

Women's Asylum News

Women's Project at Asylum Aid

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Gender in Refugee Law: essential reading

By Adrienne Anderson

Efrat Arbel, Catherine Dauvergne and Jenni Millbank (eds.), Gender in Refugee Law: From the margins to the centre, Routledge, London and New York, 2014, 295pp.

In 1985 the Executive Committee of the High Commissioner's Programme (ExCom) called for States to establish programmes to meet the specific problems faced by refugee women and stressed the importance of understanding their particular needs and gathering statistical, sociological and other data (Conclusion on International Protection No. 39, 1985). ExCom has repeatedly enjoined States to adopt a gender-sensitive approach to the Refugee Convention throughout the last two decades (1996, 1999, 2003, 2004 and 2005).

This book neatly echoes these early, twin calls by ExCom by asking how much progress has been made to establish a gender-sensitive interpretation of each element of the refugee definition and identifying where information and protection gaps lie. Editors Efrat Arbel, Catherine Dauvergne and Jenni Millbank give credit to the feminist movement and UNHCR for advances made, but note that "gender is no longer at the forefront of the reform agenda". They explain their project: "to survey a terrain and set, or re-set, an agenda" and to evaluate "what has been accomplished and what remains to be done". More than ten years after UNHCR's 2002 Guidelines on gender-related claims, it becomes clear that "we are not there yet" on gender (Michelle Foster, page 38).

The book has an ambitious aim given the breadth of the subject, and it is, without a doubt, achieved in this excellent collection. It gives intensely practical, concrete guidance to academics and policy advocates to be able to identify and fill information and research gaps and to practitioners to break down and reconstruct holistic gendered claims where every element of the refugee definition is informed by a gender-inclusive and -sensitive approach. The descriptor 'practical' should not be taken to imply a lack of rigorous and principled analysis. On the contrary, as stated in the introduction, because "research and advocacy use the same language", this book promotes and guides theoretical and evidence-based policy advocacy and legal practice.

With twelve substantive chapters, each one written by a different contributor, a comprehensive view of gendered refugee claims emerges. It includes a chapter from Asylum Aid's Debora Singer, 'Falling at Each Hurdle: Assessing the Credibility of Women's Asylum Claims in Europe', and chapters from Christel Querton and Claire Bennett, former Asylum Aid staff.

As well as legal professionals, medical and sociological experts author chapters, giving a deeper understanding of refugee status determination. The structural choice to provide a comparative approach across jurisdictions should allow practitioners to push the boundaries of law in their own jurisdiction by learning from others' successes and failures. This is important in the dynamic arena of refugee law, where national decision-makers ought to be searching for the "true autonomous meaning of the treaty" and recognising that "there can only be one true meaning" across transnational lines (R v Secretary of State for the Home Department, ex parte Adan [2001] 2 AC 477). Each contributor focuses on different jurisdictions, including the UK, Europe, Canada, and the USA, or an area of law such as human trafficking or armed conflict, and clearly identifies the current status of

gender and a plan of action for future research, litigation and awareness-raising for her readers.

Three main themes intertwine throughout: 1) the "unknowability of gender" in refugee law due to information/data gaps and "stories going untold" or unbelieved; 2) the desirability of expanding the existing categories of "refugee" in law and breaking stereotypes; and 3) the need to bring strategic litigation and undertake direct representation while consulting non-traditional sources of law and cross-fertilising from other areas in order to rectify 1) and achieve 2).

Debora Singer and Claire Bennett ('Lesbians and United Kingdom Asylum Law') explore credibility as an obstacle to gender and sexual orientation cases respectively, interrogating the expectation of decision-makers to hear corroborative or objective evidence, an expectation that is extremely difficult for claimants to meet in this context. Bennett captures the connection between an information gap and a protection gap when she says: "...information regarding hate crimes and discrimination experienced by LGBT groups is frequently absent from country of origin reports. A number of commentators have noted how this missing information is often interpreted by decision-makers to mean a lack of threat." (sources omitted). A claimant's personal testimony becomes the core evidence in her claim, but a potential consequence is that a decision-maker's gender and "sexual stereotypes" are then available as an influence on "women's cases and believability" (pages 145-148).

Bennett and Singer both provide information to plug other gaps: Singer by including a comprehensive best practice guide for decision-makers (page 112) and Bennett by signposting legal professionals to sociological studies that explore how sexuality is understood and the meanings of words like 'lesbian' and 'gay'. Another noteworthy chapter in this regard is Jane Herlihy's 'Psychological barriers to fair refugee status determination', which provides a wealth of information from the therapy context on the interplay between shame and disclosure and brings this information into the asylum context. Accessing non-legal information may strengthen a lawyer's presentation of a claim or a policy advocate's identification of a campaign by allowing them to better understand the background to a claim, to challenge the stereotypes, and to use that information to meet the elements of the refugee definition.

Deborah Anker's chapter ('Legal change from the bottom up') explicitly calls on lawyers to access non-traditional sources of authority because repeated use can "ma[k]e novel legal arguments more familiar, compelling, and legitimate to asylum officers, immigration

judges and other higher level institutional and judicial decision makers" (page 48). She suggests that lawyers catalyse legal change by developing narratives with their clients which portray women as more than victims or automatically falling within the particular social group ground. Maria Hennessy's chapter similarly argues that reference to human rights and international criminal law as well as academic material can effect a shift in policy and judicial discourse. She identifies research and strategic litigation opportunities in the European sphere, in response to what she sees as the need for "greater awareness...amongst legal practitioners and courts of the need to clarify and enhance the refugee law framework from a gender perspective" (page 191).

Gender in Refugee Law should be considered essential reading for practitioners, policy advocates, and academics. This book will not only benefit those driving gender issues, but all those involved in refugee law, given that the progression of gender claims will continue to enhance refugee law as a whole. In one of many examples of clever curation, the first and final substantive chapters act as bookends, both explicitly placing the onus of change on advocates and academics: an inspirational call to action (pages 38 and 283). As Foster says:

"...the continued problems in application of basic principle in this most litigated of human rights treaties calls for continued vigilance, monitoring and tenacity in ensuring that the Convention is truly able to provide protection on the basis of equality...."

Reading this book allows one to be vigilant, at the very least.

Introduction to Gender in Refugee Law is available for download: <u>http://papers.ssrn.com/</u> <u>sol3/papers.cfm?abstract_id=2425856</u>

The book is available here: <u>http://www.routledge.com/books/details/9780415839426/</u> Price: Hardback £90

Sector update

Immigration Act reforms fail to protect health of vulnerable pregnant women

The healthcare charging provisions of the newly passed Immigration Act 2014 fail to

address the barriers to accessing maternity care experienced by pregnant women who have claimed asylum and expand the range of services which are chargeable. This will contribute to significantly worse health outcomes for both mother and baby. Asylum agencies have been supporting Maternity Action's campaign to exempt pregnant women from charging to ensure all women have access to the maternity care they need.

Changes now embedded in the Act extend charging to all migrants living in the UK who do not hold Indefinite Leave to Remain (ILR) status. In addition, charges will now be levied on some primary care services (including GP care beyond the initial consultation, dental, optical and pharmaceutical services) as well as some Accident and Emergency services.

The Act introduces two key changes in primary legislation:

A change to the definition of 'ordinary resident' for the purpose of accessing NHS services. Currently, anyone classified as an 'ordinary resident' (including anyone living here on a lawful and settled basis) is entitled to free NHS hospital treatment. The new law redefines this classification to only include migrants that have ILR, which can only be applied for after a minimum of 5 years of residence in the UK.

Introduction of a 'health levy', or a new charge for migrants as part of their visa application, prior to entering the UK. The levy will be paid as part of the visa fee and will grant access to basic primary and secondary NHS services.

The government has confirmed that refugees and asylum seekers will continue to be exempt from NHS charges, however, the government seems likely to retain charging for refused asylum seekers in England who are not in receipt of Home Office support. Similarly, vulnerable migrant women with undocumented status are likely to remain chargeable for maternity care.

Maternity care is classed as 'immediately necessary treatment' and should not be refused or delayed for any reason, including inability to pay. Despite this provision, it is apparent that charging policies and practices deter vulnerable women from engaging with maternity services.

To learn more about the campaign or to get involved, such as through writing to your MP, go to: <u>http://www.maternityaction.org.uk/wp/policy-campaigns/campaigns/access-to-nhs-maternity-care-for-vulnerable-migrant-women/.</u>

Significant Legal Issues

EN v The Secretary of State for the Home Department [2014] ScotCS CSIH_47 (28 May 2014)

This decision deals with the assessment of the well-founded fear of an applicant where her 'home area' in her country of origin is in dispute. The Inner House was asked to consider whether the First Tier Tribunal had erred in only applying a risk assessment to Harare, where the applicant had lived for 6 years, rather than additionally exploring an internal relocation enquiry. The decision demonstrates a lack of reasoning on this point and fails to include any appropriate test for assessing a home area.

The applicant, a Zimbabwean national, had claimed that she was at risk because of her support of MDC. Her claims to political involvement and harm suffered as a consequence were not found to be credible. She was from Gutu, but had spent the six years prior to leaving Zimbabwe in Harare. At the time of the hearing, it was conceded by the Home Office that individuals could not be returned to Gutu, but the First Tier Tribunal held that the applicant could return to Harare.

She argued that the First Tier Tribunal had erred by assessing the risk she faced in Harare rather than enquiring whether it would be unreasonable or unduly harsh for her to relocate there. She submitted that the factual basis before the First Tier Tribunal did not support a finding that Harare was her home as she had made her refugee claim in relation to attacks on her home in Gutu. The SSHD argued that internal relocation did not arise because Harare was to be properly considered as her home area. It was unclear in the previous decisions whether the Tribunals had considered internal relocation factors. The

SSHD argued that there was enough in previous decisions to conclude that whether return to Harare was unduly harsh or unreasonable had been considered.

The Inner House quoted the following guidance from EM¹:

"In common with many other parts of Africa and, indeed, other parts of the developing world, Zimbabwe has seen a process of urbanisation, whereby persons from rural areas have migrated to the cities, for the purpose of seeking work.....

A person who has migrated from the countryside to city, or whose forebears did so, may well look on his or her rural place of origin as their "home area". ... For our purposes, however, in determining whether a person is entitled to asylum or other international protection, a person's home area must be established as a matter of fact. **Someone who**,

for example, has for years before leaving Zimbabwe made his or her home in Harare must have a claim to international protection assessed by reference to whether that person is at real risk of persecution in Harare; and, if so, whether he or she can reasonably be expected to relocate to another part of Zimbabwe, where no such risk exists and where it would not be unduly harsh to do so... The fact that the person concerned feels an attachment to a rural area, and even has relatives living there, does not mean that that area falls to be treated as the home area for the purposes of determining entitlement to international protection." [emphasis added]

The Inner House, without further enquiry into the applicant's lifestyle in or ties to Harare, held that the applicant had "made her life" in Harare. This was sufficient to find that it should be considered her home area. The applicant's age is not made known in the decision, but she had claimed to be politically active in the 1990s, indicating that she is of an age such that 6 years in one area does not necessarily establish a lasting connection nor a severing of all ties other than some vague nostalgic feeling towards the place of her birth.

It is possible, of course, that more than one place can be considered to be a home area for an applicant, and it may be that the actual finding itself of the Inner House cannot be faulted. However, given the significance of the determination, it would be a safer decisionmaking process had further consideration been applied and reasoning explained in the making of that determination. This is arguably particularly important with claimants like the applicant in this case. The additional considerations of harshness and reasonableness in an internal relocation enquiry may have a considerable impact on the outcome of a claim, particularly where the travel and settlement of a single woman is at issue.

In Australian jurisprudence for example, decision makers have looked to more specific and identifiable factors other than whether a "life" or "home" has been made, whatever those terms may mean. The existence of substantial ties² or a meaningful connection to a location is explored, which may be evidenced by, for example, the ownership of property, relatives in or even an emotional link to an area³.

1. EM & Ors (Returnees) Zimbabwe CG [2011] UKUT 98

2. SZQEN v Minister for Immigration and Citizenship [2012] FCA 387 (18 April 2012)

3. 1304507 [2013] RRTA 342 (9 May 2013)

For the full text, please see: <u>http://www.bailii.org/scot/cases/</u> <u>ScotCS/2014/2014CSIH47.html</u> *Women Asylum News* 123 (May/June 2014) Asylum Aid and Rights of Women are working together on joint strategic work to disseminate legal information on gender, asylum and refugee issues. Asylum Aid would like to thank Rights of Women's Adrienne Anderson for sharing the above case summary. For more information and case summaries, you can join the Women's Migration and Asylum Network. Email <u>wman@row.org.uk</u> or visit <u>www.rightofwomen.org.uk/current.php</u>

National News

UN Special Rapporteur on Violence Against Women blocked from visiting Yarl's Wood.

The UN Special Rapporteur on Violence Against Women, Rashida Manjoo, paid a two week visit from 31st March to 15th April to the UK at the invitation of the UK Government. Her visit included meetings with Government Departments and NGOs.

On 31st March, Rashida met civil society through the End Violence Against Women Coalition which provided a briefing for her. At the meeting, Women for Refugee Women and Asylum Aid stressed the importance of her visiting Yarl's Wood Immigration Removal Centre, as this was not on her official itinerary.

At her press conference at the end of her visit to the UK on 15th April, Rashida Manjoo issued a <u>press release</u> in which she expressed concern at her exclusion from Yarl's Wood "because if there was nothing to hide, I should have been given access."

Rashida will be presenting a report on her visit to the UN which will be made public in the autumn. This is expected to include her findings related to women asylum seekers and refugees.

As the government leads the biggest ever push to combat sexual violence in conflict, are we failing victims of this very issue on our doorstep?

From 10 to 13 June, the government hosted representatives from all over the world in London for a <u>Global Summit</u> to end sexual violence in conflict. While Asylum Aid supports all efforts aimed at preventing this horrendous form of violence around the world, it is imperative that its victims are given adequate protection if they seek asylum in the UK. Our research shows, however, that survivors are often failed by our asylum system, just when they thought they had reached safety.

If the UK is to speak authoritatively on the protection of women and girls in conflict on the global stage, Asylum Aid <u>argues</u>, it must also address the treatment of these same women, when they arrive to seek asylum on our shores. That we continue to call vulnerable victims liars within our asylum system, while publicly touting our support for them abroad smacks of a deep hypocrisy.

The <u>international protocol</u> put forward at the summit is shamefully silent on the issue of protection for asylum seekers. The government must take urgent practical steps to remedy this omission by conducting a review of its decision-making procedures, providing gender-sensitive training to all Home Office asylum case workers, and making it a priority to tackle the culture of disbelief that makes seeking asylum another form of torture for so many women.

Fresh scandal at Yarl's Wood prompts Serco investigation

Serco, the private security company that runs Yarl's Wood immigration detention centre, has been accused of failing to adequately investigate allegations of sexual abuse of women in its care. Keith Vaz MP summoned senior Serco management staff to appear before the Home Affairs Select Committee, of-which he is the chair, on Tuesday 24 June to explain their actions, following the publication of the company's report into its investigation of a claim made by a Pakistani detainee that she had been sexually assaulted three times by a health worker at the centre.

MPs and campaigners have expressed their concerns over the quality of the internal investigation carried out, after it emerged that the report, which was made public only after a <u>legal battle</u> with Guardian News and Media, revealed that the woman's credibility was questioned by Serco staff on the basis that her account was too detailed and consistent. Furthermore, the report criticised one Serco employee to-whom the woman told her story, and who believed her, for failing to consider the possibility that the woman might be lying. The report concludes that this employee requires further guidance in order to dissuade her from making similarly sympathetic judgments in the future.

Following the report's publication, Keith Vaz <u>said</u> he found its contents "shocking", and warned that this was "clearly the tip of the iceberg as far as these allegations are concerned and the way Serco has dealt with them."

Serco's contract has been <u>blighted</u> with controversy, over deaths at Yarl's Wood, accusations of sexual abuse and the detention of pregnant women. Recently, a former employee *Women Asylum News* 123 (*May/June 2014*) 9

turned whistle-blower <u>substantiated</u> claims previously made of neglect and abuse of women in the centre as well as of the existence of a 'culture of disbelief' in the centre, and 'antiimmigration' sentiment being endemic amongst staff.

Neither is this the first time that criticism has been levied at the Home Office and Serco for the secrecy that surrounds the management of the centre, as reported above, the UN Special Rapporteur on Violence Against Women was denied access to the facility during her visit to the UK in April.

Dr Bob McGuiness, Chief Executive of Serco's UK division, <u>apologised</u> for the repeated scandals to the Home Affairs Select Committee on Tuesday. It was revealed at the meeting that in the course of Serco's seven years running Yarl's Wood, there have been 31 investigations carried out into improper sexual contact between staff and detainees, which have resulted in the dismissal of ten members of staff. David Winnick MP for Labour, who sits on the Committee, has said that he is unsatisfied with the apology, however, and that he and colleagues will continue to investigate the issue.

Hypocrisy over FGM

The British government has been accused of hypocrisy over its treatment of women who seek asylum based on fear of being subjected to FGM on return to their country of origin. This has been highlighted in the case of <u>Afusat Saliu</u>, who fled Nigeria to save her daughters from FGM and was subsequently deported.

Despite the government's strategy to end violence against women and girls and FGM becoming a talking point in Westminster, the continued removal of women at risk is at odds with the current standpoint of the government. FGM has been illegal in the UK for almost 30 years and the legislation has recently been <u>extended</u> to include extra-territorial acts of FGM (performing FGM while abroad) and to apply to both UK citizens and permanent residents.

Over the years, however, there have been many cases of the UK government sending women back to their home countries who are claiming asylum on the grounds that they or their daughters would be subjected to FGM if they return. FGM is viewed by the <u>UN</u> as grounds to seek asylum and is considered both torture and 'inhuman and degrading' treatment.

International News

Egypt brings in law on sexual harassment

The Egyptian government has <u>criminalised</u> acts of sexual harassment; outgoing President Adlu Mansour issued a decree on 5th June declaring penalties of up to five years jail time or fines between \$400 and \$7000. This is the first time the country has had a law defining sexual harassment and it is defined by the decree as 'any sexual or pornographic suggestion or hints through words, signs or acts'.

Offenders in a position of power, uniformed or armed will receive a minimum penalty of two years jail time and the punishment is doubled for repeat offenders.

Women's groups in the country however, have expressed doubt over whether or not this new law will have any real effect on the way sexual harassment is dealt with by the authorities, many being involved or even perpetrators of this crime.

Founder of the campaign "I saw harassment", which documents sexual harassment of women, Fathi Farid says the penalties were of "no value" because they gave the judge the right to choose between a fine or jail and that the penalties were "not enough for cases involving sexual assaults by mobs".

This scepticism has been echoed by other campaigners and activists in the country, where a UN study found 99.3% of Egyptian women had been subject to abuse.

A spokesperson for HarasssMap, an organisation tackling harassment of women, commented that "The biggest issue is still the cultural one: society doesn't see it as a crime" And senior police Chief, Colonel Ahmed El Dahaby echoed these concerns; "Our traditions are the thing that stop people from filing charges. The girls are scared – they're too ashamed "

Almost a year on from the occupation of Tahir Square where the endemic levels of harassment began to be brought to light, this new legislation is a step in the right direction; however it is yet to be seen if it will be properly enforced.

Women's rights ignored in Sudan

The case of <u>Meriam Yeyah</u> Ibrahim has brought international media focus to Sudan. Meriam was being held in custody awaiting a possible death sentence for the crime of apostasy, the renouncement of faith, until Monday 23 June. She has been released following an international outcry over her sentence of 100 lashes for the crime of adultery, as her marriage to a Christian man is not recognised, and death by hanging for converting from Islam to Christianity.

Meriam was taken directly to an undisclosed safe location upon her release from jail in Khartoum with her new-born baby and two-year-old son. Her lawyers are now working to get her to safety in the United States, where her husband already lives.

Amnesty International has stated that they do not know of anyone who has actually been hanged for apostasy in Sudan. Since the criminal code was introduced in 1991, charges have always been overturned or dropped and the prisoners released, very often after renouncing their faith, although in this case, Meriam refused to renounce her Christian faith.

This case also highlights the ongoing struggle for women's rights to be fully recognised in Sudan. Meriam had to give birth in shackles and was allowed two years to nurse her baby before she was to be executed.

In August 2013 Amira Osman Hamid was arrested in her village for leaving the house without a headscarf on. She was charged with 'indecent dress', the penalty for which is flogging. In 2009 journalist Lubna Hussein was also arrested under this law, along with 12 other women for wearing trousers. Lubna was sentenced to a fine instead of flogging due to international attention. These arrests were made under Article 152, a vague law which prohibits, 'indecent' dress but it is so vague that the law is applied in an arbitrary manner and discriminates heavily against women.

Women and men in Sudan have been continually speaking out against the state sponsored torture and sexual violence they endure and campaigns are beginning to gain momentum, however the state continues to react harshly. Khartoum ratified the African Charter of Human Rights in 1986 and these punitive arrests, trials, executions and acts of extreme violence by the state are in contravention of almost every article.

UK Training and Events

IARS Training

IARS is offering online training on gender sensitivity in the asylum process; the training is available online for free or as an e-book or hardcopy for £4.99.

This is part of a three–year Comic Relief and Matrix Chambers funded project Abused No More: The Voices of Refugee and Asylum-seeking Women which is a user-led skills development and research programme focusing on the impact of gender-related violence on refugee and asylum-seeking women.

The online training programme is primarily aimed at legal and health professionals but it may be also used by other practitioners who work directly with refugee and asylum-seeking women.

To find out more visit http://www.iars.org.uk/content/online-training-gender

Publications

Gill, A K., Strange C, Roberts K.

'Honour' Killing and Violence: Theory, Policy and Practice

This book explores 'honour' based violence, from history and culture to psychology; recommendations are made which are both practical and theoretical. This book is for anyone concerned with honour based violence and wishing to know more whether personally or professionally.

The book explores the issue of honour killings and violence as a gender-based form of discrimination and looks at instances around the world of these occurrences and how various agencies handle them as well as the cultural and sociological reasons.

The book also provides substantial information on the historical basis for such violence.

Available now

Hardback: £70, Paperback: £22.99

You can purchase this book online at: <u>http://www.palgrave.com/products/title.aspx?</u> <u>pid=646860</u>

Charter of rights of women seeking asylum



Endorsements: 350

Google group membership: 165

Refugee Women and the Referendum in Scotland

The Refugee Women's Strategy Group (RWSG) is working in partnership with the Scottish Refugee Council to provide an event for refugee women on the forthcoming referendum on Scottish Independence.

At this event, we will provide an opportunity for refugee and asylum seeking women to explore the issues around this crucial decision. Whether we have the right to vote or not, refugee women feel strongly about our contribution to Scotland's future.

Our event will be held on 7th August – just over 1 month before the referendum on the 18th September and it is open to all refugee and asylum seeking women.

"We are particularly keen to involve young women as the voting age has been extended to 16 & 17 year olds for this election." (Vuyelwa – RWSG)

We will provide keynote speakers from both the YES and NO campaigns to outline the key benefits for becoming a self- governing country or remaining in the UK.

"Like many people in Scotland, we have had enough of scaremongering. We want to know what would be good about either option." (Rose – RWSG)

There will be opportunities to ask questions and discuss with each other the key points raised. We want the event to be participative, not being talked at. We want to provide the opportunity to really analyse what is being offered from both sides of the debate and to work towards an informed choice.

We want to be part of shaping Scotland's future, we are Scottish now, we and our families feel connected to Scotland, so we want to make sure that we use our votes (where we have them) wisely.

For more information on the Charter and the Missed Out campaign, please go to <u>www.asylumaid.org.uk/</u> <u>charter</u>

If your organisation would like to endorse the Charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk

She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

Afraid....isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we cay in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

Please support us

Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.

You can make a donation via our website: www.asylumaid.org.uk/pages/givo_now.html OR send it to us by post with this form:

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