



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3253/2018\*, \*\*

<i>Communication submitted by:</i>	G.Z. (represented by counsel, Daniel Epstein)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Canada
<i>Date of communication:</i>	4 October 2018 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 8 October 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2025
<i>Subject matter:</i>	Deportation to the Congo with alleged risk of unlawful killing, torture, ill-treatment and arbitrary detention owing to political profile
<i>Procedural issues:</i>	<i>Ratione materiae</i> ; substantiation of claims
<i>Substantive issues:</i>	Arbitrary detention; cruel, inhuman or degrading treatment or punishment; non-refoulement; political activities; refugee status; right to life; torture
<i>Articles of the Covenant:</i>	6 (1), 7 and 9 (1)
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The author of the communication is G.Z., a national of the Congo born in 1965. He submits that by deporting him to the Congo, the State Party would violate his rights under articles 6 (1), 7 and 9 (1) of the Covenant. The Optional Protocol entered into force for the State Party on 19 August 1976. The author is represented by counsel.

1.2 On 8 October 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State Party to refrain from deporting the author to the Congo while his case was under consideration by the Committee. The author remains in Canada.

\* Adopted by the Committee at its 143rd session (3–28 March 2025).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



**Facts as presented by the author**

2.1 The author worked in agriculture in the Congo. He has a wife and a son, as well as a stepson whom he has not legally adopted. His wife and children remain in the Congo.

2.2 Through tribal connections, the author obtained, on an unspecified date, an honorific, unpaid position in the Pool Department with the General Delegation Responsible for the Promotion of Peace and the Reparation of the Aftermath of War.<sup>1</sup> The General Delegation collected weapons and promoted peace after the violent civil war in the Congo during the period 1997–1999.

2.3 Within the General Delegation, an individual named G.B. led a team that included the author. At an unspecified time, the Secretary of the Parti congolais du travail (Congolese Labour Party) requested G.B. to attend meetings led by a tribal chief. The purpose of the meetings was to encourage the Congolese people to support a constitutional amendment that would allow the President of the Congo, Denis Sassou Nguesso, to remain in power. G.B. refused to participate in those meetings. His refusal was imputed to the rest of the General Delegation.

2.4 G.B. received threats for refusing to participate in the meetings. At an unspecified time, the author also began receiving threatening telephone calls. He went into hiding at his brother's house near Brazzaville. Eventually, all members of the team went into hiding, as it had become obvious that they were being surveilled by the authorities. G.B. believed, based on the language used in the threats and his knowledge of the national political system, that loyalists of the President were responsible for the threats.

2.5 G.B. was able to obtain diplomatic passports for his team members. The author and the other team members used those passports to flee the country on an unspecified date.

2.6 In May 2015, the author and four other team members arrived in Canada, where they applied for asylum. A joint hearing was scheduled for the team members. However, on the day of the hearing, the author informed the asylum authorities that he was in ill health. He was therefore given a hearing on another date, separately from his team members, who were granted asylum.

2.7 On 6 October 2015, the Refugee Protection Division of the Immigration and Refugee Board denied the author's asylum application on the ground that he was not credible and had provided a vague, confusing and contradictory account of the events relating to his claim.

2.8 On 15 August 2016, the Refugee Appeal Division of the Immigration and Refugee Board denied the author's appeal against the negative asylum decision. It reiterated the finding that the author was not credible.

2.9 On 5 December 2016, the Federal Court rejected the author's application for leave to apply for judicial review of the negative decision on his appeal. The decision of the Federal Court was not subject to appeal.

2.10 In April 2017, an arrest warrant was issued against the author in Canada because he had failed to present himself for removal.

2.11 In July 2017, the author applied for permanent residence in Canada based on humanitarian and compassionate grounds (also known as a humanitarian and compassionate application).

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<sup>1</sup> Délégation Générale Chargée de Promotion des Valeurs de Paix et de la Réparation des Séquelles de Guerre. The author provided a copy of a stamped certificate dated 18 June 2014 purportedly issued in Brazzaville by the Director of the Cabinet of the General Delegation Responsible for the Promotion of Peace and the Reparation of the Aftermath of War. According to the certificate, the author had been named Head of Human Resources of the General Delegation and had taken up his functions on 18 June 2014. He also provided a copy of another stamped certificate, dated 16 February 2015, purportedly issued in Brazzaville by the Minister of State, Director of the Cabinet of the Head of State. According to the latter certificate, the Minister of State ordered the author, as the Head of Human Resources, to travel by plane to Canada on 8 April 2015, returning on 22 April 2015, for the purpose of attending a technical meeting with donors in Canada.

2.12 In September 2017, the author was arrested pursuant to the warrant. He was subsequently released on bail.

2.13 Thereafter, on 15 September 2017, the author filed an application for a pre-removal risk assessment. On 12 January 2018, that application and the author's application for permanent residence on humanitarian and compassionate grounds were denied.

2.14 On 3 October 2018, the author was arrested and detained for the purpose of removal.

2.15 On the same date, the author applied to the Federal Court for leave to apply for judicial review of the negative pre-removal risk assessment decision of 12 January 2018.<sup>2</sup>

2.16 On 3 October 2018, the author also applied to the Federal Court for an administrative deferral of the removal order against him, until such time as his leave application concerning the pre-removal risk assessment was determined. He presented new evidence in the form of an affidavit from G.B., who linked the author to the other members of the team.<sup>3</sup>

2.17 On 5 October 2018, the Federal Court held a hearing and denied the author's application for deferral of removal pending the outcome of his pre-removal risk assessment application. The Federal Court did not find any error in the finding of the Pre-Removal Risk Assessment Officer that the author had not offered a reasonable justification for submitting the affidavit at the time he did.

2.18 The author maintains that he has exhausted domestic remedies and has not submitted the same matter to another procedure of international investigation or settlement.

### Complaint

3.1 The author submits that the State Party would violate his rights under articles 6 (1), 7 and 9 (1) of the Covenant by deporting him to the Congo, where he would be subjected to unlawful killing, torture, ill-treatment, arbitrary arrest, abduction, interrogation and detention. He is perceived as a political opponent of Denis Sassou Nguesso, fled the country and has been tainted by an accusation of treason. Political opposition leaders have been detained since 2015 for opposing a constitutional amendment that permitted the President to remain in power.<sup>4</sup> Security forces and police officers in the Congo reportedly carry out arbitrary killings, arrests and acts of torture and ill-treatment.<sup>5</sup> The deportation of the author would violate his right to security of the person and he could be subjected to ill-treatment in detention as well. Prison conditions in the country are reported to be harsh and life-threatening, and there are reports that political prisoners have been denied medical care.<sup>6</sup>

3.2 The State Party's immigration authorities erred by hearing the author's case separately from those of the rest of the members of the General Delegation Responsible for the Promotion of Peace and the Reparation of the Aftermath of War, based on the fact that the author claimed to be in ill health on the day of their joint asylum hearing. The other members were granted asylum in Canada.

3.3 The Refugee Protection Division and Refugee Appeal Division considered that the author was not credible in his claims. However, the author has minimal formal education and

<sup>2</sup> On 8 February 2019, the Federal Court dismissed the application for leave to apply for judicial review of the negative pre-removal risk assessment decision. Separately, the author was granted leave to apply for judicial review of the negative humanitarian and compassionate decision; the application was subsequently denied, as described in para. 4.13 below.

<sup>3</sup> The author alleged before the Federal Court that the Pre-Removal Risk Assessment Officer had erred by considering the production of the affidavit of G.B. untimely. The author provided to the Committee a copy of the affidavit of G.B., dated 4 September 2018. The Pre-Removal Risk Assessment Officer issued an addendum to address the contents of the affidavit, which did not alter the conclusion to reject the author's application.

<sup>4</sup> Amnesty International, *Report 2017/18: The State of the World's Human Rights* (London, 2018), p. 135.

<sup>5</sup> United States of America, Department of State, "Republic of the Congo: 2016 Human rights report", p. 2.

<sup>6</sup> United States, Department of State, "Republic of the Congo: 2017 Human Rights Report", pp. 4 and 5.

does not have a strong memory. He is not loquacious and is not capable of providing succinct descriptive narratives or clearly enunciating his thoughts.

3.4 In 2018, in its judgment on the author's application for a stay of removal, the Federal Court relied on domestic standards and did not examine the new affidavit from G.B. that the author had presented. The author had not previously submitted the affidavit because his then-counsel had not informed him that procuring the affidavit could sway the decision of the Refugee Appeal Division.

#### **State Party's observations on admissibility and the merits**

4.1 In its submission of 22 November 2019, the State Party noted that it considered that the communication was inadmissible under articles 2 and 3 of the Optional Protocol. It is insufficiently substantiated and is incompatible with the scope of the Covenant. The author is requesting the Committee to reevaluate facts and evidence that numerous independent and competent decision makers already examined during thorough domestic processes.

4.2 In his asylum claim, the author asserted that, four days after his arrival in Canada, his wife told him that government agents had come to their home to threaten her, and that the author and his team members had been charged with high treason. On 18 August 2015, the author was heard by the Refugee Protection Division, an independent, specialized tribunal that considers protection applications. It usually holds a private oral hearing that is conducted in an informal and non-adversarial manner. Officials from the Office of the United Nations High Commissioner for Refugees may observe the proceedings. Individuals seeking protection are typically assisted by legal counsel and an interpreter, and are provided every opportunity to establish their claim, through oral testimony and supporting documentary evidence. The Division reaches its conclusions on the basis of the evidence adduced during the oral hearing and all available relevant documentation provided to it. During his hearing, the author was represented by legal counsel and had the right to adduce evidence and make submissions. He gave oral testimony and had the opportunity to explain any ambiguities or inconsistencies in the evidence and to respond to the questions of the Division.

4.3 In its decision of 6 October 2015, the Refugee Protection Division seriously questioned the author's credibility and reached the following conclusions: the author's testimony was vague, contradictory, incoherent and, at times, confusing. He was unable to answer fundamental questions about his asylum claim. The author orally stated that his problems had begun in 2013; however, in his written testimony, he stated that his problems had started in November 2014. When asked about this discrepancy, the author was not able to provide an explanation. He was also unable to answer when asked to provide details about the steps that he had taken after feeling that his life was in danger. He was unable to describe his role and functions eight months after his appointment as the Head of Human Resources for the General Delegation. With regard to his travel documents, he stated that he had decided to leave the Congo in February 2015. However, the letter of invitation that formed the basis of his application for a Canadian visa was dated in December 2014. When asked about that discrepancy, the author was unable to provide an explanation and stated that the leader of the General Delegation was responsible for the arrangements.

4.4 The Refugee Appeal Division is also a specialized tribunal with expertise in refugee and protection issues. It only considers the evidence and record that was before the Refugee Protection Division. A claimant may provide the Appeal Division with additional evidence that was not before the Refugee Protection Division when such evidence arose after the rejection of the claim, was not reasonably available or could not reasonably have been presented at the time of the asylum hearing.

4.5 When considering the author's appeal, the Refugee Appeal Division considered new evidence that he had introduced. That evidence consisted of news articles that had only become available after the asylum hearing. The Refugee Appeal Division upheld the credibility findings of the Refugee Protection Division for the following reasons: the Refugee Appeal Division had reviewed the audio recording of the asylum hearing and concluded that the testimony of the author was vague, confusing and contradictory. With regard to the author's statement that he lacked education, he had been able to complete and sign his basis of claim form, which included the dates of different alleged events. Furthermore, it was

improbable that he would have succeeded in obtaining and travelling on a legitimate and diplomatic passport from the Congo and leaving the country by regular means if he had been accused of treason.

4.6 The Federal Court grants applications for leave for judicial review of an asylum decision if there is a fairly arguable case or a serious question to be determined. The applications are thoroughly reviewed by a judge of the Federal Court on the basis of written submissions. The Federal Court dismissed the author's application.

4.7 In his humanitarian and compassionate application of July 2017, the author requested permanent residency on the basis of his establishment in Canada and the risks and conditions in the Congo. He stated that remaining in Canada was in the best interests of his children, who remained in his country of origin, because he had better economic prospects in Canada and was therefore better able to provide for them.

4.8 Also in his humanitarian and compassionate application, the author submitted a photograph of a child whose skin had been burned. He alleged that the burns had been inflicted by agents of the Government of the Congo on 21 October 2015 (i.e. after the Refugee Protection Division had denied his asylum application, on 6 October 2015). The officer who evaluated the humanitarian and compassionate application noted that the author had not mentioned that allegation during the proceedings before the Refugee Appeal Division. The officer was unable to conclude that the photograph depicted the author's child. The officer noted that the photograph was not dated and that no medical report had been provided to corroborate the alleged event. Moreover, the author had not provided a birth certificate or other proof that he was in fact the father of the child.

4.9 Furthermore, with his humanitarian and compassionate application, the author submitted a photograph that he alleged depicted his wife being arrested by the authorities in the Congo. He also provided a news article identifying his wife as the individual who had been arrested, and another photograph that he alleged depicted the destruction of his home by the authorities. The evaluating officer noted the stark difference in the appearance of the woman being handcuffed in the photograph and the woman appearing in the newspaper article. The author did not provide an explanation as to who had taken the photograph and sent it to him. The officer determined that there was insufficient evidence to identify the person in both photographs. With regard to the photograph of the damaged house, the officer noted that it appeared to be uninhabited and that no information had been provided regarding when the photograph was taken.

4.10 Also with his humanitarian and compassionate application, the author submitted an article from the newspaper *La Griffe*, according to which his wife had been arrested twice, on 4 November and 10 December 2016, as a result of the author's activities. The officer determined that the article was not a reliable or authoritative source of information, considering the other unverified reporting of the newspaper and general corruption in the Congo. The officer noted that some newspapers were known to publish information whose sources were unreliable and unverified. For example, on the cover page was a heading that stated that the accompanying photograph depicted a baby whose head was located on its abdomen. The photograph had clearly been altered and showed the face of a baby where the belly and chest would normally be located.

4.11 Lastly, and also with his humanitarian and compassionate application, the author submitted two handwritten letters purporting to be from his wife, stating that the authorities had launched tear gas bombs from helicopters during a referendum, which had resulted in burn injuries to their child. However, in the author's narrative, he asserted that the child had been burned on 21 October 2015; the referendum had taken place on 25 October, four days later. The letters from the author's wife contained different spellings of the wife's name and other glaring inconsistencies. The author also provided no evidence that the letters had been sent from the Congo. Accordingly, the letters were not given probative value.

4.12 With regard to the best interests of the author's children, the officer evaluating the humanitarian and compassionate application noted that the author's stepson had not been legally adopted and that the author's name was not on the child's birth certificate. In addition, the author had not provided a birth certificate or other evidence to establish that the other child was his own. The officer noted that, despite having valid passports, the family members

had chosen to remain not only in the Congo, but also in Brazzaville. In the light of the aforementioned factors, the officer considered that there were not sufficient elements to justify the granting of the humanitarian and compassionate application.

4.13 The author's request for leave to apply for judicial review of the negative humanitarian and compassionate decision was granted, and a hearing was held before a Federal Court judge on 13 February 2019. On 19 February 2019, the Federal Court rejected the application, with detailed reasons. With regard to the author's claim that there was general State-sponsored violence in his native Pool Department, the Federal Court noted that the author had not raised that claim to the Humanitarian and Compassionate Officer. The Federal Court analysed in detail the evidence presented by the author to demonstrate that he would be persecuted because of his political views and gave the evidence low probative value. The Federal Court rejected the author's claim that the Humanitarian and Compassionate Officer had been insensitive to cultural realities in the Congo. While the Federal Court agreed with the author that his family's decision to remain in the country might not have resulted from a genuine choice, it considered that the statement had not affected the overall outcome of the decision of the Humanitarian and Compassionate Officer.

4.14 The State Party explains in detail the claims raised and addressed during the author's pre-removal risk assessment. His subsequent application for a deferral of removal was denied on 3 October 2018 because he had provided no explanation for the late filing of his application for judicial review of the negative humanitarian and compassionate decision, and the risks alleged had already been considered during the pre-removal risk assessment. The author did not request leave to apply for judicial review of the negative deferral decision to the Federal Court, as was his right.

4.15 In his communication to the Committee, the author complains about various aspects of the domestic procedures, but the substance of his claims is an appeal of the domestic decisions, which were not manifestly arbitrary or unjust. The author also questions the competence of his previously retained counsel. However, the Committee has previously stated that a State Party cannot be held responsible for alleged errors made by a privately retained lawyer, unless it was obvious to the decision maker that the lawyer's behaviour was incompatible with the interests of justice.<sup>7</sup>

4.16 The author lacks credibility for the reasons described by the domestic authorities. The State Party acknowledges reports of a problematic human rights situation in the Pool Department in the Congo. However, reports also indicate that the situation is improving and, in December 2017, an agreement was signed pertaining to the cessation of hostilities in the region. The general human rights situation in the country does not suffice to establish a violation of the author's rights under articles 6 or 7 of the Covenant in the case of his removal from Canada. Furthermore, the author has not provided any evidence relating to his claim under article 9 of the Covenant.

#### **Author's comments on the State Party's observations on admissibility and the merits**

5.1 In his comments of 7 July 2021, the author reiterates his arguments and maintains that he has established that the ruling regime of Denis Sassou Nguesso poses a real and personal risk to his life. The State Party also violated its international and constitutional obligations, thus resulting in an arbitrary evaluation of his claims and requests and a grave denial of justice.

5.2 In evaluating the author's motion for deferral of removal in its judgment of 5 October 2018, the Federal Court found it perplexing that the author had submitted the affidavit from G.B. late, had not explained why he had not submitted it earlier and had not attempted to argue that his previous counsel had been ineffective. In fact, the blame for the denial of justice rests not so much with the author's former counsel as with the Refugee Protection Division of the Immigration and Refugee Board. The Board has the authority to summon witnesses and require them to give evidence. In the author's case, the Refugee Protection Division did not exercise its powers of inquiry in a robust fashion. Rather, its decision indicates that its

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<sup>7</sup> *Edwards v. Jamaica* (CCPR/C/60/D/529/1993), para. 5.2.

review was perfunctory, focused upon minutiae, devoid of cultural sensitivity and lacking in any serious investigation into the heart of the risk alleged by the author.

5.3 The domestic decision makers all failed to acknowledge that the author's lack of education was a reasonable explanation for his confusion and inability to clearly express his thoughts. The Delegation of which he was a member was led by G.B., who acted and decided on behalf of the delegates. The Refugee Protection Division focused on the author's inability to remember the date of the meeting at which G.B. refused to cooperate with the President of the Congo and the author's inability to remember all of the people who were present at the meeting. Rather than calling witnesses and conducting a robust investigation, the Refugee Protection Division preferred to simply disbelieve the author. While the burden of proof is on the author, the burden to ascertain and evaluate all relevant facts is shared between the author and the asylum examiner.<sup>8</sup> According to its own standards, the Refugee Protection Division has a duty to fully assess risks raised by an applicant's profile or circumstances. By failing to do so in the author's case, it abnegated its own authority.

5.4 In a different panel, the Refugee Protection Division determined that G.B. and the other members of the General Delegation were refugees. The decisions were based on the same evidence and facts as in the author's case. However, the author was not as articulate or as educated as one of the other claimants and was considered not credible. The State Party is defending a blatantly faulty and purely arbitrary decision that brings into disrepute its own refugee system. The author is not attempting to relitigate or appeal his asylum claim. A gross miscarriage of justice took place, and the author is the sacrificial lamb.<sup>9</sup>

5.5 The author is wanted by a despotic and authoritarian regime. Denis Sassou Nguesso has governed the Congo since 1997. His current mandate expires in 2026 and could be extended to 2031. The United Nations ranks the Congo 149th out of 189 countries on the human development index.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes the State Party's position that the communication is inadmissible under article 2 of the Optional Protocol because it is insufficiently substantiated. The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, in which it refers to the obligation of States Parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant (para. 12). According to the Committee's established jurisprudence, the risk must be personal, and there is a high threshold for providing substantial grounds to establish the existence of a real risk of irreparable harm. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. It is generally for organs of States Parties to the Covenant to review or evaluate facts and evidence to determine whether a risk of irreparable harm exists. Considerable weight should be given to the assessment conducted by the State Party unless the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>10</sup>

<sup>8</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 3rd ed. (Geneva, 2019), para. 196.

<sup>9</sup> With his comments, the author provided copies of documentation that G.B. and the other members of the General Delegation submitted with their own refugee claims.

<sup>10</sup> *C and others v. Sweden* (CCPR/C/141/D/3307/2019), para. 8.6; *J and others v. Sweden* (CCPR/C/140/D/2936/2017), para. 7.5; *Z and C v. Denmark* (CCPR/C/137/D/2795/2016), paras. 6.5 and 6.8; and *F and others v. Denmark* (CCPR/C/119/D/2530/2015), para. 8.2.

6.3 The Committee notes the author's claim that he would face ill-treatment or be killed in the Congo because, owing to his participation in a delegation, he is considered to be an opponent of the country's President. The Committee observes that, when evaluating the risks alleged by the author, the State Party's authorities found that his statements contained material gaps and inconsistencies with respect to the core elements of his claims. In particular, the State Party's authorities noted that the author's accounts of the timing and nature of the events that allegedly prompted his departure from the Congo were unclear and contradictory in several respects. The State Party's authorities also noted that he had been able to obtain a diplomatic passport and a mission order for the purpose of leaving his country of origin and considered that the alleged risks were not personal and real. The Committee observes that the author was represented by counsel during the various stages of the domestic proceedings and that, as described by the State Party in its observations, the domestic authorities evaluated the documentary and oral evidence that he had provided and furnished detailed explanations for their findings that the author's claims were not credible. The Committee notes that, according to the author's admission, his asylum claim was heard separately from the claims of other members of his delegation because he claimed to be in ill health on the date of the joint hearing. The Committee finds that, while the author disagrees with the conclusions of the State Party's authorities regarding the assessment of the facts and the credibility of his claims, the facts before the Committee do not allow it to conclude that that assessment was clearly arbitrary or erroneous or amounted to a denial of justice. Accordingly, the Committee concludes that the author has failed to substantiate, for the purpose of admissibility, that he would face, upon return to the Congo, a personal and real risk of treatment contrary to articles 6 (1), 7 or 9 (1) of the Covenant. Thus, the Committee declares the communication inadmissible under article 2 of the Optional Protocol.

6.4 In the light of its findings, the Committee does not deem it necessary to examine other grounds of inadmissibility.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State Party and to the author.
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