



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Visit to Costa Rica undertaken from 3 to 14  
March 2019: recommendations and observations  
addressed to the national preventive mechanism**

**Report of the Subcommittee\*, \*\***

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\* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 2 December 2019. On 9 December 2019, the national preventive mechanism requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

\*\* The annexes to the present document are being circulated in the language of submission only.



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## I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture carried out its first regular visit to Costa Rica from 3 to 14 March 2019. Costa Rica became a party to the Convention against Torture on 11 November 1993 and became a party to the Optional Protocol on 1 December 2005.
2. The Subcommittee members conducting the visit were: Roberto Fehér Pérez (head of delegation), María Dolores Gómez, María Luisa Romero, Nora Sveaass and Juan Pablo Vegas. The Subcommittee was assisted by two human rights officers and two security officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
3. The principal objectives of the visit were (a) to visit places of deprivation of liberty in order to assist the State party in fully complying with its obligations under the Optional Protocol, to strengthen the protection of persons deprived of their liberty from the risk of torture and ill-treatment and (b) to provide advice and technical assistance to the national preventive mechanism of Costa Rica and to consider the extent to which the Costa Rican national authorities are supporting its work and responding to its recommendations, taking account of the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5).
4. The Subcommittee held meetings with the individuals listed in annex I and visited the places of deprivation of liberty listed in annex II; it interviewed persons deprived of their liberty, law enforcement and detention officers, medical personnel and others. In addition, two meetings were held with the national preventive mechanism, which allowed the Subcommittee to examine the mechanism's mandate and practices and identify ways to improve its effectiveness. In order to better understand how the mechanism works in practice, the Subcommittee also visited, together with the mechanism and in various groups, a place of deprivation of liberty for women that had been chosen by the national preventive mechanism (see annex III). That visit was led by the national preventive mechanism, with the members of the Subcommittee acting as observers.
5. At the end of the visit, the delegation presented its confidential preliminary observations orally to the mechanism.
6. In the present report, the Subcommittee sets out its recommendations and observations on the functioning of the national preventive mechanism, based on what it was able to observe during its visit. These recommendations are in line with the Subcommittee's obligation to offer training and technical assistance with a view to building the capacities of national preventive mechanisms, and to advise and assist those mechanisms in evaluating the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other ill-treatment,<sup>1</sup> in accordance with article 11 (b) (ii) and (iii) of the Optional Protocol.
7. **The present report will remain confidential until such time as Costa Rica decides to make it public in accordance with article 16 (2) of the Optional Protocol. The Subcommittee firmly believes that the publication of the present report would contribute positively to the prevention of torture and ill-treatment in Costa Rica. Therefore, the Subcommittee recommends that the mechanism authorize the publication of the present report and that it inform the Subcommittee of its decision to do so.**
8. The Subcommittee will prepare a separate confidential report for the Costa Rican authorities in which it will make recommendations to the State party.
9. The Subcommittee draws the attention of Costa Rica and the national preventive mechanism to the Special Fund established under the Optional Protocol to the Convention (art. 26). Only recommendations contained in those Subcommittee visit reports that have

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<sup>1</sup> The present report uses the generic term "ill-treatment" to refer to any form of cruel, inhuman or degrading treatment or punishment, in accordance with article 16 of the Convention against Torture.

been made public can form the basis of applications to the Fund, in accordance with its published criteria.

10. The Subcommittee wishes to express its gratitude to the national preventive mechanism for its assistance related to the planning and undertaking of the visit.

## II. National preventive mechanism

11. The Ombudsman's Office was designated as the national preventive mechanism by Executive Decree No. 33568-RE-MSP-G-J, signed on 13 December 2006 and published on 19 February 2007. The mechanism began functioning as an independent body within the Ombudsman's Office on 19 January 2009. The legal status of the national preventive mechanism became official through the adoption of Act No. 9204 of 2014. In accordance with article 1 of the Act, the mechanism's objective is

to protect the fundamental human rights of persons who are in any way deprived of their liberty and to prevent any act of torture or other cruel, inhuman or degrading treatment by regularly carrying out inspections of prisons and detention facilities and centres.

12. Currently, the mechanism has since been designated as a "highly decentralized body" attached to the Ombudsman's Office. Pursuant to article 83 of the General Public Administration Act, highly decentralized bodies do not fall under the usual hierarchy in which subordinate bodies are subject to the orders, instructions and circulars of a superior authority. The mechanism enjoys financial independence and autonomy in carrying out its activities, which are established by national law on the basis of the Optional Protocol.

13. At the time of the Subcommittee's visit, the mechanism's team was composed of a director, a political scientist and a social worker, as well as an administrative assistant. One lawyer's post was waiting to be filled. In cases where the mechanism requires a specialist, for instance a physician or architect, it requests a loan of staff from the Ombudsman's Office, which has greater human resources. Such loans are permitted under article 17 of the regulations implementing the act that established the mechanism.

14. The mechanism conducts periodic visits to places in which persons are deprived of their liberty, in order to observe the treatment of such persons.<sup>2</sup> Following the visits, the mechanism makes recommendations to the competent authorities with a view to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

## III. Recommendations to the national preventive mechanism

### A. Structure and independence

15. During its visit, the Subcommittee noted with satisfaction that the national preventive mechanism has a strong position and enjoys legitimacy vis-à-vis the Costa Rican authorities. The mechanism is thus able to fulfil, unimpeded, its mandate of monitoring, issuing recommendations and engaging in dialogue with the authorities. The mechanism's reports contain extensive information relating to its observations and its recommendations are used to inform decisions by the judicial and executive branches of power.

16. The Subcommittee is concerned that the mechanism may be understaffed. It currently lacks human resources and multidisciplinary staff to carry out its work independently from the Ombudsman's Office. For instance, the mechanism has to request the Office's help in providing drivers, physicians, psychologists and other specialized workers in order to carry out its daily work.

17. **The Subcommittee recommends that the mechanism consider hiring, as part of its main team and permanent staff, medical and psychological experts with experience**

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<sup>2</sup> Article 5 of the act establishing the mechanism.

**in prison environments, who would contribute to the fulfilment of the mechanism's mandate. The addition of such professionals, who could work part- or full-time, would bring a more comprehensive focus to the mechanism's visits and increase the relevance of recommendations made to the authorities regarding health-related aspects in places of deprivation of liberty.**

18. During its visit, the Subcommittee observed good working relations between the Ombudsman's Office and the national preventive mechanism. Generally speaking, the mechanism is an independent body; there were no reports of interference by the Ombudsman's Office in the fulfilment of its mandate, the allocation of its budget or the recruitment and hiring of its staff.

## **B. Visibility**

19. The annual reports of the mechanism contain important information on its observations and recommendations to the State party's authorities. The Subcommittee considers the reports to be an extremely valuable tool for improving the visibility of the mechanism's work and raising awareness about prison-related issues.

**20. The Subcommittee believes it would be advisable for the national preventive mechanism to make its annual reports more widely available to the public by inviting senior State officials and the mass media to disseminate them broadly. Greater visibility for the reports will improve civil society's understanding of the mechanism and will give greater weight to its recommendations on major prison-related issues, such as overcrowding or the widespread lack of access to health services; in turn, this will increase the State party's accountability regarding the findings of the mechanism and vis-à-vis society in general.**

21. The Subcommittee noted that the mechanism is known and respected by key State actors, including the executive and judicial branches. However, the mechanism conducts its activities without involving other actors, such as civil society, the United Nations system or professional associations of lawyers or psychologists, resulting in a lack of visibility among these. This in turn means that intermediary organizations are not aware of the major issues relating to prevention of torture.

**22. The Subcommittee recommends that the mechanism start to work more closely with the media and with civil society to achieve further recognition of its mandate and recommendations and that it promote information-sharing. By doing so, the mechanism will fulfil its role of disseminating information about issues relating to prevention of torture and other ill-treatment; moreover, it will gain greater visibility vis-à-vis a number of non-State actors that could help to raise further awareness about the importance of torture-prevention initiatives.**

**23. The Subcommittee recommends that the mechanism propose exchanges with professional institutions, such as those specializing in forensic or legal medicine; professional associations of lawyers or psychologists; and the United Nations system, including specialized agencies. These organizations can lend technical and academic support to the fulfilment of the mechanism's mandate.**

24. In addition, the Subcommittee noted that the mechanism has not successfully distinguished itself from the Ombudsman's Office vis-à-vis some institutions. Specifically, the mechanism has not developed a sufficiently effective strategy to distinguish the methodology for its visits to places of deprivation of liberty from those of the Ombudsman's Office. As a result, it has an extremely low profile in the eyes of persons deprived of their liberty and the public at large. In most of the facilities visited by the Subcommittee, the persons deprived of their liberty were not familiar with the national preventive mechanism or its mandate, or they confused it with the Ombudsman's Office. The Subcommittee finds it regrettable that, despite its legally recognized independence, the mechanism is not sufficiently known and has not distinguished itself effectively from the Ombudsman's Office among persons deprived of their liberty.

25. **The Subcommittee recommends that the mechanism develop a stronger strategy in order to differentiate its team from that of the Ombudsman's Office and to make clear the specific nature of its mandate to persons deprived of their liberty. To that end, the Subcommittee recommends, for example, organizing awareness-raising campaigns and other promotional activities, such as the production and distribution of materials on the specific nature of the mandate and activities of the mechanism, and considering the possibility of providing members of the mechanism with clothing<sup>3</sup> of a specific colour or marked with a symbol or logo so as to clearly set them apart from members of the Ombudsman's Office.<sup>4</sup>**

26. **The Subcommittee recommends that, during visits, the members of the mechanism present themselves in a specific, easy-to-understand manner to the authorities of places of detention and to persons deprived of their liberty, and that they clearly explain their mandate and the objectives of their visit.**

### **C. Joint visit and interview methodology**

27. The Subcommittee conducted a joint visit with the mechanism during which it was able to observe its working methods. The Subcommittee experts split into two groups, with each group observing the work of two members of the mechanism. Overall, the way in which the members of the mechanism conducted their work made a good impression on the Subcommittee delegation.

28. The joint visit began with a meeting with the prison director, which lasted around an hour. Meetings with the prison authorities that take place upon arrival at an establishment must be focused on obtaining basic information about the establishment, such as the number of detainees per category or follow-up to recommendations made during the mechanism's previous visit. During the meeting, the Subcommittee noted that the mechanism members did not inquire as to the progress made in respect of the recommendations made during previous visits.

29. As for interview methodology, the Subcommittee noted that, in some interviews with persons deprived of their liberty, the members of the mechanism did not introduce themselves as such and did not explain clearly their mandate as it relates to prevention. One group of Subcommittee experts noted that the introductory part of interviews was not easily understandable for persons deprived of their liberty and the mandate of the interviewers and the institution they represented was not made clear. On other occasions, the members of the mechanism did not request the consent of persons deprived of their liberty before conducting interviews, did not make clear that the interviews were confidential and voluntary and did not inform interviewees that the interviews were not meant to address individual cases.

30. **The Subcommittee recommends that members of the mechanism always introduce themselves to interviewees, by giving their name and information about the mechanism and its preventive mandate. The express consent of the detainee should always be obtained and it should be made clear that the interview is voluntary and confidential and can be interrupted at any time at the interviewee's request. The Subcommittee is of the view that an appropriate and complete presentation builds trust with the interviewee and facilitates communication and information-sharing.**

31. **The Subcommittee would like to recall that the purpose of the interviews is to gain a better understanding of the situation of persons deprived of their liberty and to identify cases of torture and ill-treatment and any patterns thereof, with a view to formulating recommendations to prevent similar situations from occurring in the future. The Subcommittee recommends that the administration of the mechanism ensure that all the staff responsible for carrying out visits receive specific training on**

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<sup>3</sup> The Subcommittee noted with satisfaction the arrival of a shipment of vests designed for the mechanism at its last meeting with members of the mechanism. The vests will no doubt greatly increase the mechanism's visibility during visits.

<sup>4</sup> CAT/OP/12/5.

**how to conduct interviews and that the members of the mechanism continue to mutually reinforce each other's capabilities through regular skills updating and external courses.**

32. One group of Subcommittee experts noted that some information-sharing and interviews with persons deprived of their liberty took place in the presence of prison personnel. On a few occasions, the Subcommittee had to bring up the principle of privacy in order to avoid any risk of reprisals after the visit.

**33. During its visits, the mechanism must ensure privacy, confidentiality and protection against reprisals for the persons interviewed in the presence of prison personnel. The Subcommittee recommends that the place where the interviews are conducted is chosen carefully in order to ensure confidentiality, in strict adherence with the "do no harm" principle.**

34. The Subcommittee is concerned that the mechanism lacks a strategy to prevent reprisals and threats by the personnel working at detention centres and by other persons deprived of their liberty against the persons interviewed. In order for the mechanism's interactions with persons deprived of their liberty and its overall mission to be successful, it is crucial for its members to agree on and adopt a common methodology regarding reprisals.

**35. The Subcommittee recommends that the mechanism develop, as a priority, a comprehensive methodology and strategy to prevent reprisals and to ensure that its personnel is familiar with and knows how to implement the methodology and strategy. The focus should be on prevention, confidentiality and the "do no harm" principle.**

**36. The Subcommittee recommends that the mechanism always consider there to be a risk of intimidation, sanctions or reprisals and that it therefore take steps to address that risk. As a preventive measure, the possibility of reprisals must always be mentioned and interviewees must be invited to report cases to the mechanism or to the Ombudsman's Office by dialling "4" on the telephones available in prisons. In addition to the precautions mentioned above, the mechanism should warn the authorities that any kind of reprisal is impermissible, and that the mechanism will follow up in order to satisfy itself that there is a procedure for filing complaints and that any such complaints have been investigated, the findings of any investigations reported and the appropriate measures taken. The mechanism must also, among other things, conduct follow-up preventive visits more frequently.**

37. Furthermore, it would be good practice to distribute an information leaflet to interviewees to explain the mandate of the mechanism and provide contact information. The leaflet should also inform persons deprived of their liberty that they may report to the mechanism any reprisals that they may have suffered for maintaining contact with the mechanism.

#### **IV. Strategy for follow-up to the recommendations of the national preventive mechanism**

38. After its joint visit to the Vilma Curling women's centre, the Subcommittee received a report that had been prepared by the mechanism. The Subcommittee acknowledges the mechanism's efforts in preparing the report, which provides quite detailed remarks on a number of important subjects. Nevertheless, the Subcommittee is of the view that the chapter on recommendations to the State party could be enhanced.

**39. The Subcommittee recommends that the mechanism make more specific recommendations on all the aspects examined. The recommendations should be exhaustive and measurable using pre-established indicators. It would also be useful if the mechanism, basing itself on empirical findings, take a firmer, more assertive stand with regard to State actors, in order to request the necessary adjustments. The Subcommittee recommends that, after each visit, the mechanism submit recommendations to the relevant authorities quickly and conduct follow-up visits promptly.**

40. The Subcommittee further recommends increasing the number of visits carried out to follow up on recommendations made to detention centre authorities. To this end, and if possible in conjunction with the relevant authorities, it recommends establishing an effective mechanism to follow up on the recommendations it issues.<sup>5</sup>

## V. Next steps

41. The Subcommittee requests that a reply to the present report be provided within six months from the date of its transmission to the national preventive mechanism. The reply should respond directly to all the recommendations and requests for further information made in the report, giving a full account of action that has already been taken or is planned (including timescales) to implement the recommendations.

42. The Subcommittee considers both its visit and the present report to form part of an ongoing process of dialogue. The Subcommittee looks forward to assisting Costa Rica in fulfilling its obligations under the Optional Protocol by providing further advice and technical assistance, in order to achieve the common goal of prevention of torture and ill-treatment in places of deprivation of liberty.

43. The Subcommittee recommends that, in accordance with article 12 (d) of the Optional Protocol, the national preventive mechanism enter into dialogue with the Subcommittee on the implementation of the Subcommittee's recommendations, within six months of the Subcommittee's receipt of the reply to the present report. The Subcommittee also recommends that the national preventive mechanism initiate discussions with the Subcommittee on the arrangements for such a dialogue at the time of the submission of its reply to the present report.<sup>6</sup>

44. As provided for under article 11 (b) (ii) and (iii) of the Optional Protocol, the Subcommittee stands ready to provide technical assistance and advice with a view to strengthening the capacities of the mechanism. The Subcommittee also encourages the mechanism to continue the good practice of transmitting its annual reports to the Subcommittee and reaffirms its readiness to help achieve the shared aim of preventing torture and ill-treatment and ensure that commitments are translated into action.

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<sup>5</sup> CAT/OP/12/5, paras. 36 and 38.

<sup>6</sup> Costa Rica is encouraged to consider approaching the OHCHR treaty body capacity-building programme (registry@ohchr.org), which may be able to facilitate the dialogue. The contact details of the Special Fund are available at <https://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/SpecialFund.aspx>.

## Annex I

[Spanish only]

### Lista de personas con quienes se reunió el Subcomité

#### A. Autoridades nacionales

##### Ministerio de Justicia y Paz

Sra. Marcia González, Ministra

Sr. Fabián Solano Fernández

Sr. Christopher Camacho

Sr. José Luis Bermúdez Obando

Sr. Kenny Gozo Sánchez

Sra. Soledad Bonilla

Sr. Rubén Camacho Piedra

Sr. Pablo Bertoizi

Sr. Jeff Rodríguez Alvarado

##### Ministerio de Seguridad Pública

Sr. Eduardo A. Solano, Viceministro

##### Dirección General de Migración y Extranjería

Sr. Jhonny Martin Artavia, Jefe de Asesoría Jurídica

##### Poder Judicial

Sra. Nancy Hernández López, magistrada de la Sala Constitucional de la Corte Suprema de Justicia

Sra. Odilie Robles Escobar, jueza de ejecución de la pena de Alajuela

Sr. Mario Rodríguez, juez de ejecución de la pena de Alajuela

Sr. José Román Matamoros, juez de ejecución de la pena de San José

Sr. Roy Murillo, juez de ejecución de la pena

Sr. Armando Castillo Fallas, Secretaría General del Organismo de Investigación Judicial

Sr. Javier Ulate Carrillo, sección de cárceles del Organismo de Investigación Judicial

Sr. José Pablo Esquivel Segura

Sr. Alexis Mora Cambronero

Sra. Natalie Fonseca

Sra. Karla Gamboa Somarribas

##### Ministerio Público

Sra. Laura Monge, Ministerio Público

Sr. Carlo Díaz Sánchez, Fiscalía Adjunta de la Pena

Sra. Carlos E. Montenegro, Fiscalía Ejecución de la Pena

Sr. José Pablo Miranda Hurtado, Fiscal General

Sra. Emilia Navas Aparicio, Fiscalía General

Sra. Mayra Campos, Fiscalía Adjunta

#### **Defensa Pública**

Sra. Diana Montero, Directora de la Defensa Pública

Sr. Erik Núñez

Sra. Laura Arias Guillen, unidad de ejecución de la pena

Sr. Abraham Sequeira Morales

Sr. Héctor Sánchez Ureña

Sr. Alejandro Montero Acuña

#### **Defensoría de los Habitantes**

Sra. Catalina Crespo, Defensora de los Habitantes

Sra. Laura Arguedas Mejía, Asuntos internacionales

Sra. Lilliana Castro López, Defensoría de la Mujer

Sra. Nathalie Araya Jácome, Área de calidad de vida

Sra. Jenny Phillips, Directora de admisibilidad

Sra. Laura Fernández Díaz, Dirección Niñez y Adolescencia

Sr. Álvaro Paniagua, Dirección de Protección

#### **Mecanismo nacional de prevención de la tortura**

Sr. Roger Víquez, coordinador nacional

Sr. Esteban Vargas Ramírez

Sra. Lorna Elizondo Cubero

Sra. Chorlys Chacón Espinoza

#### **Asamblea Legislativa**

Sra. Carolina Hidalgo Herrera, Presidenta

Sr. Enrique Sánchez Carballo, diputado

Sra. Karine Niño, diputada

### **B. Departamentos de ciencias forenses y medicina legal**

Sr. Maikol Araoz Vega, médico

Sra. Sandra Solórzano Herra, médico forense

Sr. Franz Vega, jefe del Departamento Médico Legal

Sra. Gina Bagnarello, perito encargado de proyectos

Sra. Anayana Rodríguez Quesada, perito de la unidad genética

Sr. Alejandro Hernández, perito genético

Sra. Emily Solano Monzález, médico forense, patología

Sr. Daniel Gómez Murillo, jefatura interina del departamento

Sr. Carlo Escalante, colegio de médicos

Sr. Oscar Valverde Comos, colegio de profesionales en psicología

Sra. Ana Cristina Monge, colegio de profesionales en psicología

**C. Organismos de las Naciones Unidas**

Coordinadora Residente de las Naciones Unidas

Programa de las Naciones Unidas para el Desarrollo (PNUD)

Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente (ILANUD)

**D. Sociedad civil**

Asociación Ciudadana ACCEDER

DNI Costa Rica

Centro por la Justicia y el Derecho Internacional (CEJIL)

## Annex II

*[Spanish only]*

### **Lugares de privación de libertad visitados**

#### **A. Delegaciones de la Fuerza Pública**

Delegación policial de El Carmen, San José  
Delegación policial Desamparados Sur, San José  
Delegación policial Desamparados Norte, San José  
Delegación policial Hatillo, San José  
Delegación policial Liberia, Guanacaste  
Centro de Aprehendidos de Barrio México

#### **B. Delegaciones del Organismo de Investigación Penal**

Sección Cárceles I, Unidad de celdas I, Tribunales de Justicia de San José  
Sección de Cárceles, Delegación Regional de Alajuela  
Delegación Regional de Limón  
Sección Cárceles, Tribunales de Justicia de Limón

#### **C. Centros penitenciarios**

Centro de Atención Institucional Vilma Curling, Desamparados, San José  
Centro de Atención Institucional Jorge Arturo Montero Castro, San Rafael, Alajuela  
Unidad de Atención Específica, San Rafael, Alajuela  
Centro de Atención Institucional Liberia, Liberia  
Centro de Atención Institucional San José, San José  
Centro de Atención Institucional Nelson Mandela, San Carlos, Alajuela  
Centro de Atención Institucional Marcos Garvey, Limón  
Centro de Atención Institucional Gerardo Rodríguez, San Rafael, Alajuela  
Unidad de Atención Integral Reynaldo Villalobos, San Rafael, Alajuela

#### **D. Centros de reintegración social para niños, niñas y adolescentes**

Centro de Formación Juvenil Zurquí, Santo Domingo, Heredia  
Centro Especializado Adulto Joven, Ofelia Vicenzi, San Rafael, Alajuela

#### **E. Hospitales psiquiátricos**

Hospital Nacional Psiquiátrico, San José  
Centro para la Atención de Personas con Enfermedad Mental en Conflicto con la Ley, La Uruca, San José

**F. Centros de la Dirección General de Migración y Extranjería**

Centro de Aprehensión Región Central, Heredia

## **Annex III**

*[Spanish only]*

### **Lugares de privación de libertad visitados conjuntamente con el mecanismo nacional de prevención**

Centro de Atención Institucional Vilma Curling, Desamparados, San José

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