Refugee Review Tribunal AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: PHL35138 **Country:** Philippines **Date:** 16 July 2009

Keywords: Philippines – Isneg – Kalinga – conflict – state protection – domestic violence

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Questions

- 1. Can additional information be provided from other sources concerning the current relationships between the Kalinga and Isneg tribes? Or any reports of inter-tribal conflict anywhere?
- 2. Please provide information on state protection available in the Cordillera Administrative Region, North Luzon, and in the Philippines generally.

RESPONSE

1. Can additional information be provided from other sources concerning the current relationships between the Kalinga and Isneg tribes? Or any reports of inter-tribal conflict anywhere?

Limited relevant information has been found on relations between the specified tribes. As described by the Philippine National Commission on Indigenous Peoples, the Isnag is a relatively small tribal group of Malay origins who live in mountains in Apayao;

Isnag and Apayao are alternative terms that refer to the inhabitants of Apayao in what used to be a part of Mountain Province before it was partitioned into the five provinces of Bensuet, Kalinga, Apayao, Mountain Province, and Bontoc. Very little is known about how the Isnags lived before the Spaniards came to the Philippines. It is probable that they lived much as they do today — by hunting, fishing, and kaingin farming/That there was direct or indirect trade with China is evidenced by the Chinese jars, plates, and beads that are prized possession of many Isnag families.

Until the early part of the 20th century, there was a tradition of inter-tribal conflict;

Activities related to head-taking occupied a large part of the time of Isnag men: learning the art of war, training the young men, making and repairing their weapons, and protecting their

homes and families from attack. There were four major reasons why the men took heads: for religious reasons, for prestige, as a qualification for marriage, and for revenge. After a number of battles before and after 1913, the Isnags were convinced that their spears were no match for the "thundersticks" of the Amercian soldiers. From that time on, the Isnags lived as a comparatively peaceful people (National Commission on Indigenous Peoples 2003, 'Ethno Group: Isnag', http://www.ncip.gov.ph/ethno_groupdetail.php?id=58 – Accessed 19 June 2009 – Attachment 1).

According to the profile on the website of the Philippine National Commission on Indigenous Peoples, the Kalinga are of Malay origin and characterised by clannishness and have a long history of involvement in tribal wars;

The name Kalinga is believed to have come from Ibanas Kalinga and Gaddang Kalinga which both mean "headhunters." The Kalingas must have acquired their name because of their tradition of headhuntin[g] during tribal wars.

The Kalingas settle on levelled or terraced areas on the slopes of steep mountains near rivers and streams with free, clear running water through the Chico, Pasil, Tanudan rivers with wide plateaus and floodplains and a large portion of open grass lands.

Many villages or in Kalinga are located in strategic areas where the villagers can be forewarned of intruders, or where the surrounding terrain is rugged and form a natural defense because of "tribal wars". Tribal wars occur when a bodong peace pact system was broken or violated.

The bodong is the most admirable and efficient Kalinga institution. It is a peace pact or treaty between two tribes, wherein the Pagta or laws on inter-tribal relations are made. The bodong is also the Magna Carta of the Kalingas (National Commission on Indigenous Peoples 2003, 'Ethno Group: Kalinga', http://www.ncip.gov.ph/ethno_groupdetail.php?id=63 – Accessed 15 July 2009 – Attachment 2).

According to a 2007 article on a Heifer Project International program designed to bring an end to revenge between tribes, there are always some conflicts between Kalinga tribes

While tribes today do not go headhunting anymore, conflicts among tribes are still going on and an unsettled strife can easily result to tribal wars. According to Sison Paut, the Executive Director of the International Association for Transformation, (IAT), Heifer's partner organization in Kalinga, "most of crime cases in Kalinga are related to tribal conflicts. While it is all quiet right now and there is no war going on, peace and order in the province is volatile because hostilities that happened even long ago can be rekindled.

. . .

The strong affiliation for one's tribe is a reason why tribal conflicts and wars occur. Kalingas are very loyal to their own tribes and traditions. Each one is first identified as a member of his tribe, following its norms and rules in almost all aspects of everyday life. Families belonging to one tribe settle together and contribute to the security and progress of the whole tribe. "A community," says Sison, "is identified by the tribe living in it."

"The culture in Kalinga is that you should not move far from your tribe," stated Ruben Wacas of the Tabuk Lumin-awa-an Center for Social Action (TLC-SAC), a Heifer partner organization under the Catholic Vicariate of Tabuk. "One reason is that if you move far from your tribe, you would not be of much help, and you cannot readily get help. As such, families in most tribes migrate and settle together" ('Brokering peace among tribes: How HPI is helping end hunger and tribal wars in Kalinga' [2007], Heifer International Philippines website http://www.heiferphils.org/ – Accessed 8 July 2009 – Attachment 3).

One of the project partners is quoted in the article as saying that even where a bodong or peace pact between two or more tribes was in place, there would still be tension between them "and members keep their distance. We have plenty of intermarriages but only the immediate families are close, not the whole tribe."

According to the article Bodong as a contemporary mechanism for the resolution of conflict is also seen by some critics as no longer effective;

Bodong in old times was effective in ensuring peace among tribes. These days, however, some Kalingas doubt its relevance and even attribute it as a cause for tribal wars. They say that bodong now is commercialized, used for patronage during government elections, and even exploited as an excuse to go to wars. They also say that Kalinga police and military officers hesitate to execute their duties if their tribes hold a bodong with those involved, and suggest that all Kalingas instead follow civil law. Traditionalist Kalingas refute these and right now there is a heated debate on the effectiveness of bodong versus civil law ('Brokering peace among tribes: How HPI is helping end hunger and tribal wars in Kalinga' [2007], Heifer International Philippines website http://www.heiferphils.org/ – Accessed 8 July 2009 – Attachment 3).

Similar reservations have been expressed in a UN Development Program report of 2006:

Noticeably, customary law and adjudication persist to this day in many Cordillera IP groups even if the state's judicial system is also operative. There seems to be an accepted distribution of areas of responsibility between customary law and national law. The courts encourage the settlement of conflicts between individuals through customary law or through the barangay. However, it is the consensus that the attitude of a preferred use of customary law is changing. There are those who claim that the adjudication process of the courts with its rules of evidence is taken advantage of by the accused or the guilty especially when he is rich and/or educated. Even conflicts over land claims are brought to the courts for settlement instead of the council of elders when the claimant is rich and/or educated.

Ifugao peace pacts have become defunct and cases which involve inter-village conflict are handled by municipal officials usually with the aid of the elders of the communities involved. The peace pact system controlling inter-village and inter-region relationships is still in current use among the Kalingas, Bontoks, Apayao, Isnegs and Tingguians of Abra. The peace pact defines the provisions on the behavior of co-pact villagers while in the territory of the other. The peace pact holder is responsible for policing the boundaries so no one is killed within their territory (Buendia, Rizal, Mendoza, Lorelei, Guiam, Rufa and Sambeli, Luisa 2006, *Mapping and Analysis of Indigenous Governance Practices in the Philippines and Proposal for Establishing an Indicative Framework for Indigenous People's Governance: Towards a Broader and Inclusive Process of Governance in the Philippines.* Technical Report. Bangkok: United Nations Development Programme, p. 55, published at University of London School of African and Oriental Studies website, https://eprints.soas.ac.uk/4465/ – Accessed 15 July 2009 – Attachment 4).

2. Please provide information on state protection available in the Cordillera Administrative Region, North Luzon, and in the Philippines generally.

A previous Research Response provides information on whether or not police act in relation to complaints of domestic violence and the services available to women in such situations (RRT Country Research 2006, *RRT Research Response PHL30717* – 25 October [Q3 and Q4]) – Attachment 5).

A Philippine Human Rights Reporting Project report also provides a representative summary of the prevalence of violence against women:

The most prevalent human rights violation that cuts across all sectors of society -- even the rich and highly educated – is violence against women (VAW).

In 2006 a total of 5,758 VAW cases were reported to the police. Physical injury is prevalent, accounting for 38.86% reported attacks; Domestic violence ranks second with 26.07% of VAW cases. Rape accounts for 16.65% of VAW cases (PNP). Although rape figures are low, it is an instrument of power that has no boundaries inside the home as in marital rape; the community -where rebels and the military use rape to torture and foment fear upon the enemy: and even outside the country as in trafficking.

The Philippines has enacted several laws protecting women from violence &nd; Anti-Sexual Harassment, Anti-Rape and Rape Victim Assistance and Protection, Anti-Trafficking in Persons, Anti-Violence against Women and Children with Women;s and Children;s Desks and Services -- yet the implementation leaves much to be desired. Knowledge of the laws among those who are supposed to enforce them -like the police and judges are scandalously minimal, and much less among those who need them for their own personal protection (Tripon, Olivia H. 2008, *Women's rights in the Philippines today*, 11 January, Philippine Human Rights Reporting Project, Section 1B,

http://www.rightsreporting.net/index.php?option=com_content&task=category§ionid=7 &id=22&Itemid=131 - Accessed 8 July 2009 - Attachment 6).

With the introduction of a new civil code in 1950, before which the Philippines had legal recognition of divorce, the country ceased to allow divorce, along with Malta, the only other country in the world that fails to do so. As noted in a 2008 article by Women's International Perspective, the Family Code of 2008 did not change the ability of women to escape from a violent partner easily;

The 1988 Family Code adopted the same policy but it did provide for nullification of marriage on grounds of psychological incapacity.

While a few brave legislators have authored bills to legalize divorce, none of these have seen the light of day. Proposed bills regularly expire at the committee level before they can even be deliberated up in Congress.

To date, five bills have been filed in Congress, two in the Senate and three at the Lower House. Senator Rodolfo Biazon, Senator Tessie Aquino Oreta, Representative Bellaflor Angara Castillo, Representative Manuel Ortega and Representative Liza Largoza Mazaall all put bills up for a vote in their respective houses.

SB 782, Senator Biazon's bill, sought to amend the Family Code by allowing absolute divorce and thereby granting legally separated spouses the right to remarry. The subject of scrutiny of SB 782 is the existing provision under the Family Code which allows psychological incapacity as the only grounds or basis for the nullification of a marriage. Attorney Carol Austria, a legal rights advocate notes:

"Psychological incapacity is a very limited basis but the Supreme Court describes psychological incapacity as an incurable disease. The focus must shift from psychological grounds to issues of gender inequality and freedom from unhealthy and devastating relationships. A petition for nullification of marriage is also a far cry from the usual divorce proceeding practiced worldwide."

In formulating a national divorce law one must account for the existing indigenous community practices where proceedings are performed by mumbakis (indigenous priests) or tribal leaders. "Many marriages have been solemnized not in city halls, but in tribal communities. The important thing is to recognize what they deem as a practical and sensible divorce law in their own context," she says.

In the end, these bills failed to advance beyond the filing stage and were not even calendared for reading because they were not considered "priority bills" (Women's International Perspective 2008, 'Philippines: Marriage and domestic violence: A fatal combination in the Philippines, yet divorce is illegal' 21 January – Attachment 7).

The incidence of domestic violence reporting appears to be increasing, however reliability of statistical data is questioned. For example, in 2001 Reprovatch reported that

Domestic violence is the most prevalent form of gender-based violence in the Cordillera and in key areas in the country, according to the Center Against Trafficking of Women (CATW). Last year's figures gathered from Metro Manila, the Cordillera and the cities of Angeles, Cebu, Bacolod and Davao listed 588 cases of domestic violence accounting for more than 90% of complaints of violence against women in the country. Rape was at a distant second at 52 cases and incest at 20. There were 13 cases of sexual assault and molestation and 14 cases of sexual harassment. 71% of all forms of abuses happen right at the victims' homes ('Households unsafe for women' 2001, Reprowatch, 1 March, <a href="http://db.jhuccp.org/ics-wpd/exec/icswppro.dll?BU=http://db.jhuccp.org/ics-wpd/exec/icswppro.dll?BU=http://db.jhuccp.org/ics-wpd/exec/icswppro.dll&QF0=DocNo&QI0=157593&TN=Popline&AC=QBE_QUERY&MR=30%25DL=1&&RL=1&&RF=LongRecordDisplay&DF=LongRecordDisplay - Accessed 7 July 2009 - Attachment 8).

More recently, the Philippines National Police Women and Children Protection Centre recorded a 17% increase in the number of cases of violence against women between 2006 and 2007:

In the first semester of 2008, the PNP recorded 3,228 cases of violence against women.

Abuse by a spouse or partner is now the greatest violation committed against women with 1,398 reported cases, accounting for more than 40 percent of all types of violence against women recorded in the first two quarters of 2008.

But this could well be the tip of the iceberg, according to experts. Most cases, said the PNP, went unreported.

Legal framework

Part of the problem is the legal framework. In 2004, the <u>Violence Against Women and Children Act (VAWC)</u> was introduced. In addition to physical abuse, it covered verbal, psychological and economic abuse.

It also identified perpetrators as anyone with whom a woman had an intimate relationship, not just a spouse.

More importantly, it made physical abuse a criminal act punishable by law, and empowered abused women to break their silence.

According to the PNP, reported abuse cases have increased from 218 in 2004 when the law was passed to 2,387 in 2007; a fact largely attributed to increased awareness of the law

('Philippines: Law fails to stem domestic violence' 2008, *IRIN*, 26 November, http://www.irinnews.org/Report.aspx?ReportId=81668 – Accessed 7 July 2009 – Attachment 9).

The United Nations Committee against Torture commented in relation to the most recent report submitted to the Committee, some 16 years late, on the lack of statistical information;

The Committee takes note of various measures taken by the State party, including the enactment, in 2004, of the Anti-Violence Against Women and their Children Act (RA 9262) and the established of a significant number of Women and Children Desks in police stations all over the country and the Women and Children Protection Centre of the PNP. However, the Committee expresses its concern about the prevalence of violence against women and children, including domestic violence. It is further concerned about the lack of State-wide statistics on domestic violence and that sufficient statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided. (arts. 1, 2, 12 and 16)

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The Committee calls upon the State party to allocate sufficient financial resources to ensure the effective implementation of the Anti-Violence Against Women and their Children Act. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims. In addition, the Committee recommends that the State party strengthen its efforts in respect of research and data collection on the extent of domestic violence.

Furthermore, the State party is encouraged to promptly enact the Magna Carta of Women (House Bill 4273) which is the national translation of the Convention on the Elimination of All Forms of Discrimination against Women (United Nations Committee Against Torture 2009, 'Consideration of Reports Submitted by States Parties under Article 19 of the Convention', 14 May,

 $\frac{http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/14fb8da}{239e97ea5c12575c1004dac4a?OpenDocument} - Accessed 13 July 2009 - Attachment 10).$

In its most recent report on human rights in the Philippines, the US Department of State observed that the problem of violence against women continued to remain serious;

Violence against women remained a serious problem. The law criminalizes physical, sexual, and psychological harm or abuse to women and their children committed by their spouses or partners. As of December the PNP reported 706 cases of wife battering and physical injuries. This number likely underreported significantly the level of violence against women.

A local women's support group noted that, in smaller localities, perpetrators of abuse sometimes used personal relationships with local authorities to avoid prosecution. On other occasions women who sought to file complaints through the police were told to pay special fees before their complaints could be registered.

The PNP and the Department of Social Welfare and Development (DSWD) both maintained help desks to assist victims of violence against women and to encourage the reporting of crimes. With the assistance of NGOs, officers received gender sensitivity training to deal with victims of sexual crimes and domestic violence. Approximately 9 percent of PNP officers were women. The PNP has a Women and Children's Unit to deal with these issues (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Philippines*, February, Section 5 – Attachment 11).

Difficulties faced by indigenous women are illustrated by a short article from 2003 which described a case study of a woman ('Gwen') from the Cordillera region whose husband began to beat her four months after they were married. When she sought assistance from her parents, they always made her return home;

She clung to the hope that the clan would solve her problem, as they had resolved countless disputes in the community. She bravely spoke in front of the elders, only to be met with their anger and threats and a stalwart refusal to help her. They told her, coldly, that in their culture a woman could not leave her husband and that if she did, she would have to pay the "multa"-she must return everything that was given to her during their "sunga" and to pay a fine for her "transgression". She could not comprehend why they could condone such an injustice.

So Gwen was forced to go back to her husband. She had no choice because she could not afford to return the dowry or pay the fine that would have been imposed on her. She suffered in silence and continued to dream of the peaceful life she aspired before her marriage. Her husband again repeatedly beat her and it got to the point that she almost died from the injuries she sustained from the beatings.

It was her near-death experience which convinced her to leave her husband. Sadly, she could not bring her children with her. The community elders and leaders still firmly stood by their belief that married couples should stay together through thick and thin. They refused to recognize the abuse and pain she went through. In fact, all they did to resolve the conflict was to have her husband conduct the "sunga" wherein he would butcher a pig for her quick recovery and give "butok" or beads for his wife so that she would be healed.

Gwen's case may seem unique in the Cordilleras. Still, the truth is that domestic violence is a reality in the region. Her story is not a critique of the culture. It merely points out that there are traditional practices in the Cordilleras that are detrimental to women.

Many women in the Cordilleras silently suffer from violence. Cases of abuse and violence are being resolved through traditional cultural practices that are not anymore applicable. Some clan members, who used to be involved only in the resolution of land disputes and other conflicts, are now involving themselves in politics and other matters, abusing traditional practices to suit their needs, such as in the resolution of abuse cases. They often try to pressure the aggrieved party to amicably settle the case since they all belong to one clan, afraid of the shame and criticism that a case of abuse will bring on their clan. Bringing out the abuse in the open according to them will show the inability of their elders to settle misunderstandings (Armas, Janet 2003, 'Heart of darkness: searching for peace amidst domestic violence in the Cordilleras' *Igorota*, 1 October, http://www.highbeam.com/Igorota/publications.aspx?date=200310 – Accessed 13 July 2009 – Attachment 12).

Further to information provided in the October 2006 Research Response referred to above, the Immigration and Refugee Board of Canada also refers to the *Anti-Violence against Women and their Children Act*, 2004 which enables the victims of domestic violence, defined by the act as a criminal offence, to obtain a protection order;

Protection orders, issued by *barangay* (village) offices and valid for up to 15 days (*BusinessWorld* 19 Mar. 2004; *Manila Bulletin* 13 Nov. 2005), are designed to prevent the alleged perpetrator from coming into contact with the applicant (*BusinessWorld* 19 Mar. 2004). A representative of the Democratic Socialist Women of the Philippines Party (DSWP) explained to *BusinessWorld* that women from poorer regions or isolated villages may have difficulty travelling to urban centres for protection orders; *barangay* offices, however, are more accessible (ibid.). Once a protection order expires, the applicant may then apply for a

temporary restraining (or protection) order from the local court (ibid.; *Manila Bulletin* 13 Nov. 2005), which is valid for 30 days (ibid.). The *Anti-Violence Act* also recognizes "battered woman syndrome" as a legitimate legal defence in cases where victims of domestic violence "have been driven to defend themselves" (Philippines June 2004, 49) (Immigration and Refugee Board of Canada 2006, *PHL101561.E – Philippines: State protection and recourse available to victims of domestic violence, including recent legislation, police response and community-based services (2004 – 2006), 10 October – Attachment 13).*

Implementation of the protection order system is not uniform, as the IRIN report referred to above indicates:

Authorising the "barangays", the smallest local government unit, to issue and carry out BPOs provides a community-based source of help that is easily accessible.

However, in reality, this is precisely what makes implementation and monitoring difficult.

"There are an estimated 41,000 barangays in the Philippines making it a logistic challenge for government to train personnel on the law's rules and regulations and monitor its implementation,," says Irish Aguilar, women's programme coordinator for <u>Saligan</u>, an NGO specialising in alternative and developmental legal aid.

In many barangays, acts of domestic violence are dismissed as marital disputes.

Under the VAWC, barangays are not allowed to mediate between a husband and wife, but because of a lack of awareness of VAWC provisions, they often encourage reconciliation.

"There have been reports of asides made by barangay officers blaming the woman for being beaten because she failed to cook dinner, condoning the act of violence," added Aguilar ('Philippines: Law fails to stem domestic violence' 2008, *IRIN*, 26 November, http://www.irinnews.org/Report.aspx?ReportId=81668 – Accessed 7 July 2009 – Attachment 9).

A previous Canadian research response, predating the passing of the 2004 law, provides some basic information on the role of the *barangay* and its officials (Immigration and Refugee Board of Canada 2003, *PHL41911.E – Philippines: Information on the barangay and on its leaders, their level of authority and their decision-making powers (1990-2003),* 19 September – Attachment 14).

As pointed out by a University of Philippines law professor, the Act imposes a duty on the *barangay* personnel to provide assistance to victims immediately and ensure the "transfer of the victim to a safe place, clinic or hospital, and assistance in removing her possessions from the houses are among their other urgent responsibilities".

The Anti-VAWC Act direct *barangay* officials and courts to conduct hearings on applications for protection orders that shall take priority over all business or proceedings. *Barangay* protection orders shall be issued on the same day it is applied for and may be granted *ex parte*. Upon its expiration after 15 days from issuance, the victim may file for a temporary or permanent protection order from the Family Court. The courts can grant additional reliefs such as granting custody of the children to the petitioner, directing possession and use by the petitioner of personal properties regardless of ownership, ordering the respondent to stay away from the petitioner, her home or office and directing the respondent to give monetary support. The law also authorizes the court to impose a bond to keep the peace on any person against whom a protection order is issued (Aguiling-Pangalangan, Elizabeth 2008,

'Responses to victims of domestic violence in the Philippines' in Chan, Wing-Cheong (ed), *Support for Victims of Crime in Asia*, Routledge, Oxford, pp. 314, 315 – Attachment 15).

The Philippine Human Rights Reporting Project also noted in the report referred to earlier that whilst the *Anti-Violence Against Women and Children Act* enabled domestic abuse to be officially reported, its effectiveness as a means of protection remained limited;

Until now, women are hesitant to report their situation due to shame and fear. RA 9262 gives respite from harm with protection orders that bar perpetrators from going near the victims. Unfortunately, some barangay officials are still ignorant of this provision or the order is delayed. Awareness of these laws and their rights must be made known to all (Tripon, Olivia H. 2008, *Women's rights in the Philippines today*, 11 January, Philippine Human Rights Reporting Project, Section 1B3,

http://www.rightsreporting.net/index.php?option=com_content&task=category§ionid=7 &id=22&Itemid=131 - Accessed 8 July 2009 - Attachment 6).

A case study referred to in the article by Aguiling-Pangalangan above also illustrates the gap between statutory provisions and actual practice;

A 43-year-old woman complained of the repeated beatings she suffered in the hands of her live-in partner. When she could no longer tolerate his abusive conduct, she left for work and did not return at the end of the day. The only way she could successfully escape was to leave at home her young son, a child by a previous relationship. She sought advice from our law students who informed her for this wonderful law that protected women and children victims of violence. Several trips to the *barangay* to file for a protection order fell on deaf ears. None of the barangay officials had heard of the law or of a barangay protection order. When this was explained to them, one official expressed disbelief that the woman could be a battered wife when beatings were "merely occasional." Although the students apprised the women of her right to file an administrative case against the officials, she preferred to focus her attention to getting custody of her child. When she went back to her home, she learned that her partner had taken on a mistress and had sent her son to the mistress's relatives in one of the islands sought of the Philippines. She has not found her son to this day (Aguiling-Pangalangan, Elizabeth 2008, 'Responses to victims of domestic violence in the Philippines' in Chan, Wing-Cheong (ed), Support for Victims of Crime in Asia, Routledge, Oxford, pp. 318-319 – Attachment 15).

In 2008, the Women and Children Protection Centre (WCPC) recorded 356 cases of domestic violence offences lodged against police officers ('356 domestic abused raps filed vs cops in 2008' 2009, *Philippine Star*, 17 February,

http://www.philstar.com/Article.aspx?articleId=441014&publicationSubCategoryId=65 - Accessed 10 July 2009 - Attachment 16).

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- 2. National Commission on Indigenous Peoples 2003, 'Ethno Group: Kalinga', http://www.ncip.gov.ph/ethno_groupdetail.php?id=63 Accessed 15 July 2009.
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