

SNHR

الشبكة السورية لحقوق الإنسان
SYRIAN NETWORK FOR HUMAN RIGHTS

**The Syrian Network for Human Rights
Recommends the Establishment of
a Transitional Justice Body in Syria
through a Law Issued by the
Legislative Council**

Tuesday 13 May 2025

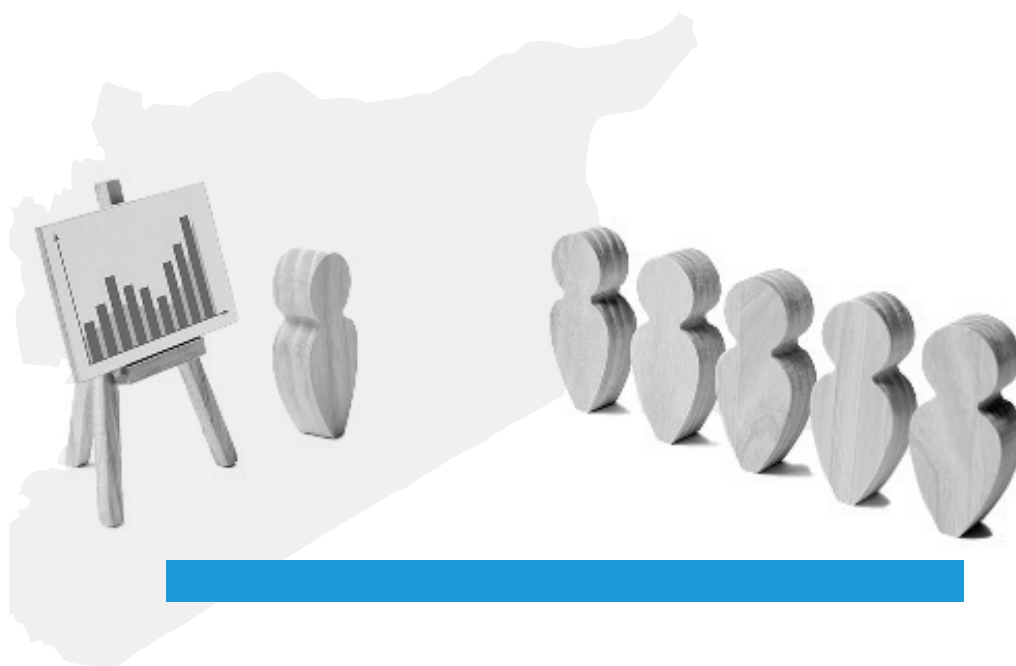


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The Syrian Network for Human Rights (SNHR), founded in June 2011, is a non-governmental, independent group that is considered a primary source for the OHCHR on all death toll-related analyses in Syria.

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FIRST: THE ROLE OF THE LEGISLATIVE COUNCIL IN DRAFTING THE FOUNDING LAW OF THE TRANSITIONAL JUSTICE COMMISSION:

Following the fall of the Assad regime on December 8, 2024, Syria entered a critical transitional phase that requires the establishment of effective mechanisms to address the legacy of human rights violations committed over fourteen years of armed conflict. There have been reports that the authorities intend to establish a transitional justice body, but these efforts appear to be relying on procedural mechanisms that do not conform to best standards and successful practices in the implementation of transitional justice.

The establishment of a transitional justice body through an executive decree rather than through the legislative process poses serious risks to its independence. International experience from countries such as Uganda, Peru, and Morocco show that bodies established by executive decree often suffer from «formal institutionalism,» meaning their existence lacks real authority and societal legitimacy. These bodies tend to have limited investigative capacity, weak victim participation, and are vulnerable to political interference. In contrast, the experiences of countries such as South Africa, Argentina, and Tunisia demonstrate that transitional justice mechanisms established through the legislative process enjoy greater operational independence, stronger social legitimacy, and greater institutional resilience.

The role of the Legislative Council

The role of the Legislative Council in drafting the founding law for the Syrian Transitional Justice Commission is a central element in ensuring the legitimacy and effectiveness of the transitional process. SNHR emphasizes that the Legislative Council, which will be formed after the issuance of the Constitutional Declaration, is the body that should be responsible for drafting a founding law regulating the transitional justice process. This legislative role performs essential functions that go beyond mere formal procedures.

First, legislative drafting reflects the principle of «legislative dignity,» the distinct moral authority derived from representative debate, as distinct from executive decisions. In transitional contexts, this deliberative process helps address the «delegation dilemma.» The complex social reality in Syria, in particular, benefits from the pluralistic participation afforded by legislative processes, allowing for the integration of diverse viewpoints into the design of the body.

Second, legislative engagement achieves what is known as «stakeholder inclusiveness,» by ensuring the participation of various social groups in designing the transitional justice framework. The Syrian Network for Human Rights emphasizes that a transitional justice body must be inclusive and representative of all segments of Syrian society to ensure its legitimacy and effectiveness. Legislative processes enable this inclusiveness through formal consultation mechanisms and public hearings, as well as amendment procedures that are typically lacking in executive decrees.

Third, the legislative drafting establishes the principle of «consolidating legitimacy,» i.e., ensuring that transitional justice mechanisms operate within the framework of the rule of law, rather than relying on exceptional powers. SNHR emphasizes the need for the founding law to clearly detail the commission's structure, mandate, and working mechanisms, the criteria for appointing its members, the nature of cooperation with judicial bodies and official institutions, reporting mechanisms, and standards of transparency and accountability.

SECOND: INDEPENDENCE AND THE JUDICIAL FRAMEWORK: BASIC GUARANTEES:

Financial and administrative independence from the executive authority

Financial and administrative independence from the executive authority is an essential condition for the success and effectiveness of the transitional justice commission. SNHR's vision emphasizes the necessity of establishing the commission on solid foundations that guarantee its full financial and administrative independence, emphasizing the importance of allocating an independent budget to the commission, approved by the legislative authority, to prevent its financial dependence on the executive authority. This financial independence aims to address the resource-control mechanism, which the executive authorities typically use to exercise indirect control over institutions that appear to be independent.

Financial independence includes several basic elements:

First, protect financial allocations, which means preventing arbitrary funding cuts, especially when the agency is conducting politically sensitive investigations. The budget must be prepared through transparent and clearly defined legislative procedures, rather than relying on executive allocations, which may be biased.

Second, granting the Authority the authority to control operational resources, meaning the ability to make internal financial decisions without the need to obtain executive authority approval, particularly with regard to expenditures related to highly sensitive investigations.

Third, employment independence, meaning that the Authority has full authority over decisions on hiring, promoting, and compensating employees, without interference or influence from the executive authority.

On the administrative side, independence includes what is known as institutional self-governance, i.e. the authority's ability to determine its own organizational structure, procedures, and operational priorities.

SNHR's vision clearly outlines the Commission's proposed organizational structure, which includes a Board of Directors, a General Secretariat, and several specialized departments, highlighting the need for broad administrative independence to enable the Commission to organize itself effectively. This administrative independence also includes procedural independence, i.e. the freedom to choose investigative methodologies, determine the issues to be addressed by the Authority, and set procedural priorities without the need for external approval.

Experiences from countries such as Chile, Argentina, and South Africa confirm that administrative independence significantly enhances the effectiveness of transitional justice bodies by enhancing their ability to adapt to evolving evidence and respond to community needs.

Mechanisms to protect against political interference:

In addition to financial and administrative independence, a transitional justice commission requires strong and effective mechanisms to protect it from all forms of political interference. The Syrian Network for Human Rights' vision emphasizes the need for the founding law to explicitly guarantee the commission's complete independence from the executive authority, while providing comprehensive protection from any political interference or undue influence by government agencies or others. To achieve this protection, multi-level safeguards must be in place that target potential sources of interference.

First, protecting the appointment process, which aims to prevent political manipulation in the selection of commission members. The Syrian Network for Human Rights emphasizes that candidates must have a record completely free of corruption or human rights violations and must be completely independent of political parties and factions to ensure the integrity of the commission. The SNHR also proposes a multi-stakeholder selection mechanism, including a recommendation committee composed of independent experts and representatives from the judiciary, civil society, and victims to nominate potential members, thus preventing any partisan capture or politicization of the appointment process.

Second, tenure protection, i.e. preventing the possibility of members being removed or subjected to retaliation for decisions made by the body, especially those that are politically sensitive. The network proposes a fixed membership term of three to five years, which would ensure necessary institutional stability and spare members the threat of arbitrary expulsion, which often leads to self-censorship. The experiences of truth commissions in Latin America and Africa have clearly shown that the lack of adequate protection for commission members weakens their courage in dealing with sensitive political issues.

Third, protecting operational independence, i.e., ensuring non-interference in the commission's daily decisions and executive activities. The Syrian Network for Human Rights' vision grants the commission broad investigative powers, including summoning witnesses, collecting evidence, reviewing official and private documents, conducting investigations into violations, and requesting judicial arrest warrants. These powers must be accompanied by strict standards that prevent the government from interfering with or obstructing the Authority's activities, with severe and deterrent penalties imposed in the event of violations of these standards.

The necessity of the authority's independence from the Ministry of Justice

Although the commission operates within the broader judicial system, the transitional justice commission must maintain its full independence from the Ministry of Justice. The Syrian Network for Human Rights' vision clearly emphasizes the need to stipulate in the founding law the commission's independence from the Ministry of Justice, as it is part of the executive authority. This independence aims to address fundamental weaknesses that could negatively impact the effectiveness of transitional justice.

First, independence from the Ministry of Justice addresses the problem of institutional legacy—the persistence of previous patterns of governance within institutions that were supposedly reformed. For decades of Assad family rule, the Ministry of Justice served as a tool for imposing political control rather than fulfilling its primary role of protecting rights and establishing justice.

Second, independence from the Ministry of Justice ensures the Commission's neutrality and integrity and protects it from the dangers of the Ministry exploiting it to pursue narrow political interests or calculations, rather than applying objective legal standards of justice.

Third, this independence allows the Commission greater freedom to develop specialized approaches and working methods that meet the specific needs of transitional justice, which may differ fundamentally from traditional ministry procedures. SNHR's vision emphasizes the importance of attracting specialized expertise and methodologies, including the use of experts in national and international law, documentation and evidence collection, as well as economics and psychosocial support experts. This requires flexibility in operating procedures that is not typically available within the Ministry's traditional framework.

Proper integration of the judicial system

The transitional justice body must operate within the framework of an independent and reformed judicial system, while retaining its distinct powers and operational independence. SNHR's vision explicitly states that, despite the commission's complete independence from the Ministry of Justice, it must operate within the Syrian judicial system, which is expected to be completely independent of the executive branch. This relationship requires careful definition to ensure "functional integration," i.e., activating cooperation that enhances the work of both entities rather than creating competition or institutional overlap.

The relationship between the Authority and the judiciary includes several main dimensions:

First, interconnectedness with the judicial system, which indicates the existence of clear formal channels between transitional justice mechanisms and regular judicial institutions. SNHR's vision emphasizes the need for the Commission to work closely with the judiciary to establish a special court to hold perpetrators of horrific crimes accountable, while ensuring that this court is directly linked to the national judicial system.

Second, functional differentiation, which refers to a clear definition of responsibilities and roles between the transitional body and the local judiciary within a coordination framework. SNHR's vision emphasizes the importance of integrating the work of the commission and the local judiciary, whereby the commission refers the results of its investigations to the special court specializing in transitional justice issues. This distinction addresses the urgent need to clarify jurisdiction, thus avoiding institutional paralysis resulting from overlapping and ambiguous jurisdictions among the various judicial bodies.

Third, the Syrian Network for Human Rights emphasizes the importance of the law specifying the penalties and judicial procedures of the Special Court based on the results of the Commission's investigations before issuing judgments. This indicates that the Commission operates within a solid and clear legal framework, rather than through exceptional measures that might undermine public confidence in transitional justice institutions.

The dangers of undermining transitional justice if sound judicial independence is not established

Failure to establish strong judicial independence entails extremely serious risks that could threaten the entire transitional justice project. SNHR clearly affirms that judicial independence is an essential condition for achieving transitional justice. It defines this independence as having multiple dimensions, including ensuring respect for the principle of separation of powers, establishing constitutional guarantees that ensure the judiciary's complete independence from the executive branch, and implementing comprehensive judicial reforms that ensure the independence and effectiveness of the judiciary.

First, weak judicial independence undermines accountability by allowing the justice process to be manipulated to benefit powerful parties at the expense of weaker groups, significantly threatening the integrity and objectivity of accountability.

Second, weak judicial independence leads to what is known as a "legitimacy deficit," meaning that judicial institutions lose their ability to appear impartial, which in turn undermines their social authority and diminishes public trust. Without this independence, transitional justice mechanisms risk eroding their credibility, and consequently, their effectiveness and ability to accomplish their mission will gradually decline.

Historical experiences from countries such as Cambodia, Guatemala, and Iraq clearly demonstrate that transitional justice mechanisms that lack sufficient judicial independence often suffer from what is known as "justice capture," where accountability measures are redirected to serve narrow political goals rather than the desired justice. This capture manifests itself in the selection of cases based on political motives, through procedural interference in sensitive cases, or through the uneven application of legal standards. SNHR's vision affirms that truly independent transitional justice represents an essential mechanism for national reconciliation and stability, as it ensures that victims feel that justice has been served, which contributes to breaking the cycle of revenge and mitigating social tensions.

THIRD: COMPOSITION AND SELECTION OF MEMBERS: THE NECESSITY OF REFLECTING THE ETHNIC, RELIGIOUS, AND POLITICAL DIVERSITY IN SYRIA

The composition of the transitional justice body in Syria must reflect the deep demographic and political diversity of Syrian society, in order to ensure the legitimacy of its procedures and their effectiveness on the ground. SNHR clearly emphasizes that, given Syria's ethnic, religious, and political diversity, the body must be inclusive and representative of all segments of Syrian society, which is essential to achieving the desired legitimacy and effectiveness. This diversity aims to respond to the requirement of cultural compatibility within the framework of transitional justice, namely the need for justice mechanisms to accurately reflect the societal contexts in which they operate.

The diversity in the composition of the body performs several essential functions that go beyond mere symbolic representation:

First, this diversity enables access to multiple knowledge bases and perspectives, which enhances the accuracy and depth of the search for truth. The Syrian Network for Human Rights emphasizes the need for the commission to include experts from diverse fields, as well as representatives from various societal components. This is crucial given the complexity of the patterns of violations committed in Syria, which impact different communities in varying ways and require a multidimensional interpretation.

Second, diversity builds trust among different segments of society, giving them a strong sense that their experiences and priorities will be truly and seriously considered. SNHR stresses the need for the Commission to ensure appropriate representation of various cultural, religious, and ethnic groups, while developing comprehensive solutions that are compatible with the nature of Syrian society.

Third, diverse composition provides valuable operational information, the contextual knowledge necessary to design transitional justice mechanisms that can respond accurately to community needs and local cultural contexts. The network stresses the importance of ensuring that the body's composition fairly reflects local communities to ensure equitable representation of all cultural, religious, and ethnic groups.

The lack of adequate stakeholder representation within the transitional justice body will create serious risks that threaten the body's legitimacy, effectiveness on the ground, and impact on society. Poor representation leads to what is called a participation deficit, where affected communities are excluded from participating in processes that directly affect them. Inadequate representation also leads to distorted narratives, i.e., an incomplete or biased understanding of violations resulting from reliance on limited experiential perspectives.

Transparent Selection Processes: The Recommendation Committee Model and Its Importance

SNHR's selection mechanism is based on the formation of a recommendation committee to ensure the independence and competence of members. SNHR's vision clearly stipulates the need to establish a recommendation committee composed of independent experts and representatives of the judiciary, civil society, and victims, to nominate members for the Commission's board of directors. This multi-stakeholder approach aims to address the problem of "appointment politics," i.e., the tendency to produce partisan or politicized membership upon direct appointment, which threatens the independence of institutions.

The recommendation committee model offers several important advantages over direct appointments:

First, the model achieves what is known as "appointment distance," a clear institutional separation between political powers and the member selection process, which greatly enhances the body's independence. This distance helps address the problem of "political loyalty," where direct appointments often put pressure on members to demonstrate loyalty to their appointing bodies rather than to their institutional mission.

Second, this model allows for a focus on determining qualifications, competence, and experience, rather than relying on political considerations and connections. The network's vision emphasizes that selection must be made according to clear and strict legal criteria that focus on competence and experience.

Third, this pluralistic approach enhances what is called "legitimacy resulting from procedural pluralism," that is, achieving broad social acceptance of selection processes as a result of the participation of multiple groups. SNHR's vision states that, after the nomination process is completed by the Recommendation Committee, ten members will be elected to form the Authority's Board of Directors through transparent and clear electoral procedures. This approach addresses the requirements of "institutional acceptance" in transitional contexts—that is, enhancing the public's willingness to accept the Authority's authority based on the fairness of the procedures for selecting its members.

Multi-stakeholder consultation requirements

SNHR emphasizes that the establishment of a transitional justice body and the selection of its members must be undertaken through broad consultation processes that include diverse stakeholder groups. This requirement aims to address the so-called "ownership challenge" in transitional justice—ensuring that transitional justice processes reflect broad societal views and demands, rather than being limited to narrow institutional or elite preferences. SNHR identifies six main groups to be consulted: civil society, victims, political actors, local communities, youth and women, and international supporters.

These consultations serve multiple vital functions beyond mere symbolic inclusion:

First, it allows for a wide diversity of expertise and access to multiple knowledge sources, which helps design a comprehensive and balanced institutional structure. SNHR’s vision emphasizes the need to involve civil society organizations to ensure the formulation of mechanisms that accurately reflect local needs and aspirations.

Second, these consultations help achieve “contextual sensitivity,” that is, designing processes that respond effectively to the specificities of the transitional phase rather than relying on ready-made templates. SNHR’s vision emphasizes the need to consult with local communities to ensure fair representation of all cultural, religious, and ethnic groups, and to work to develop comprehensive solutions that are compatible with the nature of Syrian society.

Third, extensive consultations contribute to achieving “alignment of expectations,” i.e., creating a shared and realistic understanding among stakeholders of the Commission’s powers and capabilities. SNHR’s vision emphasizes the importance of consulting with victims to ensure that their views and direct experiences are utilized, which contributes to designing mechanisms that effectively promote the achievement of justice and reparations.

Historical experience from countries such as El Salvador, Cambodia, and Kenya suggest that a lack of transparency or limited stakeholder participation often leads to the creation of “deficient commissions,” bodies with weak operational independence, low community credibility, and limited investigative capacity.

Government cooperation requirements

The necessity of obligating all government agencies to cooperate.

SNHR’s vision emphasizes the need for the law to oblige all government agencies to fully cooperate with the transitional justice body, given that voluntary cooperation is insufficient to ensure the success of transitional justice in post-conflict contexts. This mandatory cooperation aims to address the “horizontal accountability challenge,” i.e., establishing the necessary institutional commitments between state agencies that are accustomed to operating independently or according to hierarchical relationships.

Government cooperation requirements should include the following dimensions:

First, positive assistance commitments—that is, an active commitment by government institutions to support the agency’s work rather than simply refrain from obstructing its activities. This commitment addresses the problem of “passive resistance,” which is characterized by non-cooperation through inaction rather than direct obstruction.

Second, establish clear requirements for individual testimony, requiring current and former officials to provide all information related to corporate operations necessary for investigations.

Third, establish clear access protocols for archives, ensuring that the Authority has systematic access to sensitive institutional records and documents.

The scope of government cooperation must be comprehensive and non-selective. The network’s vision emphasizes that cooperation must include all government agencies, given the interconnected institutional nature of human rights violations, which often involve more than one government institution. This approach aims to avoid the “risk of accountability circumvention,” which can result from excluding certain parties from cooperation requirements.

SNHR’s vision clearly stipulates the need for sanctions against any party that obstructs the Commission’s work, while emphasizing that cooperation requires strict enforcement mechanisms to ensure effective compliance.

Effective implementation mechanisms include:

First, the authority to impose direct administrative sanctions on uncooperative officials without the need for lengthy judicial proceedings.

Second, the existence of judicial coercion mechanisms, such as the issuance of binding court orders that compel government agencies to fully comply with the Commission’s requirements.

Third, the enhancement of public accountability by adopting clear standards for transparency and reporting, with the aim of mobilizing public opinion against any entity that fails to cooperate.

Historical evidence from countries such as South Africa, Peru, and Sierra Leone confirms that strong enforcement mechanisms significantly increase institutional cooperation. While South Africa’s Truth and Reconciliation Commission was granted broad powers of subpoena and search, backed by deterrent sanctions, El Salvador’s Truth Commission faced significant challenges due to its almost exclusive reliance on voluntary cooperation, resulting in inconsistent and selective cooperation, particularly in accessing military archives.

Delegation considerations for a period of three to five years

SNHR's vision stipulates that the mandate of the transitional justice commission should extend for a period of three to five years. This aims to address the dilemma of operational duration in the context of transitional justice, which requires a delicate balance between providing sufficient time to conduct comprehensive investigations and avoiding the institutional stagnation that could result from extending the commission's work for excessively long periods. Appropriate time frames serve several essential functions beyond simple scheduling:

First, the specified period provides operational stability by giving the Commission a clear timeframe that allows for systematic planning, rather than conducting hasty investigations that lead to incomplete or superficial results.

Second, a realistic period helps address the challenge of managing expectations—that is, aligning the timeframe granted with the scope of the Commission's responsibilities. The Network's vision outlines broad responsibilities, including summoning witnesses, collecting evidence, accessing official documents, and investigating multidimensional violations. These responsibilities require sustained, systematic work that cannot be accomplished in a compressed timeframe.

Third, an appropriate timeframe ensures procedural comprehensiveness—that is, ensuring the comprehensive and systematic application of investigative standards to all types of violations committed, rather than a selective focus on specific cases. The Syrian Network's vision emphasizes the importance of documenting violations committed by all parties from March 2011 until the fall of the Assad regime on December 8, 2024, which requires an appropriate timeframe to cover a long period exceeding thirteen years.

Fourth, an appropriate timeframe enables the effective completion of the victim engagement cycle, allowing sufficient time to identify victims, record their testimonies, carefully verify their accounts, and incorporate these experiences into the Commission's reports and findings.

Historical experiences from countries such as South Africa, Peru, and Sierra Leone confirm that the duration of the mandate significantly impacts the effectiveness and achievements of transitional justice bodies. For example, the South African Truth and Reconciliation Commission was initially given an 18-month mandate, which was later extended to 30 months to complete its core mandate, resulting in a stressful investigative process despite significant resources. In contrast, the Truth and Reconciliation Commission in Peru, which operated for 26 months with a clear and defined scope of work, achieved tangible achievements and demonstrated timeliness, which enabled comprehensive and detailed investigations to be completed while maintaining sustained public interest.

FOURTH: RECOMMENDATIONS:

1. Develop and implement a comprehensive public outreach strategy on the proper sequence for establishing transitional justice bodies, emphasizing the need to complete the constitutional framework and obtain legislative approval before forming the relevant committees and bodies.
2. Establish the Legislative Council through transparent and comprehensive legal processes, following the issuance of the Constitutional Declaration, with clear authority to draft the basic law regulating transitional justice.
3. Drafting a comprehensive bylaw through extensive consultations with victims' groups, civil society organizations, legal experts, and other stakeholders. This bylaw should detail the Commission's structure, mandate, working mechanisms, criteria for selecting its members, reporting requirements, and its relationship with other state institutions.
4. Designing and implementing a multi-stakeholder selection mechanism for the Commission's members, based on transparent and clear criteria that emphasize competence, integrity, and independence, while taking into account the ethnic, religious, and political diversity present in Syrian society.
5. Allocating sufficient financial resources for the Commission's operations through transparent and publicly announced legislative procedures, rather than relying on executive allocations, will enhance the Commission's institutional independence.
6. Establishing formal coordination mechanisms between the Transitional Justice Commission and judicial institutions to ensure appropriate sharing of evidence and information while preserving the independence of each entity.
7. Establishing a formal coordination mechanism between transitional governance bodies and organizations with expertise in transitional justice to provide the necessary technical assistance while ensuring national ownership of the process.
8. Design and implement educational and public awareness programs on transitional justice procedures, their timelines, and the scope of their responsibilities, with the aim of managing community expectations and fostering a realistic understanding of the Commission's role.
9. Integrate transitional justice processes into broader institutional reform initiatives, particularly in the security and judicial sectors, to ensure an integrated approach that contributes to addressing the legacy of past violations and preventing their recurrence in the future.



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FOR HUMAN RIGHTS



info@snhr.org
www.snhr.org

No justice without accountability

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