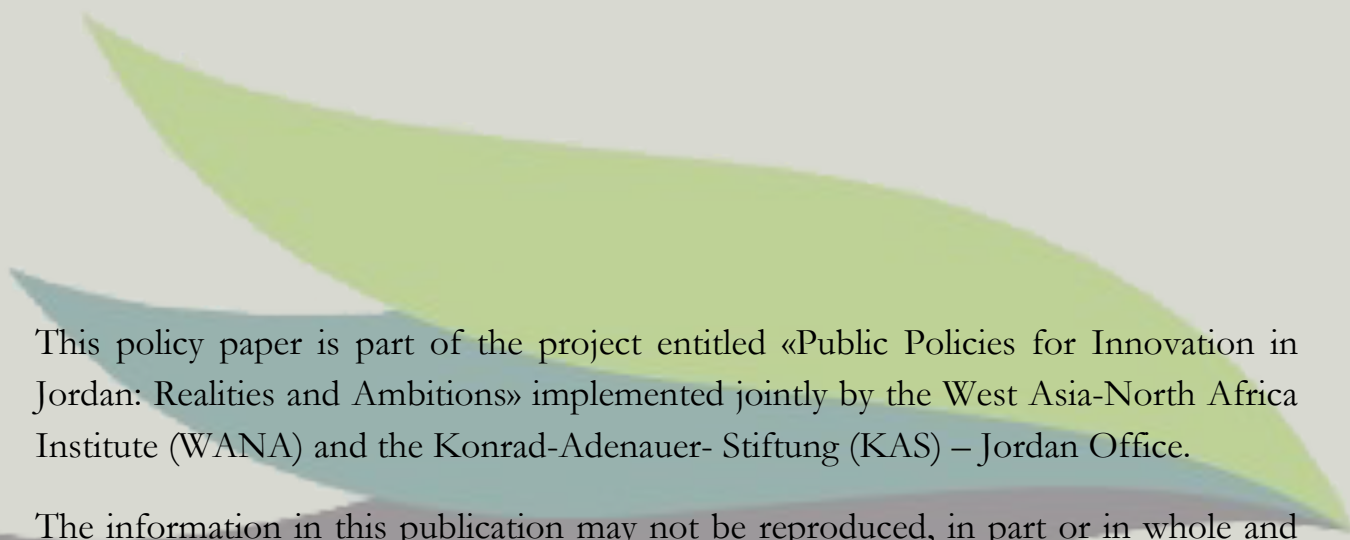


# Labour Contractual Problems in the Construction Sector in Jordan: Can Innovation Provide Practical Solutions?





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# Table of Contents

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Executive summary .....	2
1 Introduction .....	2
2 Methodology .....	4
3 Jordanian Labour Code Gaps .....	4
4 Contractual Problems Overview .....	5
4.1 Probation Period .....	5
4.2 The Engineers' Quota.....	6
4.3 Independent Contracts .....	7
5 Multi Stakeholders; Multi Responsibilities; Multi Solutions .....	7
5.1 The Responsibility of the Ministry of Labour (MoL).....	7
5.2 The Responsibility of Community-Based Organisations (CBOs).....	9
5.3 The Responsibility of the Hiring Companies.....	9
5.4 Shared Responsibility .....	9
6 Conclusion and Recommendations.....	10

## Executive summary

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The construction sector is becoming a contributor to Jordan's economy due to its role in raising the Gross Domestic Product (GDP) and employing many workers. The construction sector's contribution to GDP in Jordan counts for around 3.5 per cent<sup>1</sup> and employed 38,825 workers in 2016 increased from 23,379 in 2000, which counts for 66 per cent overall growth over the same period, according to the department of statistics.<sup>2</sup> With the growing population in Jordan, it is expected that the construction sector will witness further growth. However, Jordanian workers and engineers in the construction sector face many contractual problems that affect their life and cause negative consequences on multi-dimensions, financially and psychosocially. This paper sheds light on three of these contractual problems and discusses whether innovation can provide a practical solution for these problems. The problems addressed in this paper concern the probation period, engineers' quota, and independent contracts. The probation period in contracts is the period that allows the employer to examine the qualifications of the workers without legal consequence in case they reject them. The engineers' quota is the minimum number of engineers for a specific area of a construction project. Finally, independent contracts are contracts that deal with workers as service providers. Key informants and respondent interviews were conducted to locate the problem from legal and practical perspectives. The paper suggests revising and developing the current labour law and setting a new innovative law that covers the gaps that have been taking place during the last decade. Also, to make innovative standardised contracts to be used by each wide category of workers.

## 1 Introduction

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The construction sector is one of the most vital sectors in Jordan. It secured a 3.5 per cent contribution to the GDP in Jordan<sup>1</sup> and employed 5 per cent of the Jordanian

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<sup>1</sup> "The Construction and Housing Sector in Jordan - The Challenge of Demand and Supply Alignment & Financing Mechanisms," *Jordan Strategy Forum*, Oct. 2019, <https://jsf.org/sites/default/files/The%20Construction%20&%20Housing%20Sector%20in%20Jordan%20The%20Challenge%20of%20Demand%20&%20Supply%20Alignment%20&%20Financing%20Mechanisms.pdf>.

<sup>2</sup> Salem Ajluni, "Investment and Employment Trends in Jordan's Key Economic Sectors," ed. Dorsey Lockhart, *The West Asia-North Africa Institute*, Mar. 31, 2019, [http://wanainstitute.org/sites/default/files/publications/Publication\\_JourneyMapping\\_English\\_0.pdf](http://wanainstitute.org/sites/default/files/publications/Publication_JourneyMapping_English_0.pdf).

workforce.<sup>3</sup> From 2015 to 2018, the construction sector was the sixth employer among the other sectors in Jordan.<sup>2</sup> The construction sector is expected to grow in parallel with the population in Jordan. However, workers and engineers in the sector face many challenges related to the contractual side of their jobs. This paper focuses mainly on three contractual problems; the misuse of the probation period in contracts, the misuse of engineers' quota, and the misuse of independent contracts. The main objective of this paper is to clarify these contractual problems and to suggest some innovative solutions for these problems

These problems create many conflicts between workers and engineers on one side and companies on the other side. Workers lose part of their basic rights like social security coverage, fair payment, and the opportunity to grow and build professional experience. Solving these contractual problems will increase job security, create fair contracts that differentiate between the construction sector and the other sectors and considers the uniqueness of the construction sector, reduce conflicts in the workplace, and educate workers and companies on basic labour rights that should be considered. Also, addressing these problems and suggesting innovative settlements allow decision-makers in government and the private sector to take action based on a clear vision.

This paper starts by introducing some gaps in the Jordanian labour code. Then it provides an overview of three of the main contractual problems that face workers and engineers in the construction sector. The paper provides this overview based on interviews with four experts and two workers in the field. Then it discusses the roles of the stakeholders involved in these problems, their responsibilities and the solutions they can provide. Finally, the paper provides some recommendations for decision makers such as the Ministry for Labour, CEOs in construction companies, and Jordan Engineers Association (JEA) on how innovation can provide a solution to mitigate the discussed three problems and to move forward towards an innovative labour law.

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<sup>3</sup> Amer Abo Sae'a, José Luis Fuentes Bargas, and Pablo S. Ferrer Gisber, "Analysis of the Jordanian Construction Sector," *24th International Congress on Project Management and Engineering*, July 10, 2020, pp. 350-362. [http://dSPACE.aeipro.com/xmlui/bitstream/handle/123456789/2438/AT02-005\\_20.pdf?sequence=1&isAllowed=y](http://dSPACE.aeipro.com/xmlui/bitstream/handle/123456789/2438/AT02-005_20.pdf?sequence=1&isAllowed=y)

## 2 Methodology

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The paper applied a qualitative approach. This policy paper is based on desk research, Key Informant Interviews (KII) and respondent interviews. The interviews were conducted with a legal expert from the Jordanian Ministry of Labour (MoL), a project manager who works in the construction sector, a CEO of one of the construction companies, and a legal expert from the International Labour Organisation (ILO). Also, respondent interviews were conducted with one technician and one engineer who work in the construction field in the private sector. All participants work in Jordan.

## 3 Jordanian Labour Code Gaps

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Interviewees from the sector emphasised that the current Jordanian labour code is a clear and comprehensive one compared to labour laws in neighbouring Arab countries such as Palestine. For example, the Palestinian labour law does not include how to end the contract and based on which conditions and who has the authority to validate these conditions, while the Jordanian labour code covers all these gaps<sup>4</sup>. However, there are some gaps in the current labour code, such as; the unfair dismissal from work, and there is no specific article covering the daily labourers. Also, the code still does not differentiate between the construction sector and the other different sectors and does not consider the uniqueness of the construction sector, which is project-based. Those gaps create problems for workers in the sector. For example, workers who work on a daily basis do not have the option to be covered by the company in social security or cover their annual leaves as per the standard employment contract. Also, workers have project-based contracts that end in parallel with the project. These challenges need to be addressed in a new contemporary law that differentiates between the construction sector and other sectors and sets new rules or laws to address them. For example, the law could review and reconsider the wage gaps and the probation period gaps for workers in the sector due to project-

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<sup>4</sup> "Qanoon Al'amal Bayn Al Nas Wa Alwaq'e'a Muqarana Be Qawaneen Al'amal Fe Alduwal Al'arabeeya Wa Alajnabeeya" [Labour Laws between Text and Reality: A Comparison between Labour Laws in Arab and Foreign Countries]," Birzeit University - Institute of Law, Oct. 16, 2011), [http://lawcenter.birzeit.edu/lawcenter/ar/legal\\_encounters/323-2%العربية%20الدول%20في%20العمل%20بقوانين%20مقارنة%20الواقع%20والنص%20بين%20العمل%20قانون%20والأجنبية](http://lawcenter.birzeit.edu/lawcenter/ar/legal_encounters/323-2%العربية%20الدول%20في%20العمل%20بقوانين%20مقارنة%20الواقع%20والنص%20بين%20العمل%20قانون%20والأجنبية).

based contracts. The gaps in the current code creates some contractual problems in many sectors, particularly in the construction sector. The next section sheds light on three of these problems.

## 4 Contractual Problems Overview

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According to the consulted interviewees in the construction sector, contractual problems happen either because of gaps in the current labour code or because of the workers' lack of knowledge of labour rights. Some companies try to take advantage of these conditions and reduce the benefits of the workers to a minimum. Workers and engineers sometimes accept such unfair conditions due to: the high percentage of unemployment in Jordan, lack of knowledge of labour code, lack of inspection from the government side, and seeking experience from fresh graduates. Also, workers forfeit their rights sometimes because the contractual relationship is a short one and not worth spending time and effort in court. However, these problems do not come at no cost. There are financial consequences for individuals, such as; low wages, delay in paying house rent and bills, and financial debts. These financial grievances lead to psychosocial consequences such as; a sense of insecurity, mental health issues, low motivation, and low sense of belonging to work. The subsections below illustrate each problem.

### 4.1 Probation Period

According to Article 35 of the Jordanian Labour Code, the probation period is the period that allows the employer to test the capabilities and qualifications of the employees and decide whether to proceed with them or not in case they do not meet the job requirements without any legal responsibility on the employer.<sup>5</sup> The interviewees pointed out that the employees must be aware of their rights. For example, the probation period should be agreed upon between the company and the worker before signing the contract. It should not exceed the maximum limit, which is three months. This period is a right for both the company and the labourer, and it is a good opportunity for them to know each other. The code does not allow renewing this period, and in case the company renewed the probation period, then it will be considered illegal in court, although the contract itself will remain valid.<sup>6</sup>

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<sup>5</sup> The Hashemite Kingdom of Jordan, Official Gazette, *Labour Code and its Amendments No. 8, 1996*

<sup>6</sup> Interview with expert in labour rights who works for one of the UN agencies, 25th June 2022

However, in practice, the probation period can be used by some companies to make short-term temporary agreements (less than three months) with workers and to put pressure on them to sign new contracts every three months with new terms of reference. This action prevents workers from having a valid official contract that contains all their rights. Some companies may employ workers or engineers for less than three months and replace them with new ones every three months.

## 4.2 The Engineers' Quota

The engineers' quota, according to the technical instructions of the engineering companies and offices, is “ the area of the construction project that JEA allows the engineer or the engineering office to supervise during one year based on the engineer's educational level (Bachelor, Masters, or PhD) and the number of years of experience”.<sup>7</sup> This means that every engineering company or office should employ a specific number of engineers for each construction project based on the area of that project. Also, Article 11 of the national building law number 7 (1993) and Article 4 of the instructions for applying the building codes support the JEA's instructions.<sup>8</sup> At the same time, the supervising party should employ a resident engineer for each project with an area of more than 500m<sup>2</sup> or have it supervised directly by the JEA supervision committee for projects with areas less than 500m<sup>2</sup>. The main purpose behind these regulations is to control the quality of the project as per the engineering standards and building codes and to create job opportunities for engineers. However, some companies circumvent this requirement by inviting fresh graduates or unemployed engineers to sign low-wage contracts and not requiring their presence on site. Companies will not prevent engineers from attending their jobs, but most engineers choose not to come because the salary is lower than the minimum wage of the engineers' salary scale <sup>9</sup> as per JEA instructions, which hinders their rights. In addition, the absence of engineers has an adverse impact on the quality of projects.

The consulted interviewees who work in the field emphasised that the exploitation of the engineers' quota only happens in small projects like residential buildings, but

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<sup>7</sup> “Applicable Technical Instructions,” Applicable Technical Instructions - Jordan Engineers Association (JEA) *Jordan Engineers Association (JEA)*, accessed Dec. 7, 2022, [https://www.jea.org.jo/EN/List/Applicable\\_Technical\\_Instructions](https://www.jea.org.jo/EN/List/Applicable_Technical_Instructions)

<sup>8</sup>The Hashemite Kingdom of Jordan, Jordan National Building Law no. 7/93.

<sup>9</sup> [https://jea.org.jo/EBV4.0/Root\\_Storage/AR](https://jea.org.jo/EBV4.0/Root_Storage/AR)



it does not exist in large-scale projects. The main reason behind this exploitation, according to some of the interviewees, is “unemployment” and that JEA might not be able to follow up with some companies because the JEA does not have enough staff to monitor.

### 4.3 Independent Contracts

Independent contracts deal with workers as independent contractors, which means that they are not considered employees but service providers according to article 780 of the Jordanian Civil Code<sup>10</sup>. Some companies could misuse this form of contract to save money by considering the worker as someone who does a service for the company without following the company's rules (e.g., specific starting and finishing time). However, on the ground the worker works as an employee and commits to all employers' regulations.

## 5 Multi Stakeholders; Multi Responsibilities; Multi Solutions

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A number of stakeholders with different roles and responsibilities could contribute to addressing the discussed contractual problems. Understanding these roles and responsibilities of each of them allows us to investigate multiple solutions.

### 5.1 The Responsibility of the Ministry of Labour (MoL)

MoL has three mechanisms for solving conflicts:

- **Solving individual problems.** When a worker has an individual problem with his company (e.g., the worker got discharged from work without any valid reason), the worker can submit a complaint through an interview, digital platform (*Hemayah platform*), phone, or WhatsApp. The inspector will contact the worker and explain the legal aspects of the problem and if it is within the powers of MoL. They then delegate it to the responsible directorate and register it on the complaint system. The directorate later sends an inspector to visit the company to investigate the issue and prepare a report and take the necessary legal action. Finally, the directorate informs the worker of the result.<sup>11</sup>
- **Solving conflicts related to wages and overtime working hours.** The

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<sup>10</sup> Hashemite Kingdom of Jordan, *Jordanian Civil Code, Law No. 43 of 1976*

<sup>11</sup> “Inspection Services Manual,” Ministry of Labour, [http://www.mol.gov.jo/EN/Pages/Inspection\\_EN](http://www.mol.gov.jo/EN/Pages/Inspection_EN).

worker visits the Wages Authority (WA) at the MoL to register and fill out the complaint form. The WA informs the company through the ordinary courts and follows up to finalise the issue in the Jordanian courts.<sup>12</sup>

- **Settlement of collective labour disputes.** MoL receives the complaint from one of the registered labour associations in Jordan. MoL assigns a representative to reconcile the two parties in a friendly manner and sign a collective work contract among the parties in case they agree on a solution. In case the parties do not reach an agreement, then the MoL representative sends a report to the Minister of Labour within 21 days from the date he was assigned. The Minister may intervene to resolve the dispute himself. The conflict is referred by the Minister to the conciliation council headed by him, and the parties name their representatives. In case the conciliation council does not reach a settlement, it shall submit a report to the minister within 21 days from the date of the council's formation. The conflict is then referred to the labour court formed by the judicial council in order to issue a decision within 30 days. The court's decision is considered a final decision and not subject to appeal by any other party.<sup>11</sup>

Interviewees stated that there are other roles that MoL can play in solving the discussed contractual problems:

- MoL can apply new mechanisms to solve labour problems effectively. For example, by increasing the monitoring and penalty procedures and applying the existing ones strictly. Also, MoL has its own electronic platform (*Hemayah platform*) to receive complaints, but it could be translated into other languages so that foreign workers can use it. In addition, MoL could raise the workers' awareness regarding labour rights through social media and other media sources (e.g., TV, radio, and newspapers).
- An amendment of the current labour code needs to use better innovative solutions for the current contractual problems. The new law could contain new articles regulating daily labourers. The law could consider increasing the minimum wage of workers (daily and monthly basis wages). Also, encouraging companies to register workers who work ten days and above in the social security service. In addition, the amendments might push companies to set up cameras and fingerprint digital instruments to prove workers working time.

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<sup>12</sup> <https://portal.jordan.gov.jo>

The MoL is not responsible for the contractual relationship between the worker or engineer and the company in case they both agree on the contract and the payment. It refers to the degree of awareness of the employees; they should negotiate to get a fair payment that covers social security and risks or injuries in the workplace. MoL gets involved if the employee has concerns, complaints or any kind of conflict with the company.

## 5.2 The Responsibility of Community-Based Organisations (CBOs)

The consulted interviewees emphasised that CBOs, although dependent on donor funds, still can play an innovative and effective role in:

- Raising awareness, conducting training sessions, and providing consulting for workers.
- Preparing studies and reports to inform decision-makers.
- Negotiate with the government to advocate for amendments to the labour code.
- Auditing companies and conducting investigations anonymously and suggesting friendly solutions for conflicts between workers and companies.

## 5.3 The Responsibility of the Hiring Companies

While MoL and CBOs can advocate and regulate the rights of workers, companies can exert the most influence by committing to their social responsibilities as hiring institutions. They can further ensure fair employment that would, in turn, build trust and increase social cohesion. Companies need:

- To explain their internal policies to their employees.
- Registering the engineers' quota and the contracts in JEA.
- To commit to MoL, JEA, and The Jordanian Construction Contractors Association (JCCA) regulations and instructions.

## 5.4 Shared Responsibility

Experts and interviewees emphasised that other parties could be involved to share responsibility with MoL. These parties include:

- The Ministry of Public Works and Housing, Ministry of Local Administration, JEA, and JCCA. Better coordination among all these parties could lead to solving the discussed problems.
- Universities, training centres, and technical colleges, could also share responsibility with MoL in raising awareness and educating workers on their rights and responsibilities through workshops, training courses, and counselling sessions.

## 6 Conclusion and Recommendations

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The purpose of this paper is to shed light on three of the main contractual problems in the construction sector. Also, this paper offers some innovative recommendations to mitigate the impact of the discussed labour contractual problems. Based on the reviewed literature and on the conducted interviews with six experts and workers in the sector, the paper suggests the following recommendations:

1. **The different stakeholders (the MOL, JEA, JCCA, CBOs, companies, and workers or their representatives)** need to cooperate to create a committee of members from all these parties to find innovative solutions for the current contractual problems. This committee will take the initiative to:
  - A. Establish a new platform for registering contracts whereas the committee can monitor this process. This platform might contain assessment forms that allow companies to assess their employees and explain the reasons for their dismissal during the probation period. Also, employees can assess their companies and register any complaints regarding their rights. The platform can be developed over one year of forth and back discussions among the committee members. A proposal could be submitted to donors focused on labour rights in order to get enough funds to design and maintain the platform. The project also could be extended to design an innovative application to answer the most common questions regarding labour rights and provide short videos on social media channels.
  - B. Working with a “smart contract”, which is a digital programme that is designed to implement, manage or authenticate specific actions that are

relevant legally based on the conditions and articles of a contract.<sup>13</sup> These contracts are self-implementing and based on specific algorithms related to the rights and responsibilities of the contracted parties. The smart contract evaluates the contract articles and conditions and whether they are committed to or violating the law and it sends regular reports to the agreed parties. Once some conditions apply, the smart contract will perform a specific action.<sup>14</sup> For example, the worker can enter his /her overtime working hours into the smart contract (the programme), and the employer shall validate the number of hours, and the smart contract will secure the amount of money to send to the worker's bank account together with the monthly salary of the worker. The committee above can manage such contracts through the created platform. Donors who support Jordan in terms of legal affairs and electronic government could be addressed by the committee to support such project.

- C. Make innovative standardised contracts to serve each wide category of labours. For example, standardised collective contracts for civil engineers who work in residential construction projects. These contracts can be agreed on between the committee above, the construction companies, and labour associations in the construction sector. The committee can design suitable standardised contract for each category in need of such contract and monitor the process of applying it on regular bases. Such a contract is feasible as it saves time and energy consumed by regular conflicts among parties in the sector.
2. **Companies** could start installing digital fingerprint instruments and monitoring cameras to be used as proof of workers working time in case there is a conflict with the company. This can be an advantage to labours to save their rights in case there is any kind of complaints against the worker from the company. This also will be feasible for companies as it provides a monitoring system for the working hours and overtime of employees.
  3. **MoL** is to take serious steps towards the contractual problems in the construction sector through:
    - A. Preparing a draft of a new innovative labour law by inviting partners from the private and non-profit sectors and conducting open discussions to

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<sup>13</sup>Savelyev, Alexander, Contract Law 2.0: «Smart» Contracts As the Beginning of the End of Classic Contract Law, *Higher School of Economics Research Paper No. WP BRP 71/LAW/2016*, Dec. 14, 2016 <https://ssrn.com/abstract=2885241>

enhance the current law in order to match the developments that have been taking place over the last decades. Developing the labour law can be implemented over one year of studying the current law and the gaps that need to be covered. The government is to invest in making amendments to the labour law as it is a feasible solution because a new innovative law will avoid conflicts that MoL has to deal with every year.

- B. Using social media to raise the awareness of workers and engineers and educate them on their basic rights and how to deal with conflicts with their employers. MoL could activate the official pages on Facebook, Instagram, YouTube, and other social media websites to achieve more progress in educating workers, engineers and employers on labour rights, the responsibilities of each party, and the procedures for solving conflicts friendly or through the official legal parties.
4. **JEA** could take serious steps towards the contractual problems in the construction sector, for example:
- A. JEA regulations and instructions could be updated. JEA steering committee need to restudy the current regulations and submit an amendment to the engineers' association council. The amendment considers the rights of both the employer and the engineer and takes into account the uniqueness of different projects.
  - B. Contracts for construction engineers shall be validated, stamped, and shared by JEA in coordination with MoL. This saves the engineers' rights and prevents companies from taking advantage of the lack of opportunities available to fresh graduate engineers.



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