR), with support from International Women's Rights Action Watch Asia Pacific (IWRAWAP).



Report Contents:

- I. INTRODUCTION**
- II. CONTRIBUTING ORGANIZATIONS**
- III. EXECUTIVE SUMMARY**
- IV. RESPONSES TO THE “LIST OF ISSUES”**
 - a. General [Articles 1-4 and 7]**
 - i. Systematic Exclusion and Restrictions of Independent Civil Society Organizations
 - ii. Abuse and Lack of Protection of Women’s Rights Defenders or Female Human Rights Defenders
 - b. Other Issues [Articles 1-4, 7, 9, 12, 14]**
 - i. Access to Justice
 - ii. National Machinery for the Advancement of Women
 - iii. Violence Against Women
- V. HIGH PRIORITY RECCOMENDATIONS**
- VI. LIST OF REFERENCES**

INTRODUCTION:

As this report will detail, independent civil society organizations are highly restricted in Vietnam. As a result, Vietnamese Women for Human Rights (VNWHR) and other independently minded women’s issues and human rights focused organizations were excluded from the consultation process for Viet Nam on CEDAW. VNWHR does not enjoy government support, and, on the contrary, as this report will highlight at times, we are often attacked by the government for our activities.

The scope of this alternative report aims to be narrow and precise. Specifically, we have chosen a format that responds to particular points on the “List of Issues” and questions for Viet Nam from the CEDAW Committee where we suspect the Vietnamese government may not be so open and forthcoming. We have elected to respond only to particular points where we are most equipped with facts and expert insight and points we feel are most critical for us to address. We hope to add helpful insights that respond to many of the Committee’s initial questions. We also hope to flag and highlight potentially underreported issues that may be helpful towards the Committee’s assessment of Viet Nam’s fulfillment of its CEDAW obligations.

CONTRIBUTING ORGANIZATIONS

This report has been a collaborative effort between Boat People SOS (BPSOS) and Vietnamese Women for Human Rights (VNWHR). International Women’s Rights Action Watch Asia Pacific (IWRAWAP) provided support and guidance. We thank IWRAWAP for

alerting independent civil society of this opportunity and for their additional advice and feedback.

Boat People SOS (BPSOS) is a 501(c)(3) registered nonprofit in the U.S. with its origins in Southeast Asia—previously leading rescue-at-sea missions in response to the waves of boat people fleeing Vietnam in the 1980s. BPSOS returned to Southeast Asia as a regional organization in 2009, providing legal aid and protection to urban refugees and assisting with capacity building for civil society organizations focused on human rights in Vietnam and in ASEAN.

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Vietnamese Women for Human Rights (VNWHR) is an independent civil society organization founded in 2013 in response to the failure of mass women’s organizations to effectively respond to the needs and human rights issues faced by women in Viet Nam. Core issues of focus include defense and support of female human rights defenders, including prisoners of conscience and support of persecuted ethnic and religious minorities on rights issues ranging from land grabbing to freedom of belief.

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EXECUTIVE SUMMARY

Boat People SOS (BPSOS) and Vietnamese Women for Human Rights (VNWHR) are encouraged to see the List of Issues raised by the CEDAW Committee. The Committee’s questions for Viet Nam reflect serious areas of concern with respect to Viet Nam’s adherence to its CEDAW obligations. Unfortunately, many of these concerns start with **Article 3** and pertain to a lack of fundamental rights inside Viet Nam with particular ramifications for women. Subsequently, relating to **Article 2**, our report finds that many policies set up obstacles and barriers that move Viet Nam away from fulfillment of the Convention rather than moving towards it. Most notable here are laws and decrees that restrict independent association and free expression. Additionally, problematic elements of the Penal Code serve to exacerbate these problems and backward movement.

Many pressing problems also surround implementation of **Article 7** and violence against women participating in civic life. This report documents the systematic targeting of particular women by the state with the intention to discourage civic engagement of those with connections to independent human rights organizations or independent religious groups. This of course returns us back to the overarching issue of a lack of basic rights and freedoms.

At the center of this report is a response to the Committee's concerns from the "List of Issues" regarding the participation of independent civil society organizations and the protection of women's rights defenders (Specifically, *Issue 1 – General*). This report goes into significant detail on this concern and related systematic forms of violence faced by female members of free associations and female human rights defenders. Additionally, this report touches briefly on other concerns raised in the "List of Issues" and relating to some of Viet Nam's most marginalized and vulnerable women. We hope to draw the Committee's attention to rural ethnic minority women who often face multiple forms of oppression **(Articles 14)**.

In terms of moving forward with CEDAW in Viet Nam, this report concludes that the absence of fundamental human rights, in particular, rights related to forming free associations and rights to free expression are the biggest obstacles with respect to CEDAW's implementation. The High Priority Recommendations put forth here thus relate to safeguarding these basic human rights and providing space for independent civil society to operate. As long as independent organizations like VNWHR are restricted and other women and independent groups are attacked for exercising fundamental rights, progress towards ending discrimination against women will remain slow, partial, vulnerable, hard to monitor, and a process forever guided and controlled government. Conversely, if women and related independent civil society organizations were granted public space and freedom to exist and operate, the shift would be transformative and long-term. We believe free civil society and open civic spaces would serve as the best instruments to move towards the fulfillment of CEDAW in Viet Nam. We request that the Committee consider and review our related High Priority Recommendations.

As a final note, we ask that the Committee sternly advise the government of Viet Nam against any sort of reprisals against VNWHR for the submission of this alternative report and participation in this process.

RESPONSES TO THE "LIST OF ISSUES"

The "List of Issues" put forth by the Committee point to a series of critical areas for Vietnamese women. The government of Viet Nam may lack the necessary information as well as the will to address certain pertinent items noted on this list. In many cases, the government is to blame and thus may not be so forthcoming and may even present inaccurate or false information which distorts and downplays problems critical for the Committee's full analysis.

Issue 1 – General [Articles 1-4, 7]

I. The Systematic Exclusion and Restrictions of Independent Civil Society Organizations and Independent Free Associations

The Committee has wisely put forth questions regarding the systematic participation of independent civil society organizations in Viet Nam. Unfortunately, independent civil society organizations, including women's rights groups, were not consulted with or invited to join the state's report drafting process. It would be more accurate to state a case of the systematic exclusion of independent civil society organizations.

Through a series of codes and decrees, the Vietnamese government is able to guide, regulate, manage and control all civic organizations. Key legislation on associations goes back to 1957, with notable updates including the 1995 Civic Code, the 2003 Decree on the Organization, Operation and Management of Associations and Implementing Organizations (Decree 88), and subsequent 2010 revisions and renaming (Decree 45). It should be noted that one can see such restrictive policies oriented at monitoring and state control are widespread in Viet Nam by also reviewing the restrictions on free association of religious organizations (Decree 92), the 2014 report by the Special Rapporteur on the Freedom of Religion or Belief, and the new Law of Religion currently being drafted. Academics and legal experts note that such laws are predominantly regressive in nature and, rather than opening up civic space, are focused on establishing restrictions, monitoring, and control, especially towards any associations that exist as independent alternatives to government-established organizations and associations focused on human rights. Official registration becomes either highly cumbersome, or, in many cases, impossible. These various laws and decrees hurt and slow efforts to fully implement CEDAW and violate **Articles 1-4** that ensure fundamental human rights and state obligations to take positive steps toward fulfillment of CEDAW via the development of law and policies conducive towards the convention's implementation. Regulation of public life and associations also is a form of non-compliance with respect to **Article 7 of CEDAW** and **General Recommendation 23**.¹²³⁴

The results of such policies and a restrictive legal framework mean that independent CSOs have not only been absent from participation in consultation processes on CEDAW that they would be granted in other settings, but also, more generally, leads in a permanently underdeveloped independent civil society that lacks appropriate access to resources and support mechanisms. A closed and restrictive environment of this nature not only violates key CEDAW Articles, but also prevents progress in CEDAW's implementation at the very basic level needed for accurate and honest monitoring and assessment of implementation progress. Rather than move implementation forward, it impedes the identification of gaps where critical special measures mandated by CEDAW may be needed.

This unfavorable environmental structure is further bolstered and made comprehensive by strategic deployment of mass organizations and related government-organized umbrella organizations such as the Vietnam Union of Friendship Organizations (VUFO) presenting and characterizing themselves as key representatives for Vietnamese civil society while simultaneously operating strictly under government control.⁵ A system that begins with exclusion finishes the job with replacement, as independent organizations are systematically blocked from activities and replaced by government-associated counterparts in contexts such as regional forums.⁶⁷ The result is enhanced government control with the added outward appearance of openness and a flourishing civil society. In relation to CEDAW,

¹ *Maintaining Firm Control* (Sidel, 2010)

² *Vietnam: Decree no 92 article* (Christian Solidarity Worldwide, 2014)

³ UNSR on Freedom of Religion or Belief, Report on Viet Nam (2014)

⁴ *Vietnam's Religion Law*, World Watch Monitor (Reimer, 2015)

⁵ *COMINGO, VUFO and PACCOM*, NGO Centre, N.D.

⁶ *Cuộc chiến đầu tiên giữa GONGO và các tổ chức Xã hội dân sự độc lập*, RFA, 2014

⁷ *APF 2015: Cơ hội cho các Tổ chức Xã hội dân sự Việt Nam*, RFA, 2014

access to appropriate assessment of progress and setbacks in CEDAW implementation is likely hindered by an incomplete consultation process that involves this collection of Government Organized Non-Governmental Organizations (GONGOs) only able to make minor and selective criticisms or to exclusively defend criticisms from the Committee, effectively misrepresenting reality. A major consequence of this structure is that many of the worst rights violations against women, often faced by some of the most vulnerable sectors of the population, go unmentioned or are brushed aside or minimized via positive distortions.

This report would like to note to the Committee that any claims or responses made by the Vietnamese government regarding the inclusion of independent organizations is a misrepresentation of the facts, especially if consultations with mass organizations and associations under VUFO are cited as proof of such engagement. Any characterization which portrays such organizations as independent or representative of independent civil society is false and perhaps even purposely disingenuous and misleading.

In conclusion, the lack of openness with respect to independent civil society organizations is one of the largest obstacles towards the fulfillment of the CEDAW for Viet Nam. If there is no adequate space to discuss discrimination nor infrastructure to properly monitor and report discrimination against women, the results will be slowed and limited as serious challenges impede CEDAW's implementation. Open space for civil society organizations to operate is a fundamental right that cannot be separated from the overall status of women. The policies outlined above violate basic rights and work against and in opposition to the fulfillment of **Articles 1-4 of CEDAW**, most notably **Article 2-3**, as well as **Article 7**, and **General Recommendation 23** pertaining to public life.

Recommendations

- A full reform of laws and decrees on associations in order to ensure that independent civil society organizations are able to operate effectively and freely, and are empowered to push the implementation of CEDAW forward.
- A detailed mapping and timeline for ensuring a consultation process on CEDAW that engages independent and even unregistered civil society organizations, including independent religious associations, and independent associations of ethnic minority groups.

II. Abuse and Lack of Protection of Women's Rights Defenders or Female Human Rights Defenders

Regarding the Committee's concerns with respect to "Women's Rights Defenders", this report presents evidence of frequent intimidation, threats, arrests and violence faced by female human rights activists and female members of rights-focused independent civil society organizations and religious associations. These are additional areas of non-compliance to CEDAW through failings around basic and fundamental human rights (**Articles 2 and 3**) caused by policies that violate basic rights, encourage rights violations, and inadequate training or others measures to prevent such fundamental violations. Instances of threat and violence against female members or independent associations and religious groups violates **Article 7 of CEDAW** and **General Recommendation 23** on women's right to public engagement in Non-Government Organizations and associations,

and points to systematic failures regarding **General Recommendations 12 and 19** on violence against women.

A. A Pattern of Police Violence Against Female Human Rights Defenders: Incidents of police violence are not isolated exceptions, but a pervasive problem in Viet Nam.⁸ Such violence includes numerous forms of torture, which are also widespread and systemic.⁹ The prevalence of both torture and violence used by the state is clearly in violation of **Article 3** and **General Recommendations 12 and 19** on violence against women. Furthermore, as the women targeted with violence are often attempting to lead a public life affiliated with a non-governmental organization and attempting to exercise their basic human rights and protect the rights of others, Viet Nam also violates **Article 7** and **General Recommendation 23**.¹⁰

There are several unfortunate cases involving Vietnamese Women for Human Rights (VNWHR), the co-authors of this report. On 22 April 2014, after attending the trial of two female land rights advocates, VNWHR members Tran Thi Hai and Nguyen Ngoc Lua were detained for several hours and severely beaten by police and thugs.¹¹ Violence was used to punish and discourage these women with respect to basic and fundamental civic participation and their membership in an independent civil society organization. Another significant case is that of Tran Thi Nga, who was taken in while waiting at a bus stop.¹²¹³ Police insulted, sexually molested, and beat her, taking video for their own amusement. They also forcibly got her fingerprints as signature on a document she had not read.

Violence against women leading a life of civic engagement is a pervasive problem. Nguyen Hoang Ai is another well-documented case of a female activist violently intimidated and attacked.¹⁴¹⁵ Most recently, in June 2015, it has been reported that police beat Pham Thanh Nghien, another prominent female rights defender.¹⁶ These are just a few examples of violence against women after very basic exercises in civic participation and public life. It is clear that such actions are systematic and aim at discouraging civic engagement, especially civic engagement in defense of basic human rights.

B. Arrests and Female Prisoners of Conscience: According to VNWHR's estimates and monitoring efforts there are approximately, 19 female prisoners of conscience in Vietnam, including the following women:

1. Bùi Thị Minh Hằng

⁸ *Public Insecurity: Deaths in Custody and Police Brutality in Vietnam*, Human Rights Watch (HRW), 2014

⁹ *Vietnam: Torture and Abuse of Political and Religious Prisoners*, Coalition to Abolish Modern Day Slavery in Asia (CAT-VN), 2014

¹⁰ *Report on Human Rights Violations in Vietnam*, VNWHR, 2014

¹¹ *Two Members of Vietnamese Women for Human Rights Arrested*, Defend the Defenders, 2014

¹² Dan Lam Bao, 2014

¹³ *Physical Attacks Against Vietnamese Bloggers on the Rise*, Electronic Frontier Foundation (EFF), 2014

¹⁴ *Vietnamese Blogger Harassed, Beaten by Plainclothes Police*, RFA, 2014

¹⁵ Nguyen Hoang Vi, Defend the Defenders, Articles Archive

¹⁶ *Vietnamese Activist 'Savagely' Beaten by Plainclothes Officers*, RFA, 2015

2. Dương Thị Tròn
3. Đặng Thị Mỹ
4. Đỗ Thị Hồng
5. Đỗ Thị Thiêm
6. Hồ Thị Bích Khương
7. Lô Thanh Thảo
8. Ngô Thị Toan
9. Ngô Thị Như
10. Nguyễn Đặng Minh Mẫn
11. Nguyễn Thị Thuý Quỳnh
12. Nguyễn Thị Tuyền
13. Nguyễn Thị Ánh Nguyệt
14. Phạm Thị Phương
15. Tạ Phong Tần
16. Trần Thị Thuý
17. Võ Thị Thu Thuỷ
18. Phạm Thị Lộc
19. Trần Thị Thu

Again, in violation of CEDAW **Articles 3 and 7**, arrests and detention relate to a lack of basic fundamental rights and rights particular to civic engagement and participation in independent organizations. Police repeatedly use a few loosely phrased Articles of the Penal Code to arrest and silence views critical of the government. Frequently cited Penal Code Articles are as follows:

- Article 79: Carrying Out Activities Aimed at Overthrowing the People's Administration – Used to imprison high profile dissidents and those joining anti-Communist political parties or organizations.
- Article 87: Undermining the National Unity Policy – Used primarily when targeting ethnic minorities and ethnic minority members of independent religious groups.¹⁷
- Article 88: Conducting Propaganda Against the Socialist Republic of Vietnam – Usually used to target dissident bloggers, writers and journalists in serious cases.
- Article 245: Disturbing the Public Order – A common law used to break up and disrupt meetings, including religious services, and peaceful demonstrations.¹⁸
- Article 258: Abusing Democratic Freedoms – Most often used against bloggers, government critics, and to repress freedom of speech.¹⁹

Such a closed and restrictive environment and laws of this nature grant the government sweeping power. These government instruments are some of the most obstructive forces in slowing the implementation of CEDAW. Use of such laws violates fundamental human rights and immobilizes the non-government actors necessary to move CEDAW implementation and basic human rights forward in Viet Nam.

C. Arbitrary Detention, Illegal Searches, Property Destruction, Harassment and Restriction of Movement: It also must be noted that a variety of additional tactics are used against female

¹⁷ *Vietnam Jails 8 Montagnards for 'Undermining National Unity'*, RFA, 2013

¹⁸ *Vietnam: Activists Face Trial on Bogus Traffic Offense*, HRW, 2014

¹⁹ *Growing concerns over harassment of H'mong people*, Dan Lam Bao, 2014

rights defenders and those in civic and religious associations. This includes unlawful searches, the destruction of private property, the disruption of church services, harassment, indefinite and arbitrary detention without charges, and restrictions of movement. Huynh Thuc Vy, another member of VNWHR, has been repeatedly harassed and detained for her peaceful rights-focused activities.²⁰ Such tactics are additional tools utilized by the state in violation of fundamental rights and **Article 3 of CEDAW** and are used in high frequency in rural areas populated by ethnic minorities, with leading members of independent religious communities often targeted.

D. Prison Sentences and Poor Prison Conditions: **Article 3 of CEDAW** must also be cited in relation to prison sentences for many peaceful female rights activists. The harsh conditions they must endure are worthy of alarm. Prison conditions often amount to forms of torture, including extended solidarity confinement, lack of adequate nutrition, and denial of very basic rights. Those with chronic ailments rarely get proper treatment sickness worsens due to generally poor conditions.²¹²²

F. Summary: Inadequate police training may be a part of the problem, but the larger problem explicitly connects to the activities that the aforementioned women are involved in, their membership in particular groups, and systemic issues of standard police strategy in response to dissenting voices. What is repeatedly found is an attempt to intimidate women leading a public life into retreat and into silence, which is the very opposite of what the government is obligated to do under CEDAW. Such practices not only show the government's lack of will to enact the convention, but reveal systematic actions that work directly against CEDAW and move Viet Nam further away from the Convention's implementation.

Recommendations

- The repeal of Articles 79, 87, 88, 245: 258 and implementation of special measures to protect fundamental human rights, with particular attention paid to female human rights defenders and protections on public life for women. The government should not use statues, bylaws and decrees to void some constitutional articles acknowledging the rights to freedom of assembly, association and speech. Article 4 in the constitution should also be annulled to prevent abuse of power and to protect human rights.
- The immediate release of all female prisoners of conscience, including female human rights defenders and members of independent or unregistered civil society and religious associations.
- The development of a comprehensive training program for police and related policy changes that encourage adherence to the rule of law and which end the common-place use of torture and violence and other police tactics which violate human rights.

Notes on other areas of the “List of Issues”

Access to Justice [Articles 1-4, 14]

²⁰ *Blogger harassed, briefly detained by police in Vietnam*, Committee to Protect Journalists, 2012

²¹ *Vietnam: Torture and Abuse of Political and Religious Prisoners*, (CAT-VN), 2014

²² *Jailed Vietnamese Activist on Hunger Strike to Protest Treatment in Prison*, RFA, 2015

Regarding the Committee's concerns of lack of mechanisms for redress: There is unfortunately little that is done in cases of government abuse. As CAT-VN, Human Rights Watch, and others all document in their respective reporting on rights violations in Vietnam, police abuse often occurs with impunity, which only worsens in rural areas in the Northwest and Central Highlands. These rural areas, populated largely by Hmong, Montagnard and other ethnic minority groups, are often blocked to foreigner reporters, researchers, academics, and any independent monitoring. Lack of free access to information compounds the problems of justice faced by disenfranchised populations who generally have a weaker understanding of their fundamental rights.²³²⁴

Recommendations

- The government of Viet Nam should allow for foreign press, independent rights groups, academics, and researchers to have free access to information, particularly in the Northwest and the Central Highlands.
- The government of Viet Nam must eliminate de jure and de facto impunity for police and pay special attention to women and redress obstacles faced by rural ethnic minority groups. Actions should also include awareness-raising activities for rural ethnic groups on their rights.

National Machinery for the Advancement of Women [Articles 1-4 and 7, and General Recommendation 6]

Regarding the Committee's questions on the role of mass women's organizations: Vietnamese Women for Human Rights (VNWHR) was founded because it was felt that the mass women's organizations did not adequately address or respond to the needs and concerns of women. Mass organizations are part of the state apparatus and an example of state's attempt to control and manage civic life. They do little to move CEDAW forward, especially in the realm of improving fundamental human rights in Viet Nam. In such institutions, there is a lack of will, mandate, and capacity for unbiased comprehensive monitoring of policy impact and the situations of women. In fact, the failure of mass organizations to properly support the groups they purportedly represent is well documented.²⁵²⁶ The chief aim and mandate of mass women's organizations is to bolster communist party control, not the advancement of women. Rather than coordinate or consult with civil society, these government entities co-opt and close civic space.

Recommendations

- The government of Viet Nam should develop a new approach to its national machinery for the advancement of women, including policies that develop consultation procedures and build capacity for free associations that focus on women's rights. Policy must start by allowing civil society to exist and freely criticize the government and for mass organizations to take heed of recommendations given through civil society interface.

²³ Ibid

²⁴ *Public Insecurity: Deaths in Custody and Police Brutality in Vietnam*, HRW, 2014

²⁵ *Commentators Say Vietnam Needs Independent Farmers Associations*, RFA, 2015

²⁶ *Vietnam's Rights Activists Hope for Democracy*, RFA, 2015

Violence Against Women [Articles 1-4, 7, and 14; General Recommendations 12 and 19]

Regarding Committee concerns on violence against women: While this report already addresses issues of serious violence and torture against women, we wish to emphasize and reiterate the pressing need to deal with this ongoing human rights crisis. Our particular concern is forms of violence against women that are systematic and state-led. In such cases, women attacked by the state are often simply attempting to exercise their fundamental human rights or advocating for the rights of others. In such cases, there is little chance of redress or justice. Rather than diligently fight for the elimination of violence against women and against torture, violence and torture continue to be tools systematically utilized by the state. Violence and torture are abhorrent in all cases, but when initiated by state actors against those defending basic universal human rights, such violations take on an added weight, especially for a country under the obligations and mandate of CEDAW (not to mention other relevant treaties and conventions).

Finally, with respect to violence against women, we ask the Committee to note ongoing problems of violence against rural ethnic minority groups, including the Montagnard, Khmer Krom, and Hmong.²⁷ These groups, especially those that participate in independent religious organizations of all faiths, include some of Viet Nam's most vulnerable women. Their voices are often silenced, and, through a combination of factors, ranging from lower female literacy rates to weaker social capital, rural ethnic women are at high risk for rights abuses with minimal pathways of redress.

Recommendations

- The government of Viet Nam should set a clear comprehensive nation-wide policy against police violence and use of torture. It should include police training against forms of violence and torture with a special emphasis on the treatment of rural ethnic minority women and other vulnerable groups. Policy should also include clear forms of redress and punishment for violent acts committed by state officials, including plainclothes police and hired thugs.

HIGH PRIORITY RECOMMENDATIONS

- I. The government of Viet Nam should immediately adopt measures that allow for independent civil society in Viet Nam to exist and to continually develop. Measures must remove current restrictions and regulations that aim at government control, especially for organizations focused on human rights. Immediate measures should also be taken to protect independent organizations and their members from violence or attack and measures must also ensure preservation of and respect for their independent status.
- II. The government of Viet Nam should enact laws and trainings to immediately end all forms of police violence and torture. Measures must also be taken to protect women

²⁷ Vietnam: Montagnards Harshly Persecuted, HRW, 2011

from violence or torture (actual and threatened). New policies must also include an end to impunity and a clear pathway of redress for survivors of violence and torture. Special measures should also be taken to allow for independent monitoring and an end of abuse in rural areas populated by ethnic minority groups.

LIST OF REFERENCES

This list of references is provided to support this report and towards assisting the Committee's assessment of Viet Nam with respect to CEDAW. References appear in order matching that of the report. Links to reports have been provided for all sources.

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