

# The fundamentals of protection



## Key message

Protection aims to ensure the full and equal respect for the rights of all individuals, regardless of age, gender or ethnic, social, religious or other background. This requires a common understanding of protection and the means by which it is achieved. This chapter provides a definition of protection, explains who internally displaced persons are and why they need protection and assistance, and outlines the key approaches and core principles that should guide and underpin all protection efforts.

## 1. What is protection?

Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.<sup>1</sup>

Protection can be seen as having three different dimensions:

- Protection as an **objective**
- Protection as a **legal responsibility**
- Protection as an **activity**

**Protection is an objective**, which requires full and equal respect for the right of all individuals, without discrimination, as provided for in national and international law. Protection is not limited to survival and physical security but covers the full range of rights, including civil and political rights, such as the right to freedom of movement and to political participation, and economic, social and cultural rights, including the rights to education and health.

**Protection is a legal responsibility**, principally of the State and its agents. In situations of armed conflict, that responsibility extends to all parties to the conflict under international humanitarian law, including armed opposition groups. Human rights, humanitarian and development actors play an important role as well, in particular when States and other authorities are unable or unwilling to fulfill their protection obligations.<sup>2</sup>

**Protection is an activity** because action must be taken to ensure the enjoyment of rights. The three types of protection activities can be carried out concurrently:

- *responsive* – to prevent or stop violations of rights;
- *remedial* – to ensure a remedy to violations, including through access to justice and reparations; and
- *environment-building* – to promote respect for rights and the rule of law.<sup>3</sup>

<sup>1</sup> This definition, which was originally developed over a series of ICRC-sponsored workshops involving some fifty humanitarian and human rights organizations, has been adopted by the IASC. See *Protection of Internally Displaced Persons*, Policy Paper Series, No. 2 (2000) and *Strengthening Protection in War: A Search for Professional Standards* (ICRC, 2001).

<sup>2</sup> Several international organizations, namely OHCHR, UNHCR, UNICEF and ICRC, have specific protection mandates. All UN and partner agencies however have a responsibility to integrate human rights into their work and to approach their work with due regard to protection issues. See *Renewing the United Nations: a Programme for Reform*, Report of the Secretary-General to the United Nations General Assembly (UN doc. A/51/950) and *Protection of Internally Displaced Persons* (IASC, 2000). See also Part I.3 of the handbook.

<sup>3</sup> *Strengthening Protection in War*, 2001, p. 20 (ICRC, 2001).



### In our work

Protection requires working with all relevant stakeholders, including populations at risk, local communities and the authorities, to:

- *prevent* violations of rights from occurring or recurring;
- *stop* ongoing violations;
- *provide remedies*, through reparation and rehabilitation, if violations have occurred; and
- *foster* an environment conducive to respect for the rights of women, men, girls and boys in accordance with the law.

## 2. Who are internally displaced persons?

All persons, including those who are internally displaced, are equally entitled to protection. As defined by the *Guiding Principles on Internal Displacement*,<sup>4</sup> internally displaced persons are:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.

**Involuntary departure** and the fact that the individual **remains within his/her country** are the two defining elements of an internally displaced person (IDP). The first element distinguishes IDPs from individuals who left their homes out of choice and could have otherwise safely remained where they lived.<sup>5</sup> The second element explains why IDPs are not refugees. Refugees, by definition, are *outside* of their country of nationality or habitual residence.<sup>6</sup> In other respects, however, both categories of displaced persons often face similar risks and deprivations.

The definition mentions some of the main causes of internal displacement, including **armed conflict, violence, violations of human rights and disasters**. This is not an exhaustive list; the phrase “in particular” means that it does not exclude the possibility that other situations might meet the two key criteria of involuntary movement within one’s country.

It is important to understand that the IDP definition is a **descriptive definition** rather than a legal definition. It simply describes the factual situation of a person being uprooted within his/her country of habitual residence. It does not confer a special legal status in the same way that recognition as a refugee does. This is not necessary for IDPs because, unlike refugees who require being formally recognized as such by the country of asylum or UNHCR under its mandate, IDPs remain entitled to all the rights and guarantees as citizens and other habitual residents of a particular State.<sup>7</sup>

The purpose of highlighting the situation of IDPs and working to enhance their protection is not to privilege IDPs over other groups; IDPs have the same rights as others in their country. They often experience many of the same risks as other civilians caught in conflict, who also are in need of protection. Yet, the experience of internal displacement also creates heightened as well as **distinct protection risks**. These particular risks need to be understood and addressed so that the rights of IDPs are protected *along with* those of other civilians.

<sup>4</sup> See Annex 1: “Guiding Principles on Internal Displacement.”

<sup>5</sup> It is important to keep in mind that persons who did not leave might face similar risks as those who left, but were simply unable to travel due to health reasons or because they were trapped in the conflict. Some might find it even more dangerous to move out of their places of origin because of tension with surrounding communities, or insecurity along the way.

<sup>6</sup> A refugee is defined as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality or habitual residence, and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country. See Art. 1 of the 1951 Convention Relating to the Status of Refugees.

<sup>7</sup> Some countries do accord IDPs, or certain groups of IDPs, a status under national legislation. However, this does not affect the rights enjoyed by *all* internally displaced persons under international human rights and humanitarian law.

IDPs have been compelled to leave their homes and often cannot return because they face risks at their places of origin from which State authorities are unable or unwilling to protect them, because they might have been specifically prohibited to return, or because their homes have been destroyed or are being occupied by someone else. They also may face the risk of forced return to an area that is unsafe.

The **particular factors of internal displacement** that tend to heighten protection risks include:

- IDPs have lost their homes and, as a result, may be in need of shelter. In some cases they may be compelled to seek shelter in crowded camps or settlements, which can give rise to various protection risks.
- They have often lost access to their land and other property and are cut off from their normal livelihoods and sources of income. As a result they may suffer poverty, marginalization, exploitation and abuse.
- Access to adequate food, safe water and public services, such as education and health care becomes difficult, often leading to high levels of hunger, malnutrition and disease.
- Family and community-structures often collapse and family members become separated. Unaccompanied and separated children, single-headed households (in particular when headed by women or children), older persons and persons with disabilities are often at heightened risk of abuse, including sexual exploitation, child labour or forced recruitment into armed forces or groups.
- Identity documents often are lost, destroyed or confiscated in the course of displacement. As a result, IDPs often face difficulties in accessing public services, such as education and health care, limits on freedom of movement and heightened risk of harassment, exploitation or arbitrary arrest and detention.
- In many cases, IDPs are displaced into areas where they face marginalization, discrimination and hostility, are exposed to landmines or explosive remnants of war, or are targeted for abuse and attack.

### 3. Who is responsible for protecting internally displaced persons?

Primary responsibility for protecting internally displaced persons, and all persons within their own country, rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty.

Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so, and might even be directly involved in forcibly uprooting civilians.

Even then, however, the **role of international actors is to reinforce, not replace, national responsibility**. This requires a two-pronged approach of encouraging States and other authorities to meet their protection obligations under international law while also supporting the development of national and local capacities to fulfill these protection responsibilities.

The Framework for National Responsibility identifies twelve steps that governments should take towards ensuring an effective national response to internal displacement.<sup>8</sup> These are elaborated in detail in Part IV.4 and are summarized below.

<sup>8</sup> See *Addressing Internal Displacement: Framework for National Responsibility*, The Brookings Institution-Bern Project on Internal Displacement, 2005.

### National responsibility in situations of internal displacement

In addition to ensuring the protection of rights in accordance with international law, national responsibility in situations of internal displacement entails:

1. Preventing displacement and minimizing its adverse effects
2. Raising national awareness of the problem
3. Collecting data on the number and condition of IDPs
4. Supporting training on the rights of IDPs
5. Creating a legal framework upholding the rights of IDPs
6. Developing a national policy on internal displacement
7. Designating an institutional focal point on IDPs
8. Encouraging national human rights institutions to address internal displacement
9. Ensuring that IDPs participate in decision making
10. Supporting durable solutions
11. Allocating adequate resources to addressing internal displacement
12. Cooperating with the international community when national capacity is insufficient

In situations of armed conflict, all parties to the conflict, both State and non-State actors, have a responsibility to respect and ensure respect for international humanitarian law, including by providing protection and assistance to the civilian population.

## 4. Operationalizing protection

Effective field-based protection strategies are built around three common and inter-connected approaches:

- **Protection must be rights-based** (a rights-based approach);
- **Individuals and communities are active and equal partners in their protection** (a community-based approach);
- **Protection promotes full and equal respect for the human rights of all individuals**, without discrimination of any kind.

Use of these approaches is fundamental to ensuring that a protection perspective is integrated throughout all the different sectors of humanitarian response.

### 4.1. Protection is about realizing human rights (a rights-based approach)

Because protection is about respect for rights, it requires an approach grounded upon and geared towards the full and equal enjoyment of rights.

This way of working requires that we recognize individuals as **rights-holders** with legal entitlements to protection and assistance. Unlike “needs,” rights generate responsibilities to ensure the protection and well-being of individuals. The State and other authorities are **duty-bearers** with responsibilities to respect and protect individuals’ rights.

These rights and responsibilities are firmly rooted in international law, particularly human rights and international humanitarian law, and refugee law, where relevant.<sup>9</sup>

A rights-based approach means that all of our policies, programmes and activities:

- are based on rights, as provided in international law;
- further the realization of rights; and

<sup>9</sup> Refugee law does not apply to the protection of internally displaced persons, although some refugee law principles are relevant, by analogy. The international legal framework for the protection of IDPs is discussed in Part I, Chapter 2.

- seek to strengthen the capacities of rights-holders (women, men, girls and boys) to claim their rights, and the capacities of duty-bearers (State and other authorities) to meet their obligations to respect, protect and fulfill those rights.

A rights-based approach can strengthen our work by anchoring it in a system of rights and corresponding obligations established by international law. By empowering people to claim their rights and strengthening the capacities of duty-bearers to fulfill these rights, a rights-based approach also promotes and strengthens the sustainability of our efforts.



### In our work

Applying a rights-based approach in situations of internal displacement requires that we:

- Be familiar with international legal standards, that is rights and obligations, that underlie protection;
- Use rights as the basis for our activities, including situation analysis and participatory needs assessments, strategy development, protection activities and programme planning, design, implementation, monitoring and evaluation;
- Analyze why individuals or groups cannot enjoy their rights, including by examining underlying and structural obstacles, and barriers based on age, gender or diversity;
- Ensure that our policies, programmes and activities aim to support internally displaced women, men, girls and boys in enjoying their rights; and
- Strengthen the capacity and accountability of national and local authorities to meet their protection responsibilities.

While a “rights-based approach” to humanitarian action is a relatively recently coined expression, the concept behind it is based on decades-old principles. According to the Charter of the United Nations, one of the core purposes of the United Nations is to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” Human rights are therefore a concern that cuts across humanitarian and development activities, entailing a responsibility for all parts of the UN and NGOs to integrate human rights into their work.<sup>10</sup>

## 4.2. Individuals and communities are equal partners in protection (a community-based approach)

Internally displaced persons, like other civilians at risk, develop their own strategies to reduce exposure to and mitigate the effects of protection risks. Such coping mechanisms are based on local knowledge and build upon existing capacities and resources within the community. Experience has shown that for protection efforts to be effective and sustainable, they must be designed to recognize, support and strengthen the protection capacities of individuals and communities themselves.

A community-based approach<sup>11</sup> is a way of working that:

- ensures that women, men, girls and boys of all ages and diverse backgrounds are regarded and engaged as active partners in all aspects of our work;
- recognizes their resilience, capacities and resources; and
- mobilizes and builds on the capacities of communities to enhance their own protection.

By recognizing that all members of the community are active participants in decision-making, a community-based approach reinforces the dignity and self-esteem of people and promotes their empowerment. People are empowered when they are able to become informed and active agents in addressing their own situation.

<sup>10</sup> UN Programme for Reform, 1997. See also *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*, OHCHR, Geneva, 2006, p. 35.

<sup>11</sup> See *A Community-Based Approach in UNHCR Operations: Handbook*, UNHCR, forthcoming 2007.

This way of working requires a thorough understanding of the context of displacement, including the socio-economic context, gender roles, and power dynamics within the community as well as the role of other actors, such as armed groups or the host population. It seeks to understand the community's protection concerns and priorities and to identify its existing capacities to access and enjoy human rights.



### In our work

Applying a community-based approach in situations of internal displacement requires that we:

- Understand gender roles, power relations and community dynamics (among different generations, among diverse groups, and between internally displaced persons and the local community) and how this affects their protection;
- Recognize the ways in which internally displaced persons enhance their own protection and enjoy their rights, and work to reinforce these efforts;
- Build an equal and active partnership with internally displaced women, men, girls and boys by ensuring that they participate in identifying and addressing protection risks and priorities, including through participatory assessment and in decision-making on programme design, implementation, monitoring and evaluation.

Our role as international humanitarian and development actors is to build or rebuild and strengthen the community's capacity to respond to its own concerns and to take decisions as to how best to address these concerns. We must recognize the temporary nature of our presence, our role as facilitators, and our limitations in capacities, resources and local knowledge.

Applying a community-based approach is widely recognized within the international humanitarian community as an essential element of humanitarian response, including in situations of internal displacement.<sup>12</sup>

### 4.3. Protection promotes full and equal respect for the human rights of all individuals, without discrimination of any kind (age, gender and diversity mainstreaming)

Conflict and displacement can affect individuals in different ways depending on factors such as age, gender, and ethnic, social, religious and different backgrounds. Certain groups of persons, including women, children, older persons and minorities, are often marginalized within communities and less represented in formal decision-making structures. As a result, their specific concerns are often overlooked in needs assessments and in programme planning.

Failure to acknowledge the particular risks faced by diverse members of a community not only results in a failure to address those concerns, but it might lead to actions that inadvertently increase these risks and reinforce discrimination and exclusion.

Incorporating diversity analysis into all aspects of our work is essential to understanding and addressing the different protection risks within a community.<sup>13</sup>

In practical terms, mainstreaming diversity involves:

- recognizing that, within a community, different members face particular inequalities, risks and needs, depending on their age, gender and social or other background;
- identifying and analyzing the different protection risks faced by women and men of different ages and backgrounds. This includes protection risks arising from their particular situation and the protection implications of our own activities; and

<sup>12</sup> *Guidance Note on Using the Cluster Approach to Strengthen the Humanitarian Response*, IASC, November 2006. A community-based approach also is part of the Terms of Reference for Sector Leads at the Country Level.

<sup>13</sup> The IASC has highlighted the importance of mainstreaming age, gender and diversity into all aspects of humanitarian response, including into all sectors and clusters within the "cluster approach." See *Guidance Note on Using the Cluster Approach to Strengthen the Humanitarian Response*, IASC, November 2006.

- taking targeted action to address and prevent these risks and inequalities and to empower groups within the community to claim their rights.

#### 4.3.1 Gender

The term “**gender**” refers to the socially constructed and assigned characteristics, roles and responsibilities of women and men in any given culture. These social characteristics are constructed on the basis of sex combined with other factors, such as age, religion, national, ethnic and social origin. Gender is not static; it responds to changes in the social, political and cultural environment.

**Gender equality** refers to the equal rights, responsibilities, treatment and valuation of women and men, and girls and boys. There is gender equality when each individual’s rights and opportunities are not dependent on being female or male. When there is gender equality, women’s and girls’ interests, needs and concerns shape political, social and economic decisions as much as do those of men or boys. All humanitarian agencies have a responsibility to mainstream a gender perspective into their work.<sup>14</sup>

Conflict and displacement can affect women and men, girls and boys, in different ways, and often result in changes in gender roles and power dynamics. Gender, too often perceived strictly as a “women and girls’ issue,” also relates to men and masculinity. A gender analysis will help identify not only the particular protection risks that women and girls face, but also those faced by men and boys.

Sexual violence and exploitation, which primarily targets women and children, has become one of the most disturbing and common features of contemporary armed conflict and displacement crises. Displaced women, girls and boys are often forced to take on different and/or additional responsibilities as a result of being separated from their families. During displacement, there is usually a dramatic increase in the number of women and children who head households and who, as a result, are at particular risk of rights violations. At the same time, because of existing, even exacerbated, inequalities within the community, women and children might have even less social, economic and political power and be less represented in formal leadership structures, with the result that their rights and particular needs often are overlooked.

#### 4.3.2 Age

Displacement also affects individuals in different ways, depending upon their age. Children, adolescents and older people are often excluded from formal decision-making structures, with the result that the specific risks that they face are not taken into account.

- **Children**, generally defined as persons under 18, are exposed to a range of risks when forced to flee from their homes. Children, in particular when separated from their families, are often at risk of neglect, abuse or exploitation, forced recruitment into armed forces or groups, child labour, deprivation of access to food, shelter, education and health care, and other violations of their rights. Such factors seriously threaten their well-being and undermine their cognitive, emotional and social development.
- **Adolescents**, generally considered to be children aged 10 and older, face distinct risks compared with younger children but are often neglected within displaced communities. Seen as young adults, they are at high risk of sexual violence or exploitation and forced recruitment into armed forces or groups. When separated from parents or adult care-takers they often take on the daunting responsibility of caring for younger siblings but may lack sufficient resources and support to manage a household.

<sup>14</sup> ECOSOC, Agreed Conclusions on Gender Mainstreaming, 1997/2. These Conclusions identify principles for mainstreaming gender equality throughout the UN system and contain specific actions that should be implemented by UN agencies in order to institutionalize gender mainstreaming. Security Council Resolution 1325 (2000) on the protection women in armed conflict as well as resolutions on protecting children in armed conflict, call upon all States, UN actors and other agencies to mainstream a gender perspective in their work.

- **Older persons** often suffer social and economic hardship as a result of displacement, in particular where they become separated from their families and other support structures. In some cases, they may have been unable to flee along with other members of their family. They may also be at increased risk of violence, exploitation or abuse and often lose their traditional role or standing within the community.

### 4.3.3 Diversity

In addition to gender and age, other factors might lead to significant inequalities and place persons at risk. These include ethnicity, language, culture, religion, disability, family status and socio-economic status.

Other differences, such as between newly-displaced and long-term displaced, between internally displaced persons in camps compared with those in urban settings, and between internally displaced persons and the local host community, might also arise.



#### In our work

Mainstreaming age, gender and diversity in situations of internal displacement requires that we:

- Understand how conflict and internal displacement affects individuals of different ages, gender and backgrounds differently, and how this affects the relationships between them and the realization of their rights;
- Incorporate age, gender and diversity analysis into assessments, analysis, strategy development, design, implementation and monitoring of protection programmes and activities;
- Work in partnership with internally displaced women, men, girls and boys to identify protection risks faced by different members of the community, and to prevent and address such risks through targeted action to empower disadvantaged groups to enjoy their rights;
- Work towards the elimination of violence in all its forms, including sexual and gender-based violence, in close collaboration with internally displaced persons, local communities, civil society and the national government; and
- Ensure that our strategies, programmes and activities do not inadvertently lead to or reinforce discrimination or exclusion of different groups, but rather promote equality and rights for all.

#### Communities, culture, tradition and rights

The universality of human rights often is challenged on the grounds that local culture and tradition should take precedence. For example, some humanitarian workers have resisted taking action to promote and protect the rights of women and girls on the grounds that doing so “would interfere with local culture.”

However, cultural beliefs are not homogenous and cultures are not static; they are continually being renewed and reshaped. Cultural change is the result of many factors, including conflict and displacement. Change also results from deliberate efforts to influence values through revisions of law or government policy.

International law provides that States are obliged to take measures to modify cultural patterns of conduct when this is required to eliminate customary and other practices that are based on the superiority or inferiority of either sex or on stereotyped roles for women and men. When a tradition or practice is considered by the United Nations’ relevant human rights organ to be directly contrary to an international human rights instrument or standard, humanitarian staff is to be guided by the relevant human rights instrument or standard, and work to promote its application.

As humanitarian actors, we have an obligation to respect and promote the rights of all. Working with the community is critical to ensure respect for the rights of all of its members. Because many human rights violations occur within the community, and because individuals and groups may be stigmatized or isolated by their communities based on their age, gender and diversity, it is only by *working with* communities that we will be able to ensure their protection.



## 5. The core principles of humanitarian action

Several core principles guide all humanitarian action and should be respected by all staff and partners at all times. Respect for these principles is critical for the integrity of our work and the credibility and safety of humanitarian operations.

- **Do No Harm:** Action, as well as inaction, can have unintended negative consequences. We must ensure that our actions and interventions (or lack thereof) do not adversely affect individuals and their communities, our partners or colleagues, or expose them to harm. Before taking action, we must anticipate the consequences and assess any potential risk factors, and take measures to eliminate and minimize such risks.
- **Humanity and the humanitarian imperative:** The prime motivation and purpose of our work is to save lives and to prevent and alleviate human suffering, wherever it is found. Individuals must be treated humanely, with dignity and respect, and have a full and equal right and ability to receive humanitarian assistance.
- **Impartiality:** Humanitarian action must be taken without any adverse distinction based on nationality, ethnic origin, religion, class, political opinion or other ground. Priorities for humanitarian action must be determined on the basis of rights and needs alone. The principle of impartiality therefore establishes two clear rules of conduct for humanitarian work: non-discrimination and proportionality according to need.
- **Independence:** Humanitarian action must be free from interference, whether political, ideological, economic or military.
- **Neutrality:** Humanitarian action must not take or be perceived to take sides in an armed conflict or other dispute. The principle of neutrality does not prevent us from taking action, nor does it provide an excuse for inaction; indeed, failure to take action could even amount to taking sides. Rather, it provides important guidance on *how* we should act, by considering how our actions might be interpreted by others. We therefore need to be aware of our own prejudices as well as the ways in which aid can be manipulated, diverted or exploited for political or military purposes. Our actions and activities must be transparent, balanced and based on objective criteria.

In addition to the core principles, several key considerations should guide us in our work.

- **Confidentiality:** Respecting confidentiality and guaranteeing the privacy and security of individuals, their families and wider communities must be of paramount consideration at all times. Breach of confidentiality or careless handling of information can have serious consequences for persons of concern as well as for our partners, our colleagues and even the humanitarian operation as a whole. We must always assess potential risk factors and seek informed consent for the gathering and use of information. Vigorous data-protection methods must be in place to guarantee the security of recorded information.
- **Sensitivity:** Many internally displaced persons have experienced violence, abuse and other forms of personal harm. We should be sensitive to their suffering, treat them with respect and dignity, and avoid creating more harm by requiring them to relive painful experiences through repeated interviewing. We must also be careful to avoid creating false hopes and unrealistic expectations about what protection and assistance we can offer; failure to do so risks increased anxiety and hopelessness, and might even put people at greater risk by giving them a false sense of security.
- **Strengthen local capacities:** The role of humanitarian actors is not to substitute, but rather to support and strengthen, local capacities: both the capacity of individuals to claim their rights and the capacity of States and other authorities to fulfill their responsibilities to ensure protection of these rights. To this end, humanitarian actors should identify and work to strengthen effective local coping strategies and protection mechanisms.

- **Understand the context**, including as it is perceived by others: To ensure that we “do no harm” and act in an impartial, independent and neutral manner, it is essential that we have a sound understanding of the country, the culture and the communities in which we work. This must include an awareness of the political agendas, interests and perceptions of all those with whom we work. Information must come from a wide range of sources and be verified to ensure that we gain an objective picture of the situation.
- **Professionalism**: Our actions and activities must be consistent with and guided by the highest standard of personal and professional integrity. In particular, we need to ensure that our conduct, and that of our colleagues and partners respects the dignity and worth of all women and men, girls and boys of concern; that it is consistent with national laws and customs; and that it respects international human rights and humanitarian law standards. Any form of sexual abuse or exploitation, including entering into sexual relations with a beneficiary or exchanging aid for sexual favours, is unlawful and amounts to gross misconduct.



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