

Indigenous Dispute Settlement: Learning from the Panay Bukidnon Tribe

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Abstract

Settling dispute is of utmost importance in the maintenance of social order. Regardless of the forms of governments, its nature of existence is universal throughout history and that it exists to regulate conflict. Different government institutions exist and are tasked to maintain order. The focus of dispute settlement as a process is to reach an agreement between conflicting parties through third party mediator/ arbiters. In the Panay-Bukidnon culture there is no clear distinction between arbitration and mediation. The indigenous cultural communities of Central Panay Mountains, collectively called the Panay Bukidnon, have been able to preserve their indigenous dispute settlement system to this day. This research study was conducted to explore the uniqueness of the Panay Bukidnon's dispute settlement process. Ethnographic investigation revealed several salient features of the Panay Bukidnon culture, specifically in the area of peace process. The culture of vengeance is the main player in dispute settlement processes among the Panay Bukidnon tribe. Furthermore, key personalities such as the recognized elders, locally known as magurang and the padara or village emissary are essential in ensuring the success of the peace processes of the tribe. Expressions of grief and vengeance known as kantang and ugh at are also revealed during disputes that involve loss of life.

Key words: indigenous dispute settlement, *Panay Bukidnon*, indigenous people, *magurang*

1. Introduction

Settling dispute is of utmost importance in the maintenance of social order. Regardless of the forms of governments, its nature of existence is universal throughout history and that it exists to regulate conflict. Different government institutions exist and are tasked to maintain order. The mandate of the regular courts is to settle disputes by rendering fair judicial decisions and these are supported by the police and even the military institutions for their execution and compliance. Resolving dispute requires conscious intention of addressing it through various means in order to minimize its impact (Schellenberg 1996). As societies have evolved into a more complex state, the process of settling disputes has also become more complex with new domestic and international laws intertwining in a globalized world.

Regardless of the ever evolving dispute mechanisms, the most preferred form of settling dispute is mediation and this is most popular among the cultural communities in the Philippines (Democratic Progress Institute 2012). This type of settling dispute is simple and requires face to face interactions of the elders representing both conflicting parties. The focus of dispute settlement as a process is to reach an agreement between conflicting parties through third party mediator or arbiters. In the Panay- Bukidnon culture there is no clear distinction between arbitration and mediation. The process may start with mediation; however, if both parties cannot agree on settling their dispute, the elders may shift to a more authoritative process of arbitration. Since cultural communities are small in number, settlement as a process is the most effective and fastest way of addressing disputes. As the Philippines developed into a nation-state, the process of disposing justice became more complex in structure and processes. In contrast with the early justice system that was dominated by elders, disputes and crimes were handed over to the court (Reyes 1988). The state strongly encourages its people to resolve disputes peacefully and to rely on courts and judges to hear and decide on cases brought to its attention and settle disputes locally (Kottack 2006).

Placing the law in the hands of its citizens is considered illegal in modern states, although this practice is deeply culturally rooted in some tribal communities. The enforcement of law and order requires government institutions to constantly make and implement laws in order to address disputes among the people before it reaches a level that may threaten social order. The state may use physical force, which is exercised by the police and military to ensure that the citizens are protected from both internal and external threats (National Institute of Justice 2015)

The state's mechanisms of control require the presence of the government institutions throughout its sovereign territory. This enables the state to efficiently monitor the extent of compliance of its citizens to the laws it has created. Before the birth of modern states, these control mechanisms were oftentimes delegated to the local lords or elites (Magno 1989). Despite the onslaught of globalization, dispute settlement among tribal communities in the Philippines is predominantly anchored on a mode that Max Weber identifies as traditional authority (Cosser 1977). In areas where the state apparatus are absent or not regularly present, the local ways of settling disputes are still being practiced by the people. The indigenous practices related to dispute settlement reflect one of Weber's modes of authority -the traditional authority exercised by traditional leaders of the indigenous communities in Central Panay.

The Evolution of Dispute Settlement in the Philippines

Before the Spanish colonization of the Philippines in the 1500s, its inhabitants already had a process for resolving disputes among the tribe members. Elders in the community were afforded high respect by the people, and disputes were brought before the village elders (Zaide 1987). People regarded by the community with utmost respect and credibility play the role of mediators or arbiters to address disputes in their early stages, thereby preventing their escalation to a more violent phase where the role of traditional mediators became effective (Jocano 1968). The power exercised by the elders in resolving conflict was very broad. They functioned to examine the evidence, evaluate testimonies, render judgment and define the penalty for the offense to preserve or restore community relationships (Durante 2005).

Indigenous cultural communities across the Philippines have varied ways of settling disputes. However, the pseudo-judicial mechanisms are aimed at a common goal, which is to manage and resolve disputes within or between indigenous communities before they escalate to a higher level of dispute that may affect the social order in the area (Acuña 2009). In the words of a *magurang*, “economic hardship is oftentimes the result of violent clan wars and life becomes miserable....relocating to another village is not that simple”. At a certain point of a clan war, both clans realize the necessity of peace and the process starts with the elders discussing about the settlement.

Earlier forms of state lacked adequate machinery to effectively centralize power and solely dominate through the use of coercive force. Thus, control of order was more dependent on local power (Reyes 1988). Even now, dispute settlement at the village level is not bounded by rigid rules and procedures as in the regular courts. Those involved in the process have more flexibility in addressing local disputes regarding decision making. The objective is to settle disputes within the village or community in a very fluid manner that is anchored on time honoured Filipino value system. This process is also perfectly attuned with the income level of the people and does not require the hiring of expensive lawyers and long period of litigation.

Traditional Dispute Settlement in Modern Philippines

The Republic of the Philippines recognizes the right of indigenous people to practice their culture within the parameters of the constitution. In 1997, the Philippine Congress enacted Republic Act 8371, known as the Indigenous Peoples' Rights Act to protect the welfare of indigenous peoples (La Viña 2015). The law allows the indigenous people to practice their culture and encourages them to practice their commonly accepted dispute settlement practices provided that these are in accord with existing laws of the Philippines. This policy also helps reduce the voluminous cases that are still undecided by the regular courts.

The National Commission on Indigenous People (NCIP) is an agency of the government that is tasked to formulate and implement programs and policies for the indigenous people. Because of the high rate of illiteracy among the indigenous people, the agency is primarily concerned in protecting indigenous peoples' ancestral domains, their beliefs, customs and traditions. The NCIP has evolved through a series of government reorganizations in an effort to properly address the multifarious issues and concerns confronting the country's diverse indigenous cultural communities, and to effectively, efficiently and responsively deliver basic services to them (<http://ncipro67.com.ph>).

Prior to the enactment of RA 8371, there were other laws passed recognizing the rights of the indigenous people, particularly to their ancestral lands and domains. However, these laws did not fully take into account the other needs of the indigenous people. Because of this, a more comprehensive law was needed that seeks to stop prejudice against indigenous people through recognition of certain rights over their ancestral lands and protect the rights of the indigenous people not only to their ancestral domain but to social justice and human rights, self-determination and empowerment, and their cultural integrity. This then gave birth to movements for a comprehensive law that will protect not only the lands, but human rights of the Filipino indigenous people (Damaso, Elena; de Guzman, Ma. Vicenta; Manzano, Florence, eds. 1998)

The right to land and self-determination are among the most significant concerns for indigenous people groups. Despite the presence of international and national laws that protect the rights of indigenous people, reality shows that they are rarely involved in the decision-making processes on matters that significantly impact their lives (Cruz 2005). Their right to self-determination is more practiced in breach than in compliance with the legal mandate. The Philippines, being a unitary state has an active and very influential national government. In effect, most of the projects and programs aimed at improving the quality of life of indigenous people are still determined by the national government. As a result, the traditional role of elders in dispute settlement has remained unchallenged and has become institutionalized.

The Local Government Code mandates the implementation of the village justice system, locally known as the Katarungang Pambarangay. The law states that offenses punishable by imprisonment of less than one year and fines of five thousand pesos (P 5,000) and below are placed under the jurisdiction of the village justice system before they can be elevated to the regular court. Local government units are mandated to implement the provisions of the village justice system which aims to resolve conflicts without going through rigid legal procedures at the village level. This decentralized approach of dispute settlement also helps decongest the regular courts of voluminous undecided cases. In the mountains of Central Panay, all forms of minor and major offenses are brought to the attention of the elders for possible settlement. According to all *magurangs* that were interviewed “all cases, violent or not, are under the scope of indigenous dispute settlement, from wife beating to massacre”. This is one area of disparity between cultural norms and state legal system that needs to be studied and addressed as soon as possible. The law specifically authorizes indigenous cultural communities to settle village disputes through indigenous mechanism. This is not only legal but practical due to the multi-ethnic nature of the Philippines. The beauty of being a melting pot of unique cultures also brings the challenge of diverse world views. Thus, every ethnic minority in the Philippines have their own practices in various aspects of life, including dispute settlement.

It is interesting to note some of the indigenous dispute settlement processes that are still being practiced today. Indigenous peoples in Luzon continue to practice *bodong* and *kadawyan*. *Bodong* is an indigenous governance institution that originated in Kalinga which literally means, “Peace pact”. *Bodong* developed as an offshoot of the head hunting practices in Kalinga in the early years. Over time, *bodong* became a system for establishing and maintaining relationships and alliances between villages. Due to the movements of people, it spread beyond Kalinga to neighbouring areas, such as Abra, Eastern Mountain Province, as well as in Cagayan and Isabela (Acuña 2009).

In some Muslim fundamentalist states, there is no clear distinction between the judicial system and religion. The justice system is strongly anchored on the Koran especially on matters pertaining to morality. As Muslims and citizens of the Philippines they are subject to the laws enacted by the national and local law making body and not subject to the laws emanating from the Koran. However, on matters related solely to family relations, they have the option of applying the Sharia law in settling family related disputes. As provided in the Koran, compromise is encouraged in cases of murder. This crime may be extinguished by an act of remission from the brother or relatives of the victim, or by granting compensation or other kinds of retribution to the victim’s brother. In contrast to this, the Rules of Court of the Philippines consider murder as a public crime. An offer of compromise by the accused may be taken as an implied admission of guilt. Even if the offended party agrees to an amicable settlement, the prosecution cannot be compromised and prosecution shall still be executed (Acuña 2009).

Another form of indigenous conflict resolution is the *rido* which is practiced by the Maranao tribe. *Rido* or blood feud is a cyclic system of vengeance which results in killing and/or retaliation among Maranao families and clans in Lanao. *Rido*, usually involving families, is characterized by initial violent reactions to a perceived insult or hurt caused by an individual to another.

It is followed by retaliatory actions and counter-retaliatory attacks by members of the disputants' families. Without any intervention, such acts may last for as long as three generations (Saber 1960; Caris 1991 in Doro 2005). *Rido* has brought about serious problems, such as the loss of lives, destruction of property and disruption of peace and order, which become hindrances to socioeconomic, political and spiritual development in Maranao society. (Caris 1991 in Doro 2005).

In the hinterlands of Panay, indigenous communities have maintained their indigenous dispute settlement. This is attributed to the historical development of the country. Indigenous people, especially those who settled in the mountains, were not subjugated by the Spaniards (Corpuz 1989; Scott 1982). There are no literatures as to why the Panay Bukidnon people have fled deeper into the forest of Central Panay and most scholars have simply assumed that they fled from the abusive rule of the Spaniards. Many *magurangs* have narrated folktales of supernatural heroes who fought against the abusive practices of the Sio (meaning Spaniards) and managed to kill hundreds of their enemies. As to why the Spaniards or even the Japanese did not extend their control over this territory, this can be explained in the words of some *magurangs* “*the Spaniards and Japanese have never set foot on the mountain ranges of Mt. Baloy... the mountain ranges were covered by trees and you can get lost without finding your way out...the paths were only known to the elders*”. They were able to keep their culture because their geographical location is protected by series of difficult and harsh mountain ranges.

The mountain people of Panay today are primarily concentrated in the interior slopes at the headwaters of such rivers as the Pan-ay, Jalaur, Aklan, Bugasong, Ansuage, and Ulian. These hill people are called Bukidnon by the lowlanders. To distinguish them from the Ati or Negritos, who are also found in the mountains, the Christian inhabitants in the lowlands have given these non-Christian groups more specific names. Those living in the mountains of Capiz and Aklan are called Mundu while those residing in Iloilo are interchangeably called, Buki, Putian, and Sulod; and those from the uplands of Antique are known as Buki. The larger settlements of these mountain folks inhabit the mountains of Tapaz and Jamindan in Capiz; in Libacao and Madalag in Aklan; in Lauaan, Bugasong, and Culasi in Antique; and in Janiuay, Lambunao, Calinog and Maasin in Iloilo. So far, there has been no official census made on these people (Jocano 1968)

Dispute Settlement through the Eyes of the Panay Bukidnon Tribe

A review of literature reveals that studies regarding the Panay Bukidnon culture are very scarce, thus, this study focuses on the dispute settlement framework of the Panay Bukidnon tribe to provide a more in-depth understanding of how dispute settlement is perceived in the light of their tribal culture. A structural-functional framework of analysis was applied to answer two central questions, “What is dispute settlement from the perspective of the Panay Bukidnon tribe?” and “How does the Panay Bukidnon tribe operationalize dispute settlement?”

Vengeance is encouraged in Panay-Bukidnon culture. The value of a person is expressed in a person's ability to keep his honor in the community (Brandon and Richard 1999). According to many *magurangs* “*if you have no honor, your value as a person is lower than the price of a tobacco leaf and to avenge the loss of a clan member is to keep the value of one's honor intact and beyond question*”. Vengeance has a very important role in the justice system in the Panay-Bukidnon culture. For most members of the tribe, the penalty of incarceration cannot compensate for the loss of a family member. The bereaved family considers vengeance as a shared community obligation rather than a personal pursuit. Failure to avenge can create an impression of the crime committed as just and predisposes a family to abuse by other members of the community. Retaliation that results to death of members of the other tribe or family provides a counterbalance for the loss. For the Panay Bukidnon, vengeance sustains morality and serves as a control mechanism to regulate human conduct and strengthen social order in the community.

Whitman (2004) argues that people need to rationalize their actions of committing violent acts of vengeance by anchoring it on self-defense or extreme emotional disturbance. In the case of the Panay-Bukidnon, committing acts of vengeance is justified as a community obligation. The culture of vengeance is greatly influenced by the perception of bravery as a desirable virtue that brings many advantages to a person. In the Panay Bukidnon tradition, the reputation of being brave grants a man the privilege of selecting a wife from distinguished clans in the community. Brave men are highly regarded and are entitled to a *lapi* or share from the harvests and hunts of other people.

In the process of settling disputes, the role of key personalities among the indigenous people in Central Panay is to encourage both parties to embrace the orientation of positive interdependence of goals that is founded on cultural values. The foundation of this orientation is trust and the honest desire of both parties to settle their disputes for the good of both parties. In cases where the goals of both parties have no common meeting ground, the key personalities involved in the dispute settlement process have to redefine the goals so that both parties can come to an agreement. The model of indigenous justice system is not a compartmentalized model similar to the western justice system which is highly vertical in structure and processes. A case may start in a district court and end in the Supreme Court because of multiple appeals by the concerned party. In this model, only the accused and the accuser are involved in the process and the goal is always to punish the guilty in order to realize the concept of justice. However, in the Panay-Bukidnon culture, every member of the family or clan is involved in the execution of justice. The continuum represents the entire process, from disclosure of problems, to discussion and resolution, to making amends and restoring relationships. The methods used are based on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature (Yazzi as cited by Melton 2005)

The Indigenous Process of Dispute Settlement

Magurangs perform a very crucial role and are in fact, the center of the dispute settlement process. The word *magurang* comes from the word “*gurang*” meaning an elder. They act as mediator or arbiter and in so doing consciously preserve their honor and integrity and maintain their prestige in the community. A *magurang* is someone who is usually an old person, accorded with respect by the community in recognition of his wisdom and capacity to discern community concerns including dispute settlement. The respect that a *magurang* earns from the community results from his possessing knowledge beyond that of ordinary people and deep understanding of the culture. In Ethiopia, indigenous conflict resolution mechanism helps maintain social order by controlling and resolving conflicts among tribes. In the absence of regular courts, the community defines the justice system of fairness and punishment through local nobles and chiefs as the arbiters of conflict (Assefa 2001).

In many cases, the indigenous customary laws may contradict the western frame of justice, which is punitive in nature and highly compartmentalized. In the Panay Bukidnon culture, being old implies possessing qualities such as experience and wisdom, which are necessary for deliberating community concerns including dispute settlement. However, not every old person can become a *magurang*; one must prove that he is capable of discernment and is a leader who can be trusted and has the ability to settle disputes. In most cases this role is inherited by the son of a recognized *magurang*, who receives early training in the art of settling disputes. In some cases, a person may become a *magurang* even though his father is not a *magurang* due to his recognized ability to settle disputes in the village.

When people are in need, they go to their recognized *magurang* to seek his aid. The help that a *magurang* provides is not only limited to settling disputes, but may also include financial, security, medical, and even personal assistance to community members. For this reason, *magurangs* usually have more stock of wealth than ordinary people and are often perceived by the people as “patron”. Since the people often seek assistance from the same *magurangs*, their judgments on similar cases become consistent and fair. This is similar to the Gada system in Africa where there had been constant elders who adjudicated every case under their jurisdiction (Endalkachew Birhan, Girma Bekele)

The *magurang*'s power and prestige in the community rely on his ability to fulfil what he had promised on behalf of his people. During a mediation or arbitration process, for example, when a *magurang* agrees to indemnify the victim of a murder case, he must meet the amount stated or else lose the confidence of other *magurangs* and even his own people. However, the effort to meet the amount is not solely the responsibility of the *magurang*, but the entire clan under him. Each member is given a quota, calculated based on his capacity to pay, that has to be achieved at whatever cost. The meeting between or among the *magurangs* would be easier to convene if they have established an alliance called *higara*. *Higara* as an alliance is sealed by the exchange of valuable possession/s like *talibong* (indigenous bolo) or plow. The alliance does not involve other members of the community, but the agreement must be recognized by all members of the community. Wolfenbarger (1990) asserted that gifts are more valuable to participants for the symbols involved than for the material benefits exchanged. Schieffelin (1980), on the other hand, viewed the giving of gifts as a rhetorical gesture in social communication. Exchange of objects can be understood as expressive statements in the management of meaning.

The transaction becomes the basic expressive act by which symbols mediate cultural meanings. Gift-giving then is probably a vehicle of social obligation and political manoeuvre (in Sherry, 1983).

Before the meeting is held, actions are done to ensure the willingness of both parties to submit themselves to the community's dispute settlement procedure. Each party informs the *padara* or village emissary that they are open for negotiation. In the meeting of the council of elders, all attendees must dispose themselves of their weapons. Village officials present can join in the discussion if they are *magurangs*. In such occasions, they represent themselves as *magurangs*, not as barangay officials. The direct parties of the conflict do not attend and are only represented by their recognized *magurang*. The meetings focus on how much *bugaysakalag*, an indigenous term for blood money, will be paid. In the past, the unit of payment was one *linansang* (nail) –meaning one *talibong*. *Linansang*, as a word, is used because to insert the bolo to its handle, one has to nail it. For the Panay Bukidnon, one's life is associated with his bladed weapon or *talibong*, so when life is taken, it should be paid with its equivalent- the *talibong*. At present, payment has evolved to include other things provided they are valuable, although usually the total value is estimated in terms of money. The purpose of the payment is for the offended family to continue with their lives. Levi Strauss (1965) stated, "Goods are not only economic commodities but vehicle and instrument for realities of another order: influence, power, sympathy, status, emotion..." (Kass. 2002).

Once the *bugaysakalag* has been determined, the *magurang* concerned will ensure and facilitate the payment. The burden of the *bugaysakalag* is upon the whole clan, not only on the assailant. Thus, the amount, in kind or its monetary equivalent, will be distributed among the members of the clan equitably, that is, according to one's capacity to pay. If a member cannot contribute due to poverty, he can loan from the *magurang* with the condition that the value of the loan would be doubled if he failed to pay on time.

The Price of Negotiation Failure

There are instances when the disparity of both goals may be so wide that locating a common meeting ground would prove to be a struggle. This is an example of a win-loss orientation wherein one party does not want the conflict to be settled peacefully. According to the recognized elders, they are only effective if both parties have the honest desire to peacefully settle their conflict. Failure to settle a conflict may escalate to a full-scale tribal or clan conflict. In this case, the conflict is not only an issue of security but also an issue of economic deterioration. Agricultural production is sacrificed to provide security to those performing agriculture works. Instead of ten people ploughing the fields and producing more crops, only half perform agricultural work while the rest must stand guard to ensure security.

During a clan war, members of one clan may not have peaceful access to shorter routes leading to the local market because of the fear of being ambushed by the other clan. They are then forced to look for another market, which is usually far from their village. In effect, they have to travel for days to buy what they need and spend extra money for this purpose. In one interview, an elder who is a resident of Barangay Taraw, Libacao said that they used to buy their goods in the town of Calinog, Iloilo; however, because of a clan dispute, they were forced to buy their goods in the town of Libacao, Aklan which required an additional day of travel in order to reach the market and to stay overnight before they could start their journey back to their village.

Dispute Settlement Traditions and the Other Aspect of the Panay Bukidnon Culture

In the Panay Bukidnon culture, dispute settlement involves not only unique ideologies and system but also practices that define their uniqueness as a people. *Kantang* and *ugkhat* are Panay Bukidnon customs that require family members of the murdered family to avenge the murder. *Kantang* is the practice of leaving the dead unburied and placing the dead body, without the coffin, on a bamboo bed outside the aggrieved family's house. The decomposing body is left in the open until there is a *durog* or partner dead body either the assailant or anyone from the assailant's family or clan. *Kantang* aims to dramatize the extent of grief that family members have as a result of the murder. *Ugkhat* on the other hand is a practice similar to *kantang* but the difference is that the dead body is placed inside a sealed coffin inside the house. The extent of grief is not as deep as in *kantang*.

Since vengeance is fundamental in Panay Bukidnon culture, it is also interesting to note how combative skills training are integrated into social activities. In fact, there remains to be no clear dichotomy between formal combative training and non-combative social activities. *Kaingin* is an indigenous agricultural practice that involves cutting trees and burning vegetations to clear an area for farming. Through this activity, a warrior develops skills in handling heavy bladed weapons as well as arm strength necessary for combat.

Sampalayo is a local dance simulating a fight between two warriors. The steps involve thrusting and striking hand movements performed to the rhythm of music and in coordination with the movement of the other dancer. The dancers begin training using sticks then proceed to use bladed instruments once they have mastered the movements. Though it is primarily a form of entertainment, the dance also serves to develop the fighting skills of tribe warriors.

Dichotomy between State and Customary Laws: A Pressing Challenge

The Philippine Constitution has long recognized the rights of indigenous people to practice their culture within the context of the legal framework of the state. However, there remain no specific implementing rules and guidelines that clearly integrate state laws and customary laws, especially in criminal cases. To most *magurangs* the state legal system is “a waste of time, time-consuming and detrimental to their agricultural practices”. According to some of the *magurangs* “*the laws of the lowlanders are useless and not applicable to the environment in the mountains ... are the police better than the magurangs...they are afraid of patrolling our mountains*”. This is a pressing challenge for the indigenous people to be allowed to settle all forms of disputes with finality.

According to some Panay Bukidnon elders, there was an instance that municipal officials settled a conflict between two villages without the participation of the *magurang*. The government utilized projects and educational scholarships to replace blood money as a compensation for lost lives. Twenty years later, a survivor of the village massacre decided to file murder charges against those involved in the crime. Despite the settlement that was previously achieved, the court did not honour the finality of the conclusion from the legal perspective due to the nature of dispute settlement employed. This incident is an example of the ambiguous relationship between customary and state laws. The process of clearly defining the line that separates state and customary laws remains a challenge for the legislative and judicial system of the Philippines. Some elders believe that those who have acquired education are prone to settle disputes in a highly legalistic manner and may be inclined to anchor most of the solutions on the Local Government Code of the Philippines. Many villagers fear that this legalistic approach may create instability in the mountains. For most elders, “*the clan war will remain unresolved until actual compensation for what has been lost is exacted*”.

According to the residents, if and when the killings will start again, “*the government may not be able to stop it from happening*”. Although some disputes among families and clans still exist, the indigenous dispute settlement remains functional in maintaining social order in the mountains of Central Panay where the presence of the state is not always present. The state legal system should not abolish or weaken the indigenous process of settling disputes, but rather integrate the indigenous system into the general legal framework of the state. Dispute settlement as an approach to reaching an agreement between parties is the most appropriate in addressing small-scale violent and difficult disputes in areas where the apparatus of the state is not well established.

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