



Joint Submission for the Universal Periodic Review 35th Session

related to

Kenya

submitted by

Consortium for Street Children (CSC)

with

**Chance for Childhood
Don Bosco Mission
Glad's House
Kenya Good Neighbors
StreetInvest**

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Established in 1993, Consortium for Street Children is a global alliance of over 100+ non-profits, researchers and practitioners across 135 countries. Our vision is a world where street children are guaranteed the same rights as every other child. We work to achieve this through international advocacy, engagement with our network members, implementing projects that directly impact street children, and strengthening research and evidence.

Introduction and Key Concerns

1. This submission concerns the rights of children in street situations in Kenya. Kenya is a signatory of various international human rights and children's rights instruments, including but not limited to the Convention on the Rights of the Child (CRC), the Universal Declaration of Human Rights and the African Charter on the Rights and Welfare of the Child (ACRWC).^[1-3] The Constitution of Kenya, 2010 (herein the Constitution) provides that all such international laws form part of the national laws of Kenya.^[4] The Children Act (No. 8 of 2001) provides the legal framework relating to children, and in particular outlines the responsibilities of the juvenile justice and rehabilitation systems.^[5]
2. The rights provided to children by these instruments apply equally to children in street situations. This refers to "(a) children who depend on the streets to live and/or work, whether alone, with peers or with family; and (b) a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities."^[6] However, there is clear evidence that children in street situations in Kenya are routinely discriminated against in towns and cities across the country, in particular by law enforcement agencies and policy makers.
3. It is not known exactly how many children in street situations there are in Kenya. The most reliable figures available are city-level observational headcounts. A headcount conducted in Mombasa in December 2018 observed 1,757 children in street situations and youth (aged 0-24) who were visible in this city alone on the day and time of the count.^[7] A 2015 study using the same methodology in Kitale town counted 796 children and youth in street situations, although this is thought by those who conducted the count to be an underestimation due to ongoing police presence in the area at the time of the count.^[8]
4. In the previous Universal Periodic Review related to Kenya considered in January 2015, abuse of children in street situations "by the police as well as by the community at large" was already highlighted as a concern.^[9] This led to recommendation 142.70, introduced by Djibouti and supported by the Government of Kenya, which called for a national policy for protection and assistance for children in street situations. Kenya acknowledged that the Children Act applies equally to children in street situations and referred to the Street Family Rehabilitation Trust Fund (SFRTF, established in 2003).^[10] However, our network members' research and media reports suggest that children in street situation's rights are still being violated in the name of this 'rehabilitation'.
5. During the period under review, the violation of the following rights were issues of concern to Consortium for Street Children:
 - i. The right to freedom of peaceful assembly and association
 - ii. The right to life, liberty and security of person
 - iii. The right to special protection and assistance for children deprived of a family environment
 - iv. The right to equal access to justice

v. The right to an identity.

6. One overarching issue is that county and national governments lack clarity on who is responsible for addressing the needs of children in street situations. The magnitude of this confusion was made clear in a motion brought to parliament on 28th February 2019 which concluded that there is a need for a census of street families in all urban centres, a clear policy on rehabilitation and reintegration at county level, and an audit of the use of SFRTF funds since its inception.^[11]
7. Some progress has been made since the last review:
 8. There are examples of progress within particular police forces. For instance, according to Chance for Childhood and their partner Kisumu Urban Apostolate Programme (KUAP), in Kisumu police have been supportive on issues of Child Protection, calling KUAP when they rescue children to be placed in safe custody. Members of the Kisumu Street Children Consortium (a consortium of state-run and private children's homes and NGOs including KUAP) have initiated discussions with the Director of Social Services of the county on how children can best be supported to reintegrate into their families or enter alternative forms of care.
 9. NGO Glad's House has delivered a series of trainings to Police and County Security forces on child rights and the issues facing children in street situations. The trainings incorporate young people alongside police, providing a safe space for them to share their lived experiences in their own voices. This will combat the limited knowledge among police and county security forces on child rights and how to work with children in street situations.
 10. In Nairobi, the government has shown willingness to work with NGOs who have experience of working with children in street situations. The minutes of a meeting between the Nairobi Street Children and Youth Consortium and Counting Executive Committee (CEC) Member for Education Janet Ouko demonstrates the CEC's openness to working more closely and in a more coordinated manner with civil society for the benefit of children in street situations.^[12]

Freedom of peaceful assembly and association

11. Children, like all people, have the right to freedom of assembly as provided by Article 37 of the Constitution of Kenya, 2010,^[4] and Article 15(2) of the CRC.^[1] In violation of this right, children in street situations are often arrested simply for being on the street and detained in remand before they are brought to the court or released back onto the street. For instance, children in street situations in Kenya are routinely exposed to police harassment and detention for vagrancy, loitering and truancy, despite the Children Act (No. 8 of 2001) treating vagrancy, loitering and truancy by children as an indicator of their need for care and protection.^[5] The UN General Comment No. 21 (2017) on Children in

Street Situations clarifies that the use of police round-ups and street sweeps violates the right to freedom of assembly as guaranteed by Article 15(2) of the CRC.^[6] It emphasises that “States should not harass or arbitrarily remove children in street situations from where they associated and peacefully assemble in public spaces”. The police actions in Kenya also discriminate against children in street situations based on their “social, political, or other status” or “residence”, in flagrant violation of Section 5 of the Children Act, which echoes the principle of non-discrimination that underlies the CRC and the ACRWC.^[1,2,5]

12. In certain areas, there are local regulations and by-laws which penalise activities associated with living and spending time on the street. For example, Nairobi County has by-laws penalising making any kind of noise on the streets.^[13] These laws further criminalise children in street situations just for being visible on the street.
13. The Homa Bay County Commissioner and other senior officials have directed chiefs to arrest parents whose children are engaging in labour, seeking to curb the number of children who are working on the streets and out of education.^[14] Arresting parents will only serve to exacerbate situations of poverty by removing these children’s caregivers.
14. Mass round-ups have been ordered and encouraged by politicians. In Nairobi, efforts to round up and remove children in street situations from the Central Business District have been framed as part of a beautification project aiming to clean up central Nairobi.^[15] Children in street situations are discriminated against, and viewed as clutter. This was expressed by a 22 year old man with experience of being in a street situation to NGO Glad’s House: *“They don’t see street connected children as human beings. Whenever they do their roundups they usually boast that they are cleaning the city by removing the rubbish out of town. They should respect us. We are also human beings.”*^[16] One example of such remarks by politicians comes from Mombasa Governor Ali Hassan Joho. In May 2016, Governor Joho announced: *“From today, I want the inspectorate department to get rid of all the street families and children from the streets as they are a security menace. [...]Time has come for the county to address the street children menace in the town as it is getting out of hand and frustrating tour firms working hard to bring tourists to Mombasa.”*^[17] As well as bringing to light the prioritisation of tourism over the rights of children and families in street situations, and again violates the principle of non-discrimination underlying the CRC.^[1]
15. In some cases, children rounded up by country security officers or police have been dumped in rural areas far from where they were picked up – without any arrests or care provided. Media reports claim that more than 40 children who were on the streets in Nakuru County were rounded up by law enforcers in February 2019 and dumped during the night in Sawich Torongo forest, more than 50 kilometres away.^[18] No measures have been put in place to prevent such an incident occurring again.^[19] The exercise has been condemned by the Street Families Rehabilitation Trust Fund (established by the government in 2003 to “coordinate and develop capacity, mobilize resources to facilitate

and monitor rehabilitative, re-integrative & preventive programmes for Street Families”^[20]), who said that a similar incident had occurred in 2018 in another county.^[21]

16. The whereabouts of large numbers of other children who have been subjected to mass round-ups is unknown. In July 2017, 470 children in street situations disappeared after having been rounded up in Nairobi. While the government claimed to have taken them to state-run rehabilitation centres, press reports state that the centres in question deny receiving any of the children.^[22] It is believed that the children may instead have been taken to various detention centres.^[23]
17. Most recently, on 13th June 2019, Nakuru County Governor Lee Kinyanjui announced all children and families in street situations would be required to register within two weeks at the social services offices and stated that those who did not would no longer be ‘allowed’ in the streets, violating their right to be in public spaces.^[24] This raises concerns about whether children who are unable to register during this short window will be further criminalised simply for being on the streets or whether those who do register will be subject to further policies designed to remove them from the county rather than to support their needs. It is also unclear how this registration process will be facilitated, given the problems registering that children in street situations who are unaccompanied by parents have had until now. The policy is unrealistic, but if it were to be carried out, there are fears that it would force children in street situations to relocate to other towns to avoid being picked up, that the process would be overtaken by corruption such as people wrongfully enrolling children who are not eligible, and that children who are not currently on the streets may be taken out of school to be presented by relatives in search of support from the government. There is also a risk that children who spend the day on the street but go home to families at night may not be included, but may still be criminalised.

Right to life, liberty and security of the person

18. All children have the inherent right to life under Article 6 of the CRC.^[1] Article 19 of the CRC commits states to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”.^[1] In Kenya, Article 53(1) of the Constitution specifically grants children the right to “be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”.^[4] Yet authorities in Kenya are not only failing to protect children in street situations from violence, abuse and exploitation, but are frequently reported to be the perpetrators of such rights violations.

Discrimination and criminalisation

19. According to NGO Glad’s House, children in street situations are arrested and detained by both Police Officers and County Government Askaris (municipal security officers), often

without having committed any crime. Discrimination against children in street situations means that they are often the first suspects for police whenever there are break-ins, muggings or murders within slum areas or estates, as reported by Kenya Good Neighbors. This again violates Section 5 of the Children Act, as well as the principle of non-discrimination that underlies the CRC and the ACRWC.^[1,2,5] In the words of a child speaking to Glad's House: *"The hardest thing for us on the streets is arrests. The police always arrest us on false issues. They take us to police station and then to jail. This encourages us to be thieves and criminals."*

Violent treatment and killings

20. Arrests often involve beatings and violent behaviour.^[25,26] Police officers are reported to use violence to elicit false confessions or witness statements as well as to intimidate children in street situations on a regular basis. A boy brought to a Remand Home in Kenya with an injury on his forehead reported to Glad's House in 2019: *"I was resisting to go inside the cell because I did not do any mistake. The police man pushed me through the door and that's how I got the cut. He took me to one of the best hospitals and told me not to tell anyone what happened"*.
21. In some cases, the level of violent treatment of children in street situations by security officials has gone beyond beatings to killings, which are claimed to be intentional acts on the part of the officers concerned. In May 2016, a combined force of County Askaris and Administrative Police in Eldoret conducted a planned raid on the 'California Barracks' area, where many children and youths in street situations sleep. The security forces reportedly beat children and chased the group towards the river. As many of the children did not know how to swim, at least six of them lost their lives in the water, as officers shot at them with tear gas. Witnesses who filmed the events were arrested and their mobile phones confiscated. Activists claim that these killings are part of a systematic policy by the county government to kill or intimidate children in street situations into leaving Eldoret.^[25] These actions violate the children's inherent right to life as enshrined under Article 6 of the CRC.^[1]
22. The incident outlined above is not the only incidence of killings of children in street situations by security forces. In Eldoret, activists report that at least 14 children were killed by these forces in 2016 alone.^[27]
23. Children in street situations are also subject to violence from members of the public, including other children. According to a first-hand account from a 17 year old boy speaking to Glad's House: *"One is always on the lookout. You never know what might happen. If it is not the police then it's the general public or even one of your friends."*^[16] Even when police and county authorities are not directly responsible for acts of violence, abuse and exploitation of children in street situations, their systematic mistreatment of and discrimination against the children will prevent the children from being able to seek justice from those who should be there to protect them. As well as failing to protect them from

violence (Article 19 of the CRC), this violates the underlying principle of non-discrimination.^[1]

Sexual violence and harassment

24. Sexual violence is both a cause and a repercussion of children's presence on the street. Girls in street situations particular report being subject to sexual violence by people in positions of authority as well as other members of the public including other children in street situations.^[27] Boys are also subject to sexual abuse and exploitation, as one male reported to Glad's House: *"The five of us had gone to swim in the river running across City Park in Nairobi. They suddenly turned up, two among the five of us managed to escape. I then remained behind with two ladies. They forced me to have unprotected sex with the girls if not they would take us all to the police station. They laughed as they watched us do it. They then told us to run away and disappear before they changed their minds"*.^[16] The Kenyan government's failure to protect children in street situations from various forms of sexual abuse and exploitation is a violation of Article 34 of the CRC as well as Section 15 of the Children Act.^[1,5]
25. Teenage girls in street situations who are in contact with NGO Kenya Good Neighbors have reported being sexually harassed by male security officers during their detention and/or forced to work as cleaners without pay and under the threat of violence.

Deprivation of liberty

26. According to Article 37(b) of the CRC and Article 53(1)(f) of the Kenyan Constitution, the arrest, detention or imprisonment of a child is required to be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.^[1,4] When detained, children must be held separately from adults and in conditions that take account of the child's sex and age. Anecdotal evidence from children in contact with the NGO Glad's House suggests that, without proof of age for the children, some are arbitrarily detained with adults and referred to adult courts. A 17 year old boy told the NGO: *"At the station the officer just looked at the three of us. He then concluded that Sam* was a small boy and was taken to the children court and then to juvenile remand home while I and Lewis* were taken to the adult court then to adult prison. I can't understand why while Sam was the oldest and the tallest among the three of us."*^[16]
27. The facilities in police stations do not provide an adequate standard of living for children, as is their right under Article 27 of the CRC.^[1] A girl aged 13-17 (precise age not given due to anonymization) explained to Glad's House: *"I struggled to eat for the whole week there. The food was very dirty and I could not eat at all. Also the toilets have no doors and if you are in the toilet the people in the men's cell would be very easy to see, there's no privacy. If there's anything to be done, they should give people clean food and have a door in the toilet"*.

28. Glad's House has heard a number of reports from children who have been held in police stations for a month. This is not in accordance with the right to liberty, freedom from arbitrary arrest or the use of detention "for the shortest possible period of time" (Article 37(b) of the CRC).^[1]

Right to special protection and assistance for children deprived of a family environment (standards of care and protection in institutions)

29. Article 20 of the CRC states that children "deprived of his or her family environment [...] shall be entitled to special protection and assistance provided by the State". This includes placement in suitable institutions where alternative care is not available.^[1] Children in street situations who find themselves in conflict with the law may be sent to rehabilitation schools, remand homes or borstal institutions. The purpose of rehabilitation schools, according to Section 47 of the Children Act, is to provide accommodation, care and protection, maintenance, training, and rehabilitation to the children housed in these institutions.^[5] As the government has no holding facilities, children in need of care and protection are mixed with children detained having been charged with a crime, until such time as the Children's Officer for a particular case finds a Charitable Children's Institution (CCI) with space to take the child who is not accused of a crime. According to Glad's House, in Mombasa County, for example, there are no separate government-run facilities for children in need of care and protection, so when CCI's are full, all children are placed in the remand centre. Likewise, according to the Section 190 of the Children Act, children below the age of ten years old should not be taken to rehabilitation schools.^[5] However, visits by Kenya Good Neighbors to Kabete rehabilitation school and Nairobi Children's Remand Centre found that under age children were still being admitted.
30. Many of the state-run institutions do not provide adequate accommodation, care and protection:
31. **Standard of living:** Many reports suggest that the standard of care and education provided by some state-run rehabilitation schools is inadequate to ensure their rights to an adequate standard of living (Article 27 of the CRC). Many of the buildings are colonial era buildings previously used as detention camps, which are not child friendly. Reports from NGOs Glad's House and Kenya Good Neighbors state that some schools lack adequate sanitation, desalinated water, or beds, and subject children to infestations of bed bugs, epidemics of scabies that go untreated, and to poorly trained staff. According to Kisumu Urban Apostolate Programme (KUAP), children in Kisumu were more satisfied with the conditions in the rehabilitation school they were housed in. However, even in this case where education and sanitation is provided, they report corporal punishment, outbreaks of bedbugs, and low staff to child ratios affecting the standard of care and protection.

32. **Corporal punishment:** Children in street situations who are in contact with Kenya Good Neighbors and who have had experience of stays in rehabilitation or borstal institutions report that the rehabilitation schools are more like prisons. The children report that the corporal punishment used in these facilities is a factor in turning many of them towards violent, serious crime upon their release, rather than rehabilitating them.
33. **Inadequate education:** Rehabilitation schools often fail to provide children with the education they are entitled to under the Constitution (Article 53), the Children Act (Section 7), the CRC (Article 28) and the ACRWC (Article 11).^[1,2,4,5,28] Some schools only cover certain levels (such as Primary Classes 4-8), and have large class sizes, as well as a lack of trained teachers for vocational training, as witnessed by Glad's House in Mombasa. Children and young people who have been through this system report learning little – for example, a 20 year old man who had been through the rehabilitation school system reported to Glad's House: *"I stayed [in Wamumu rehabilitation school] for 3 years and none of my relatives ever visited me. After 3 years I was given fare back to Mombasa. I went there knowing nothing but I left there knowing lots of bad words and habits. They say that that is a rehabilitation school but it is not. There one can walk in a good person but walk out a very bad person"*.^[16]
34. Glad's House also reports that in state-run Remand Homes there are no academic activities except those delivered by NGOs. Children should not be held for longer than three months in Remand, but Glad's House regularly sees children held for over six months or even a year. With the lack of educational activities on offer, this means that children fall further behind in their education. In the Juvenile Remand centre in Likoni, Glad's House built a library to encourage children to embrace education and culture of reading, only for it to be transformed into a confinement area.
35. **Labour exploitation:** Some government-run rehabilitation schools own large areas of farmland, where children are put to work. Their labour in these cases becomes the focus of their stay at the schools, rather than their rehabilitation. This violates children's right to be protected from economic exploitation and work that interferes with their education, enshrined in Article 32 of the CRC.^[1]
36. **Sexual abuse:** Other reports to Kenya Good Neighbors describe how some children in rehabilitation schools have been subjected to sexual abuse by other children of the same sex in the schools. The failure to protect children from such assaults violates their right to protection from violence and sexual abuse (Article 19 of the CRC).^[1]
37. **Lack of safeguarding and inadequate case followup:** For those who are still connected to their families, limited contact pushes many to run away from the

institutions. Institutions lack child protection or safeguarding policies and knowledge. To counter this, Glad's House is currently delivering free training for staff in a rehabilitation school in Mombasa on case management, child protection and good practices for working with vulnerable children, as there is no budget for staff development and training in the Rehabilitation school budget. A lack of supervision of children in institutions means that children end up being hurt either in the institution or outside it after escaping. Poor case follow up lead to many staying at the facilities for prolonged lengths of time.

38. **Poor implementation of reintegration policies:** Regarding reintegration back into families or communities, according to Glad's House, the Government of Kenya has very clear policies in place, however, these are often not adhered to in practice. For example, home visits are not carried out and children are cut off from friends and families once committed to a rehabilitation school. There are no care plans, risk assessments, or family mediation plans carried out, despite the clear regulations. This results in many children ending up back on the streets after their Remand or Rehabilitation sentence, with many of them ending up in jail as has been witnessed by Glad's House over the years. However, Chance for Childhood and KUAP have reported progress in Kisumu, where alternative care reforms are being piloted and children have been placed back in the society. The services provided are provision of basic needs to the children, mainstreaming the children to state schools, adoption and also safe custody for children in need of care and protection.

Access to justice

39. Many children are detained simply for being on the street, but for those who are charged with a crime, the justice process may be extremely slow. This is in violation of Article 37(d) of the CRC which grants the right to a "prompt decision" before the court, and to Section 186(c) of the Children Act, whereby children in conflict with the law should be "determined without delay".^[1,5] According to a case study presented by NGO Toybox, part of the CSC Network, for Joseph, a boy arrested and charged with a serious offence when he was 13, *"It took nearly 3 years for the judgement of Joseph, with 4 changes of advocates to represent him, the loss of the police file for 1 year, witnesses not being present, bail only being allowed if there is a guarantor (but he is an orphan), delays in the probation officer report, and all the time Joseph's health was deteriorating and he had no access to education. By the time the judgement was given in September 2015 for 2 years' probation, Joseph was so ill that once he was released he was admitted to hospital and died."*^[29]
40. Toybox also reports that most children and youth in street situations who are arrested are not provided with legal representation, advice, or support on navigating the justice system, in violation of Article 37(d) of the CRC as well as national law. For example, while children in conflict with the law have access to free legal representation according to Section 77(1) of the Children Act, the state budget in Nairobi only allows for funding for the

prosecution.^[5,27] Glad's House reports that over 13 years of operation working with children in street situations, the organisation has never once worked with a young person who has had access to legal representation during the process of arrest and subsequent detention. The children are given support from a Children's Officer, however the Children's Officer's role is to commit the child to Remand Centres or Rehabilitation Schools but not to provide independent legal assistance.

Legal identity

41. Every Kenyan citizen is entitled under Article 12 of the Constitution to registration and identification documents.^[4] This echoes Article 7 of the CRC which documents children's right to a name and nationality.^[1] However, children in street situations have commonly recounted difficulties in gaining documentation, particularly those who have been separated from parents or orphaned. A 16 year old girl told Glad's House: *"My mother was a heavy drinker and my father never cared. I don't even know my exact date of birth. It's my right to get a birth certificate. I don't know how I will get it as my mother is now dead and my father is a don't care."*^[16]
42. Without official documentation, children in street situations have found themselves unable to access basic services such as health care, despite having a right to basic health under Article 53 of the Constitution, and Article 24 of the CRC.^[1,4] Children in street situations in Githurai reported to Toybox that they had been unable to access healthcare despite the provision of free healthcare by the Kenyatta National Hospital on paper.^[27] Lack of access to healthcare is particularly concerning for children in street situations whose living conditions mean they are often exposed to increased health risks including skin infections, injuries, and HIV/AIDS.^[27]
43. Legal identity and proof of age is also required to protect children from deliberately acting as adults because they lack understanding of their particularly rights as children. For instance, Glad's House reported that rehabilitation schools are disliked to such an extent that some children in street situations will, when arrested, give false ages to be placed in an adult institution for a shorter period rather than risking a three year sentence at the rehabilitation school, which they are able to do due to a lack of identity documents. This can backfire when children are unaware of the law for adults, as was the case in 2018 when a 16 year old boy was arrested for the crime of robbery with violence. To avoid spending three years in the rehabilitation school or borstal, he claimed to be 19 without the knowledge that his crime holds a life sentence for adults. Glad's House was able to intervene to ensure he had access to legal advice.

Recommendations

44. Consortium for Street Children calls upon the Government of Kenya to put an end to the discrimination of children in street situations and to uphold their rights as enshrined in

international and national law. In particular, Consortium for Street Children gives the following recommendations:

45. Ensure effective participation of children in street situations and collaboration with non-governmental actors in the development and implementation of plans and strategies concerning children in street situations.
46. Integrate and apply a rights-based approach in all government actions and strategies concerning children in street situations.

Freedom of peaceful assembly and association

47. Halt operations that forcibly remove children in street situations from public spaces with immediate effect.
48. Launch a judicial inquiry into the practice of police round-ups of children in street situations and associated alleged human rights violations.

Non-discrimination

49. Review laws, including local by-laws, to remove any provisions that discriminate against children in street situations.

Right to life, liberty and security of the person

50. Hold accountable and prosecute police and security officers and other perpetrators of violent acts against children in street situations.
51. Put measures in place to ensure that all law enforcement officials undergo specific training on child rights and how to interact with children in street situations.

Right to special protection and assistance for children deprived of a family environment

52. Improve the living conditions and educational facilities in all government rehabilitation schools, remand centres, and borstal institutions and guarantee regular independent monitoring.
53. Ensure that all children in rehabilitation institutions have access to psychosocial support through qualified children officers, counsellors, and teachers.
54. Promote and support family and community reintegration where possible and in the best interest of the child to minimise institutionalisation of children.

Access to justice

55. Ensure that every child in conflict with the law has access to legal assistance as is provided for under Kenyan law.

Legal identity

56. Put child-friendly measures in place to ensure that every child can acquire legal documentation including birth certification retrospectively, with ease and free of cost, including those who are separated from their parents.
57. Immediately halt any registration drives that risk further criminalising and discriminating against children in street situations.
58. Guarantee access to healthcare for children in street situations including those who lack official identity documents.

*The names of children and young people quoted have been changed to protect their identity.

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