



**Women Enabled International
Comments on the Human Rights Committee's
Draft General Comment No. 36 on the Right to Life**

October 5, 2017

I. Introduction

[Women Enabled International](#) (WEI) appreciates the opportunity to submit these written comments to the Human Rights Committee regarding its Draft General Comment No. 36 on the Right to Life (Draft General Comment). WEI works at the intersection of women's rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women's rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls.

Women, including women and girls with disabilities, face unique and disproportionate violations of their right to life in several contexts, including related to sexual and reproductive health, gender-based violence, and harmful practices such as femicide, honor killings, or “mercy killings.”¹ Furthermore, women and girls with disabilities also experience significant violations of their right to life with dignity, including being denied the right to make decisions, to exercise legal capacity, and to have access to the goods and services that allow free decision-making. To provide the best possible guidance to states about ensuring the right to life, the Human Rights Committee's Draft General Comment should more thoroughly address these issues.

Through this submission, WEI provides background information on specific issues that affect women, particularly women and girls with disabilities, in the context of the right to life, including sexual and reproductive rights, gender-based violence, and individual autonomy. WEI then provides specific textual recommendations to the Human Rights Committee about how to better include issues affecting women and girls with disabilities in the Draft General Comment.

Please note that, in order to ensure the accessibility of this document to those using screen readers, we have included both the current paragraph and a suggested amended paragraph, with suggested amendments in italics and highlighted in yellow for ease of identification.

II. Background and Specific Recommendations

A. Autonomy, Equality, and the Right to Life

¹ CRPD Committee, *General Comment No. 3 (2016) on women and girls with disabilities*, paras. 23 & 36, U.N. Doc. CRPD/C/GC/3 (2016) [hereinafter CRPD, *Gen. Comment No. 3*].

As the Human Rights Committee recognizes in the Draft General Comment, the right to life encompasses a right to life with dignity.² Individual autonomy, including the right to make choices for oneself, is an essential aspect of dignity and to ensuring human rights, particularly for persons with disabilities.³ As the Committee on the Rights of People with Disabilities (CRPD Committee) found in its General Comment No. 1 on equal protection before the law, equal protection requires that States ensure legal personality and legal capacity for persons with disabilities in all aspects of life,⁴ and in particular that they provide necessary support to foster autonomous decision making by persons with disabilities when needed and requested, including to ensure the right to life.⁵ The CRPD Committee further noted that it is particularly important to recognize the legal capacity and autonomy of women with disabilities on an equal basis with others, including in the context of reproductive health.⁶

As currently written, the Draft General Comment does not fully support the autonomous decision-making and legal capacity of individuals, particularly persons with disabilities, and does not fully support that personal autonomy is central to a right to life with dignity. Indeed, some language in the Draft General Comment may undermine personal autonomy by stating that some persons with disabilities have “limited” or “diminished” ability or “limited moral culpability.”⁷ Recognizing the importance of individual autonomy to ensuring a right to life with dignity, WEI recommends the following changes.

Please note that WEI also recommends autonomy-related changes to paragraph 9 on sexual and reproductive rights, outlined in Section B below.

SUGGESTED NEW PARAGRAPH following paragraph 3: WEI recommends that the Human Rights Committee include a specific framing paragraph on the right to life with dignity that includes the need to ensure autonomous decision-making as part of that right.

As part of ensuring the right to life with dignity, States parties must fulfill the conditions under which individuals can live with dignity, including by protecting individuals from crime, providing individuals with needed services, ensuring their freedom from discrimination, and ensuring that they can exercise their autonomy in all aspects of their lives, and particularly concerning their lives and their health. As part of this obligation, States parties should eliminate any laws or policies that deprive individuals of the right to make decisions for themselves, including concerning their life or health, including laws that allow another person such as a guardian, parent, doctor, or judge, to make these decisions.⁸

Paragraph 10 (assisted suicide): WEI Recommends that the Human Rights Committee reframe this paragraph to emphasize individual autonomy in the context of the right to life, rather than possible restrictions on that autonomy.

Current Paragraph

² Human Rights Committee, *General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (Revised draft prepared by the rapporteur)*, para. 30 (2017).

³ See, e.g., Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, Preamble para. 14 & art. 3(1), G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611, (entered into force May, 3 2008) [hereinafter CRPD].

⁴ CRPD Committee, *General Comment No. 1: Article 12: Equal protection before the law*, para. 50(a), U.N. Doc. CRPD/C/GC/1 (2014) [hereinafter CRPD, *Gen. Comment No. 1*].

⁵ *Id.*, para. 29.

⁶ *Id.*, para. 35.

⁷ Human Rights Committee, *General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (Revised draft prepared by the rapporteur)*, para. 53 (2017).

⁸ CRPD, *supra* note 3, art. 12; CRPD, *Gen. Comment No. 1, supra* note 4, para. 26.

[While acknowledging the central importance to human dignity of personal autonomy, the Committee considers that States parties should recognize that individuals planning or attempting to commit suicide may be doing so because they are undergoing a momentary crisis which may affect their ability to make irreversible decisions, such as to terminate their life. Therefore,] States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations. At the same time, States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity. In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.

Suggested Amended Paragraph

Individuals have the right to make the decision to end their life in the context of terminal illness or other severe or mortal injury. Although States must take adequate measures, without violating their other Covenant obligations, to prevent suicides, States parties must also allow individuals to end their lives and should not prevent medical professionals from providing medical treatment or the medical means in order to facilitate the termination of life in the context of terminal illness or other severe or mortal injury, so that the individual may avoid further-severe physical or mental pain and suffering and may die with dignity. In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.

Paragraph 53 (the death penalty): In its previous General Comment on the Right to Life, the Human Rights Committee emphasizes that the death penalty should only be applied to the “most serious crimes” and that it should be a “quite exceptional measure.”⁹ The Committee has since recommended that States provide protections surrounding the death penalty to certain groups, including by abolishing the death penalty for children¹⁰ and ensuring that it is applied without racial bias.¹¹ Because the Committee has previously acknowledged that many groups should not be sentenced to death under several circumstances, WEI recommends that the Human Rights Committee remove direct references to persons with disabilities in the context of the death penalty, ensuring that the enumerated protections apply to all persons who may encounter barriers to defending themselves or to understanding the consequences of their actions. WEI also recommends that the Committee amend language about “ability” or “culpability,” including “ability to defend themselves” “limited moral culpability,” and “diminished ability to understand the reasons for their sentence,” so as to ensure that the individual autonomy of persons with disabilities is not undermined in this or other contexts.

Current Paragraph

States parties must refrain from imposing the death penalty on individuals who have limited ability to defend themselves on an equal basis with others, such as persons with serious psycho-social and

⁹ Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)*, para. 6, U.N. Doc. CCPR/C/GC/6 (1982),

¹⁰ Human Rights Committee, *Concluding Observations: Yemen*, para. 14, U.N. Doc. CCPR/C/YEM/CO/5 (2012); *Concluding Observations: Iran*, para. 13, U.N. Doc. CCPR/C/IRN/CO/3 (2012); *Concluding Observations: Sudan*, para. 20, U.N. Doc. CCPR/C/SDN/CO/3 (2007).

¹¹ Human Rights Committee, *Concluding Observations: United States of America*, para. 8, U.N. Doc. CCPR/C/USA/CO/4 (2014).

intellectual disabilities and on persons with or without disability that have reduced moral culpability. They should also refrain from executing persons that have diminished ability to understand the reasons for their sentence, and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as parents to very young or dependent children, persons at an advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims.

Suggested Amended Paragraph

States parties must refrain from imposing the death penalty on individuals who *experience significant barriers to* defending themselves on an equal basis with others *due to discrimination and stereotypes that are frequently entrenched in justice systems.* *States parties should further refrain from imposing the death penalty on persons who may not have understood the consequences of their actions.* They should also refrain from executing persons *who may not* understand the reasons for their sentence, and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as parents to very young or dependent children, persons at an advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims.

B. Equality, Sexual and Reproductive Health and Rights, and Gender-Based Violence

The ICCPR provides specific protections for individuals from discrimination, including that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”¹² In particular, the ICCPR obligates States to guarantee the equal right of men and women to enjoy the rights protections under the ICCPR, including the right to life.¹³ As the Human Rights Committee outlined in its General Comment No. 28 on equality between men and women, in order to ensure women’s equal rights under the Covenant, States should provide the Committee with information about and protective measures to combat gender-based violence and violations affecting sexual and reproductive health and rights, including abortion and forced reproductive health procedures, such as forced sterilization and forced abortion.¹⁴

In order to ensure gender equality in guaranteeing the right to life, States should respect, protect, and fulfill women’s sexual and reproductive rights. Indeed, women, including women with disabilities, face unique and specific risks to their right to life as a result of pregnancy and childbirth. The leading causes of death for women of reproductive age worldwide are HIV/AIDS and complications from pregnancy and childbirth,¹⁵ yet the majority of maternal deaths are preventable with access to appropriate perinatal care, contraceptive information and services, safe abortion, and post-abortion care.¹⁶

¹² International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, art. 26, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

¹³ *Id.*, art. 3.

¹⁴ Human Rights Committee, *General Comment No. 28: Article 3 (the equality of rights between men and women)*, para. 11, U.N. Doc. CCPR/C/GC/28 (2000).

¹⁵ World Health Organization (WHO), Factsheet No. 334: Women’s Health (Sept. 2013).

¹⁶ WHO, Factsheet No. 348: Maternal Health (May 2014). *See also*, UNITED NATIONS POPULATION FUND (UNFPA) AND CENTER FOR REPRODUCTIVE RIGHTS, “Maternal Mortality and Morbidity,” *in* ICPD AND REPRODUCTIVE RIGHTS: 20 YEARS OF ADVANCING REPRODUCTIVE RIGHTS THROUGH UN TREATY BODIES AND LEGAL REFORM 2 (2013) (“Over 70 percent of maternal deaths worldwide result from severe bleeding, high blood pressure, infection, unsafe abortion, and prolonged or obstructed labor; these causes are generally preventable if they are identified and properly managed in a timely manner.”).

Women with disabilities, in particular, face significant barriers in combating these leading causes of death. As the CRPD Committee noted in its General Comment No. 1 on equal protection before the law, women with disabilities are frequently denied control and decision-making authority over their reproductive health.¹⁷ For instance, according to the World Health Organization (WHO) and the UN Populations Fund (UNFPA), “in many places women with disabilities are routinely turned away from [maternal health] services ..., often also being told that they should not be pregnant, or scolded because they have decided to have a child.”¹⁸ Women with disabilities are also less likely to receive essential sexual and reproductive health information, goods, and services, including, for example, information and condoms necessary to prevent STIs, including HIV.¹⁹ Provider misconceptions that persons with disabilities are not sexually active also may result in their failure to perform pelvic and breast exams to screen for reproductive cancers, which is notable given that a disproportionate number of deaths from breast and cervical cancer occur in women with disabilities.²⁰

In clarifying the scope and nature of States’ duty to respect and ensure the right to life, it is essential to address the specific risks that women, including women with disabilities, face because they are women. Accessible sexual and reproductive health information and services—including contraceptive information, goods, and services; information on and screening for STIs and reproductive cancers; safe abortion; post-abortion care; and prenatal, labor and delivery, and postnatal care—are essential to safeguard women’s right to life, and States’ obligations to protect the right to life include the duty to provide these necessary services.

In order to ensure gender equality and non-discrimination in the right to life, States must also prevent, punish, and redress instances of gender-based violence, which can put women’s health and lives at risk. This is particularly important for ensuring the right to life, including the right to life with dignity, for women and girls with disabilities, who are two to three times more likely to suffer physical and sexual violence than women without disabilities²¹—including life-threatening forms of gender-based violence such as femicide, “mercy killings,” and severe domestic violence.²²

As currently written, the Draft General Comment does not include sufficient information about ensuring gender equality in the right to life. The Draft General Comment also does not adequately address the range of sexual and reproductive rights issues that impact the right to life, nor does it adequately address gender-based violence, particularly as it concerns women and girls with disabilities. As such, WEI recommends the following changes:

¹⁷ CRPD, *Gen. Comment No. 1*, *supra* note 4, para. 35.

¹⁸ WHO AND UNFPA, PROMOTING SEXUAL AND REPRODUCTIVE HEALTH FOR PERSONS WITH DISABILITIES 10 (2009).

¹⁹ Human Rights Watch, *Fact Sheet: HIV and Disability* 8 (2012), available at <https://www.hrw.org/news/2011/06/08/fact-sheet-hiv/aids-and-disability>.

²⁰ See J. Thierry, *Increasing breast and cervical cancer screening among women with disabilities*, 9 J. WOMEN'S HEALTH & GENDER-BASED MEDICINE, 9 (2000).

²¹ See, e.g., WHO, *Violence against adults and children with disabilities*, <http://www.who.int/disabilities/violence/en/>; White House, *United States Strategy to Prevent and Respond to Gender-based Violence Globally* 7 (Aug. 2012), available at <http://www.state.gov/documents/organization/196468.pdf>; Office of the High Commissioner for Human Rights, *Thematic Study on the Issue of Violence Against Women and Girls and Disability*, para. 21, U.N. Doc. A/HRC/20/5 (2012), available at <http://www2.ohchr.org/english/issues/women/docs/A.HRC.20.5.pdf>.

²² CRPD, *Gen. Comment No. 3*, *supra* note 1, paras. 29 & 36; Human Rights Committee, *Concluding Observations: China (Hong Kong)*, para. 18, U.N. Doc. CCPR/C/CHN-HKG/CO/3 (2013); Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*, para. 55, U.N. Doc. A/HRC/35/23 (2017) (advance unedited version), available at <http://www.ohchr.org/EN/Issues/Executions/Pages/AnnualReports.aspx>; U.N. General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, para. 31, U.N. Doc. A/67/227 (2012), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/227.

Paragraph 3: Include equality and non-discrimination as conditions under which individuals should enjoy the right to life.

Current Paragraph

The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.

Suggested Amended Paragraph

The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, **to experience the right on the basis of equality and non-discrimination**, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.

Paragraph 9 (sexual and reproductive rights): WEI recommends that the Human Rights Committee explore in more detail the sexual and reproductive rights violations beyond abortion that impact the right to life for women and girls. In particular, WEI recommends that the Committee emphasize the need to ensure autonomy in accessing sexual and reproductive health services, including by removing legal restrictions and also ensuring that these services are available and accessible to all women, including women with disabilities.

Current Paragraph (abbreviated)

Although States parties may adopt measures designed to regulate terminations of pregnancy, *they* must not result in violation of the right to life of a pregnant woman her other rights under the Covenant, including the prohibition against cruel, inhuman and degrading treatment or punishment. ...

Suggested Amended Paragraph (abbreviated)

Women and adolescent girls experience unique threats to their right to life in the context of pregnancy, childbirth, and the post-natal period. In order to ensure equality in the right to life for men and women under the Covenant, States parties must ensure that all women—including adolescents, women in rural areas, women with disabilities, women from racial and ethnic minorities, and indigenous women—can exercise their autonomy in this context. This requires that States ensure that reproductive health services—including contraception, pre- and post natal services, skilled birth attendants, abortion, and post-abortion care—are safe, legal, and accessible to all women, on the basis of free and informed consent of the woman herself. It also requires that any laws or policies to regulate reproductive health services must not result in a violation of the right to life of a woman during pregnancy or the post-natal period or her other rights under the Covenant, including the prohibition against cruel, inhuman and degrading treatment or punishment and the right to privacy. ...

Paragraph 28 (special protections for persons with disabilities): This portion of the Draft General Comment should specifically acknowledge abuses against women with disabilities that affect their

exercise of the right to life. It should also acknowledge that persons with disabilities face threats to their right to life in institutions, such as residential homes and psychiatric hospitals.²³

Current Paragraph

Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include reasonable accommodation of public policies which are necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential goods and services and special measures designed to prevent excessive use of force by law enforcement agents against persons with disabilities.

Suggested Amended Paragraph

Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on **an** equal basis with others. Such measures of protection shall include reasonable accommodation of public policies which are necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential goods and services, **adequate monitoring of service providers, residential care homes, and psychiatric institutions that house persons with disabilities,**²⁴ and special measures designed to prevent excessive use of force by law enforcement agents against persons with disabilities. **Regarding women and girls with disabilities in particular, this also requires that States provide special protections against femicide or “mercy killings”²⁵ and gender-based violence, which women with disabilities experience in unique forms and at disproportionate rates.²⁶ States parties should further ensure that sexual and reproductive health information and services are accessible to women and girls with disabilities, including on the basis of free and informed consent.²⁷**

Paragraph 30 (the right to life with dignity): In order to ensure the right to life with dignity, WEI recommends that the Human Rights Committee provide guidance to States on ensuring the accessible of sexual and reproductive health information and services.

Current Paragraph

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence, pervasive traffic and industrial accidents, pollution of the environment, the prevalence of life threatening diseases, such as AIDS or malaria, extensive

²³ CRPD Committee, *General Comment on article 19: Living independently and being including in the community*, para. 32, U.N. Doc. CRPD/C/GC/5 (2017) (advance unedited version), available at <http://www.ohchr.org/Documents/HRBodies/CRPD/CRPD.C.18.R.1-ENG.docx>.

²⁴ *Id.*

²⁵ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*, para. 55, U.N. Doc. A/HRC/35/23 (2017) (advance unedited version), available at <http://www.ohchr.org/EN/Issues/Executions/Pages/AnnualReports.aspx>; CRPD Committee, *General Comment No. 3 (2016) on women and girls with disabilities*, paras. 23 & 36, U.N. Doc. CRPD/C/GC/3 (2016).

²⁶ Human Rights Committee, *Concluding Observations: China (Hong Kong)*, para. 18, U.N. Doc. CCPR/C/CHN-HKG/CO/3 (2013); , *Concluding Observations: Sweden*, para. 8, U.N. Doc. CCPR/C/SWE/CO/6 (2009); U.N. General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, para. 31, U.N. Doc. A/67/227 (2012), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/227.

²⁷ CRPD Committee, *General Comment No. 3 (2016) on women and girls with disabilities*, para. 44, U.N. Doc. CRPD/C/GC/3 (2016).

substance abuse, widespread hunger and malnutrition, and extreme poverty and homelessness. The measures called for addressing adequate conditions for protecting the right to life include, where necessary, short-term measures designed to ensure access by individuals to essential goods and services such as food, water, shelter, health-care electricity and sanitation, and long-term measures designed to promote and facilitate adequate general conditions such as the bolstering of effective emergency health services and emergency response operations (including fire-fighters, ambulances and police forces). States parties should also develop action plans for advancing the enjoyment of the right to life, which may comprise strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which hamper access to medical care; detailed plans to promote education to non-violence and de-radicalization programs; and campaigns for raising awareness against domestic violence and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality. Furthermore, States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radio-active accidents and massive cyber-attacks. [Given their wide-ranging implications, some of the obligations relating to the general conditions necessary for full enjoyment of the right to life can only be realized progressively].

Suggested Amended Paragraph

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence, pervasive traffic and industrial accidents, pollution of the environment, the prevalence of life threatening diseases, such as AIDS or malaria, extensive substance abuse, widespread hunger and malnutrition, *lack of access to adequate health services including sexual and reproductive health services*, and extreme poverty and homelessness. The measures called for addressing adequate conditions for protecting the right to life include, where necessary, short-term measures designed to ensure access by individuals to essential goods and services such as food, water, shelter, health-care *(including sexual and reproductive health care)*, electricity and sanitation, and long-term measures designed to promote and facilitate adequate general conditions such as the bolstering of effective emergency health services and emergency response operations (including fire-fighters, ambulances and police forces). States parties should also develop action plans for advancing the enjoyment of the right to life, which may comprise strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which hamper access to medical care; detailed plans to promote education to non-violence and de-radicalization programs; and campaigns for raising awareness against *gender-based violence* and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality *and prevent unwanted pregnancies*. Furthermore, States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radio-active accidents and massive cyber-attacks.

Thank you for your time and attention to this submission. Should you have any questions or require further information, we hope you will feel free to contact WEI at the information provided below.

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