Effect of Leadership Transparency on Perceived Levels of Corruption in the Procurement Department in the Judiciary of Kenya

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ABSTRACT

Corruption is a major impediment to the development of a nation because it impairs public services, distorts public spending, disrupts the natural law of the economy, and undermines trust in government. This study aimed to examine the effects of leadership accountability on perceived levels of corruption in procurement departments in the judiciary of Kenya. It made use of the concurrent triangulation design and targeted the population of 278 heads of procurement committees in 278 court stations of the Kenyan judiciary and key informants from six oversight organizations. From this population, a sample of 164 heads of procurement committees was selected using the stratified proportionate random sampling technique. Quantitative data was collected from the heads of procurement committees using questionnaires, while qualitative data were collected by interviewing 12 key informants that were purposefully selected from the six oversight organizations. The study found that leadership transparency has a statistically significant and negative effect on levels of corruption in the procurement departments in the Kenyan judiciary (chi-square (X2) = 42.016, df = 2, sig. =.000). Based on the findings, the study concludes that the transparency of leaders of procurement units reduces levels of corruption in government procurement. The study recommends the formulation of laws, policies, and strategies aimed at improving the transparency of leaders in government procurement departments.

Keywords: Corruption, Government, Leadership, Procurement, Transparency

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I. INTRODUCTION

Corruption refers to unethical behavior that is typified by the misuse of organizational or public power and leads to harm to society (Manara et al., 2020). There has been a widespread perception of corruption in Kenyan government institutions since independence. According to Osamba (2019), corruption was referred to as “ten percent” because government officials demanded kickbacks that were equivalent to 10% of the value of the contract from successful bidders. Corruption in the country heightened in the 1990s, as evidenced by mega corruption scandals such as the Goldenberg that led to the loss of billions of shillings in fictitious business deals. Since 2003, Kenya’s score on Transparency International’s Corruption Perception Index (CPI) has never exceeded 35/100, where 100 indicates the lowest levels of corruption (AfriMAP, 2015). This implies that the majority of Kenyan citizens perceive their government to be corrupt. The 31/100 score that Kenya received in the year 2020 was the highest in the past 25 years (Transparency International, 2021). Despite being the best score in 25 years, it still fell below the average for the sub-Saharan Africa region, which stood at 32/100, and far below the global average score of 43/100. The lowest score that the country recorded within the same period was 19/100 in the years 2002 and 2003.

Mutangili (2019) found that tendering fraud in public institutions is the fastest-growing economic crime. One-third of all businesses that supply goods or services to government entities reported experiencing fraud in procurement. Vender selection is the stage of the public procurement process where corruption is most likely to occur. Most cases of procurement fraud are linked to politicians and senior government officials. According to Barrett and Fazekas (2020), politicians are motivated to manipulate procurement processes in public institutions to channel private gains to themselves or their families. They also influence procurement processes to allocate state resources in a manner that buys them loyalty and helps them consolidate power. Omar (2020) observed that corruption in Kenya has adversely affected the growth of the service sector, including education, transport, water supply, electricity, and health. Barrett and Fazekas (2020) observed that procurement accounts for 50% of public spending in developing countries, and thus corruption in public procurement has a massive impact on the economy.

The study by Akkoyunlu and Ramella (2020) found that nations that have high levels of corruption do not prosper as fully as those with low levels of corruption. Specifically, their research showed that corruption negatively influenced productivity, income per capita, and innovation in a country. The authors explained that corruption hampers development by disrupting the natural laws of the economy. Grundler and Potrafke (2019), in their study examining data from 175 countries for a seven-year period (2012–2018), also observed that corruption lowered the GDP per capita of a country by 17%. In particular, the study found that when a country's CPI index increases by one standard deviation, the GDP per capita reduces by 17%. In their study focusing on data from 52 countries for the 1996–2003 period, Bellinger and Son (2019) also observed that corruption reduces the chances of foreign direct investment taking place in a country by about 3%. Corruption deters foreign direct investment by creating hurdles that make it expensive for investors to set up operations in a given country. For instance, corruption may make it necessary for an investor to pay a bribe to obtain permits and licenses for setting up operations.

Money that leaks from the government budget through corruption becomes unavailable for programs that would have relieved the burden on the poor, financed education, or supported healthcare delivery. The African Union Commission (2019) also noted that corruption lowers the productivity of a nation because government officials spend more time setting up systems for controlling corruption rather than devoting it to governance and value-adding activities. Some government officials also spend a lot of time building bribery machinery and ensuring it remains operational. On the other hand, Matti (2015), through an analysis of data from 134 countries, established that corruption tends to foster income inequality within a given country. It creates inequality by skewing the distribution of resources and opportunities in favor of a few corrupt individuals and at the expense of the majority of the citizenry. The fact that corruption only benefits a few connected individuals means that this vice tends to disadvantage the majority of the population in a given country.

In addition, corruption suppresses democratic systems, erodes citizens' trust in government, and hampers economic development through diversion of resources and biased decision-making (Frank et al., 2011; Transparency International, 2020). Enste and Heldman (2017) further documented that corruption was associated with reduced investment in a country, a decline in capital inflow, a decrease in foreign trade and aid, slowed official growth in the economy, inequality between different social groupings, increased government expenditure, poor government services, and the creation of a shadow economy. Countries around the globe are exploring different strategies for combating corruption in government procurement. One of the strategies that have been advanced entails increasing transparency in the procurement decision-making process.

Transparency is a governance principle that emphasizes the freedom of members of the public to access and obtain information regarding the administration of public institutions and resources (Pratiwi & Sari, 2017). It entails the dissemination of accurate, reliable, and comprehensive information to members of the public and being open to scrutiny. The principle demands that government information, institutions, and processes be easily accessible to members of the public in a reliable, timely, and understandable format. Adequate information regarding government operations should be available to facilitate effective monitoring. According to Carcaba et al. (2017), transparency entails the provision of information that meets four main tenets: accessibility, availability, understandability, and reliability. It is associated with the openness of the governance system through the creation of clear procedures and processes. Transparency increases accountability and clarity in the management of public institutions. The principle of transparency is geared towards creating an open government through active dissemination of information, promoting access to government documents, and upholding freedom of information (Meijer et al., 2012). Openness of government activities is necessary to encourage criticism of and control of public authorities in their exercise of power.

The Kenyan government has taken various initiatives aimed at promoting the generation of accurate information regarding the financial transactions of government institutions. The most notable initiative is the rollout of the integrated financial management information system (IFMIS). This is an enterprise resource plan that is used by the national and county governments to execute key public finance management functions such as budget formulation and execution, public procurement, and financial reporting (Muiruri, 2018). According to Waweru and Ngaba (2019), IFMIS was expected to improve data recording, tracking, and information management in response to increasing demands for greater transparency. Generating accurate financial information is only the first step towards building transparency within government institutions. Full transparency is achieved when this information is disseminated to key stakeholders such as members of the public, government auditors, parliament, the press, and civil society (OECD, 2017). Despite efforts to enhance transparency in government procurement, few studies have been conducted to examine the level of transparency in government procurement departments and how it impacts perceived levels of corruption. This study sought to address this gap by examining the situation in the procurement department of the Judiciary of Kenya.

In Kenya, the judiciary is one of the three arms of the Kenyan government. Just like in any other institution, public procurement is essential to service delivery in the judiciary because it enables the development of critical infrastructure and the acquisition of essential materials. The Public Procurement and Disposal Act (PPDA) of 2015 governs procurement in the Judiciary of Kenya (Kanyaru & Moronge, 2017). Procurement follows a decentralized structure where each court station procures the basic goods and services needed to run its operations. As of April 30, 2023, the judiciary had a total of 278 court stations, comprising 127 magistrate courts, 12 tribunals, 46 kadhi courts, 44 high courts, 35 environment and land courts, nine employment and labor relations courts, four courts of appeal, one small claims court, and one supreme court (Judiciary of Kenya, 2023). Each of these court stations has a procurement committee that consists of the chair and several members.

II. METHODOLOGY

This study was grounded in the pragmatism research philosophy, a mixed-method research philosophy that focuses on solving problems (Johnson et al., 2017). It employed the concurrent triangulation design that entails collecting quantitative and qualitative data at the same time (Johnson et al., 2017). Qualitative and quantitative data were gathered separately, although during the same phase of data collection, integration was done at the analysis and interpretation stage. The quantitative phase of data collection targeted 278 heads of procurement committees from the 278 court stations in the Kenyan judiciary (Judiciary of Kenya, 2023). The qualitative phase targeted key informants from six oversight organizations, namely: EACC, the Judiciary Ombudsman, the Office of Public Prosecutor, the Auditor General's Office, Transparency International, and the Open Society Foundation. The sample size for heads of procurement was determined using the Yamane (1973) sample size formula:

$$n = \frac{N}{1+N(e)^2}$$

Where:

N= Population size (278); e= Margin of error (5% or 0.05). When fitted, the sample was 164.

The stratified random sampling technique was used to select the 164 heads of the procurement committee. The 278 court stations were grouped into nine strata in line with the court type. The strata include magistrate court stations, high court stations, courts of appeal stations, Supreme Court stations, kadhi courts stations, environment and land courts, employment and labor relations courts, small claims courts, and tribunals. Table 1 presents the sampling plan.

Table 1
Sampling Plan

Strata	**Target Population**	**Sample**
Magistrate courts	127	75
Kadhi courts	46	27
High courts	43	25
Environment and Lands Courts	35	21
Tribunals	12	7
Employment and Labour Relations Courts	9	5
Courts of appeal	4	2
Small Claims Courts	1	1
Supreme Court	1	1
Total	**278**	**164**

Source: Judiciary of Kenya (2023)

The sample size for the qualitative phase of data collection was purposively set at 12 key informants. The purposive sampling method was used to select two informants from each of the six oversight organizations. Table 2 highlights the oversight organizations and the number of informants that were selected.

Table 2
Key Informants

Strata	Sample
EACC	2
The Judiciary Ombudsman	2
Auditor General Office	2
Office of Public Prosecutor	2
Transparency International	2
Open society foundation	2
Total	**12**

Questionnaires were used to collect data from the heads of the procurement committees while interview guides were used to collect data from the key informants. Quantitative data was analysed using descriptive and inferential statistics while qualitative data was analysed using thematic content analysis technique.

III. RESULTS AND DISCUSSION

3.1 Respondents Profile

Out of the 164 questionnaires that were distributed, 153 were completed accordingly and returned to the researcher. Table 3 illustrates that 99 respondents, representing 64.7% of the sample, were male, while the remaining 54 (35.3%) were female. Most of the respondents (66%) were between the ages of 41 and 50. These results suggest that most of the leaders of the procurement committees in the judiciary are middle-aged people.

Table 3
Distribution of Respondents by Select Background Characteristics

Demographic Trait	Categories	Frequency	Percent
Gender	Male	99	64.7
	Female	54	35.3
Age	31- 40 years	20	13.1
	41- 50 years	101	66.0
	51- 60 years	32	20.9
Highest Education Level	Diploma	25	16.3
	Bachelors	80	52.3
	Masters	45	29.4
	PhD	3	2.0

About half of the respondents (52.3%) had a bachelor's degree of education, 29.4% had a master's degree, 16.3% had a diploma, and 2% had a PhD degree. The findings indicate that most of the individuals heading the procurement committees in the judiciary are highly educated. Twelve interviewees were also interviewed with key informants.

3.2 Levels of Corruption in the Procurement Department of the Judiciary

Levels of corruption in the procurement department of the judiciary were the dependent variable of the study. This concept was measured by presenting respondents with a list of questions to which they were to respond with a "yes" or "no" answer. The questions relate to red flags that would make a station vulnerable to corruption. The study obtained a composite corruption score by giving every "yes" response a score of '1' and every "no" response a score of '0'. Table 4 summarizes the distribution of the 153 sampled procurement stations across the two categories.

Table 4

Distribution of Sampled Stations by Levels of Corruption

Corruption level	Frequency	Percent
High corruption levels	65	42.5
Low corruption levels	88	57.5
Total	**153**	**100.0**

Table 4 illustrates that 65 procuring stations, constituting 42.5% of the sample, had corruption scores of 6 and above and thus were classified as having high levels of corruption. This finding implies that corruption is highly prevalent in over 40% of procuring stations in the procurement department of the judiciary. The finding is consistent with the study by Kamau et al. (2022), who found that less than 50% of Kenyans felt that the government had done enough to fight corruption.

3.3 Leadership Transparency in the Procurement Stations of the Judiciary of Kenya

Leadership transparency was the independent variable of the study. The study presented a set of seven statements related to leadership transparency and asked respondents to indicate whether each was true or false. Table 5 presents the findings.

Table 5

Respondents rating of their Level of Transparency

Statement on Leaders Independence	True N (%)	False N (%)
Our station has clear and well-published guide detailing its procurement processes and procedures.	113 (73.9)	40 (26.1)
In our station, the evaluation of bids is done using a standardized rubric	99 (64.6)	54 (35.4)
In our station, we publish the rubric for evaluating every tender on the judiciary website	79 (51.5)	74 (48.5)
Our station disseminates results of the bid evaluation process through the judiciary website	41 (26.7)	112 (73.2)
I supports the dissemination of accurate information regarding the financial transaction of the institution to the auditor general’s office	99 (64.6)	54 (35.4)
Our station publishes prices offered by each bidder in the judiciary website for transparency and scrutiny	42 (27.3)	111 (72.7)
I facilitate scrutiny from auditors, members of the public, and the media	39 (25.3)	114 (74.7)
I always advocate the generation of information regarding the financial transaction of the institution in a timely manner.	90 (58.6)	63 (41.4)

The result in Table 5 shows that 73.9% of the respondents affirm that their station has a clear and well-published guide detailing its procurement processes and procedures. The need for open and clear procurement procedures was emphasized during the interview, where one respondent reiterated that clearly established procedures make it easy for stakeholders to detect when something is wrong.

> *Government institutions should have a clear and well-elaborated guide that details their procurement processes and procedures. It is easier to identify corruption and malpractice when you know how the process works and should unfold. A guide helps to clarify the steps that should be taken so that people understand when something is wrong. The PPDA of 2015 tries to introduce standards to which every government institution should adhere when procuring goods and services. However, the extent to which this law is applied is not clear* (Interviewee 9, 2022).

The extract indicates that laws guiding public procurement have already been enacted, and it is just a matter of internalization by the public institutions. About 64.6% of respondents confirmed that the evaluation of bids within their station is done using a standardized rubric. According to Fazekas and Blum (2021), having a standardized rubric for bid evaluation reduces bias and subjectivity in the bid evaluation process. The bidders get to know from the onset what the procuring entity will be looking for and how they will rate the bids. Likewise, 51.5% of the respondents affirmed that their station publishes the rubric for evaluating every tender on the judiciary website. According to Downe et al. (2016), it is not enough for a procuring entity to have a standardized rubric. The entity should go ahead and make this rubric known and accessible to all potential bidders to enhance the transparency of the bid evaluation process. Current findings suggest that close to half of the procuring stations in the judiciary do not publish their rubric on their website, making it less accessible.

In addition, only 26.7% of the respondents admitted that their procuring station disseminates the results of the bid evaluation process on the judiciary website. This statistic implies that dissemination of the results of the bid evaluation process is not an entrenched practice in most procuring stations in the judiciary of Kenya. Ferwerda et al. (2016) identified the failure to inform all bidders about the award of the contract and failing to make reasons for awarding the contract to a particular bidder publicly available as among the red flags that signal corruption in public procurement. The reluctance to disclose information about financial transactions by public institutions was also highlighted during the interviews. Two interviewees cited a recent scandal involving the drug supply agency KEMSA, which refused to divulge information regarding companies that won bids to supply material and equipment during the COVID-19 pandemic.

> *Numerous laws have been enacted to promote transparency but have not achieved much because of impunity. Although the law has created watchdog organizations such as parliament and given them powers to obtain information from public institutions, some institution leaders blatantly refuse to give out information because they are backed by powerful individuals. Look at what happened with KEMSA; the CEO refused to give names of companies that were involved in the supply of medical equipment during the COVID-19 pandemic despite numerous demands from parliament. Such impunity has rendered existing laws incapable of addressing corruption* (Interviewee 6, 2022).
>
> *We have come a long way, but a lot still needs to be done to promote transparency. Watchdog agencies need to be given powers to sanction and punish individuals who fail to provide information about their institution's financial transactions, like in the case of KEMSA. The agency leaders totally refused to name the people involved in the questionable supply transactions despite being asked to do so by parliament* (Interviewee 11, 2022).

Chen et al. (2016) observed that disseminating bid evaluation results is an important way of promoting transparency in public institutions as members of the public get to know how the winner bidder got selected. Publishing results on the website makes them more accessible, as opposed to the use of other mediums such as newspapers. This position is reinforced by qualitative findings, where interviewees expressed that providing members of the public with information regarding the workings of public institutions enhances citizen enforcement and monitoring of service standards and quality.

> *Providing easy access to information on the working of public programs by citizens enables them to demand high standards, monitor the quality of services, and challenge abuse by public officials. For instance, publishing the amount of funds that an institution like a school or hospital receives from the government enables citizens to know what standard of services to expect from the institution and demand better quality* (Interviewee 1, 2022).

About 64.6% of respondents acknowledged that they support the dissemination of accurate information regarding the financial transactions of the institution to the auditor general’s office. According to Charles and Oluoch (2017), the auditor general’s office is one of the institutions that the CoK 2010 mandates to play an oversight role in the management of public finances. The auditor general’s office is expected to review all operations of government institutions and report to parliament. Therefore, disclosing financial information to this body is critical to enabling them to fulfill their oversight roles.

On the other hand, only 27.3% of respondents confirmed that their station publishes prices offered by each bidder on the judiciary website for greater transparency and scrutiny. These findings denote that most of the procuring stations in the judiciary do not publish crucial bidding information. According to Zhang and Zheng (2017), publication of crucial bidding information improves information disclosure to the public and other bidders, which limits room for manipulation. The publication of crucial bid information also enhances bidders trust in the fairness of the evaluation process and intensifies competition by attracting a large number of bidders. Trust emerges because bidders can see the prices and proposals that other bidders have submitted; hence, they would be able to tell why their bids were or were not successful. Current findings suggest that there is minimal publication of crucial bid information. These results are consistent with Zhang and Zheng (2017), who observed that government officials do not have a strong motivation to improve the quality of information disclosure. The lack of demand and supply forces in government financial information adversely affects the willingness of government officials to disclose information to the media.

In addition, 25.3% of respondents affirmed that they are open to scrutiny by auditors, members of the public, and the media. These findings indicate that many leaders of procurement committees are not open to scrutiny.

According to Meijer et al. (2012), one of the goals of enhancing transparency in government is to enable stakeholders, including members of the public, to scrutinize the activities and operations of a public institution. Consequently, the transparency mechanism would have little impact on the ethical conduct of an organization if the leadership were not open to scrutiny. The scrutiny of public officials reduces administrative opaqueness and promotes citizens' rights to participate in the management of public affairs. This position is supported by qualitative data, where one of the interviewees elaborated that oversight is one of the mechanisms that the CoK 2010 has put in place to address the issue of corruption in government:

> *There are various mechanisms that our constitution has put in place to promote transparency in procurement activities. One of them is oversight, which entails setting up bodies for monitoring and investing in the operations and activities of an institution to ensure that there is transparency and efficient use of resources. Several oversight bodies have been established, including Parliament and the Senate, the Auditor General, the Public Procurement Oversight Authority, and the Controller of Budget* (Interviewee 2, 2022).
>
> *Today, government procurement processes have become more transparent through the creation of oversight bodies such as the PPOA, the auditor general, and parliament. It is now easier for members of the public to get information regarding the financial transactions of government institutions. However, we still have a long way to go because most of these oversight institutions are not completely independent and are constrained by many factors, including limited personnel* (Interviewee 11, 2022).

Lastly, 58.6% of the respondents acknowledged that they advocated the generation of information regarding the financial transactions of the institution in a timely manner. According to Carcaba et al. (2017), the timeliness of producing information is a critical aspect of transparency. Information that is not released on time becomes of little use when it comes to the decision-making and scrutiny of public officials. Muiruri (2018) observed that the implementation of IFMIS enhanced the timeliness of producing financial information in most public institutions. However, current findings show that over 40% of the procuring stations in the judiciary may not be generating this information in a timely manner. A report by Oruko (2020) from the proceedings of the Parliament Investment Committee shows that some public corporations submit their financial reports to the auditor general office more than six months after the end of the financial year. The law requires all public corporations to submit these reports by the end of September of each year, which is three months after the end of a financial year.

A composite leadership transparency score was computed by summing the score on each of the eight items in the leadership transparency scale. A "true" response was coded as 1, while a "false" response was coded as zero. The computation created a composite score that ranged from zero to eight. This composite score was later recorded as a categorical variable by classifying scores of 2 or below as low transparency, 2 to 5 as moderate transparency, and scores that were above 5 as high transparency. Table 6 displays the distribution of the procurement stations across the three categories of leadership transparency.

Table 6

Distribution of Sampled Stations by Level of Leadership Transparency

Leadership Transparency Levels	Frequency	Percent
Low Transparency	49	32.0
Moderate Transparency	65	42.5
High Transparency	39	25.5

The low leadership transparency category had 49 entities making up 32.0% of the sample, the moderate category had 65 (42.5%), and the high transparency category had 39 (25.5%). These statistics indicate that the majority of the procurement stations in the Judiciary of Kenya have moderate levels of leadership transparency.

3.4 Leadership Transparency and Levels of Corruption in the Procurement Stations

To test the relationship between leadership transparency and levels of corruption in the procurement stations, the three leadership transparency categories were cross-tabulated with the two categories of levels of corruption. Table 7 presents the results.

Table 7
Cross-Tabulation of Corruption Levels by Leadership Transparency

		Levels of Corruption		
		Low N (%)	High N (%)	Total
Leadership Transparency categories	Low	7 (14.3)	42 (85.7)	49 (100.0)
	Moderate	24 (36.9)	41 (63.1)	65 (100.0)
	High	32 (82.1)	7 (17.9)	39 (100.0)
Total		63 (41.2)	90 (58.8)	**153 (100.0)**
Chi-square X^2 = 42.016, df = 2, sig. = .000				

Table 7 shows that the proportion of procurement stations with high levels of corruption declines from 85.7% in the low leadership transparency category to 63.1% in the moderate leadership category and decreases further to 17.9% in the high leadership transparency category. This pattern suggests the existence of a negative association between leadership transparency and levels of corruption in the procurement department of the judiciary. It suggests that when leadership transparency increases, levels of corruption are likely to decline. The chi-square test shows that the relationship between leadership transparency and levels of corruption in the procurement department of the judiciary is statistically significant (X2 =*<.001)*. The findings are also reinforced by qualitative findings, which indicated that transparency tends to reduce leaders' bargaining rights to extort bribes and make it easy to detect malpractices.

> *The incidence of corruption often declines when there is great transparency because transparency diminishes the leader's bargaining rights to extort bribes and other forms of favors from firms* (Interviewee 4, 2022).
>
> *When the procurement processes are transparent, it becomes easy for members of the public, the press, and investigators to detect cases of corruption. However, most institutions, such as the military and interior ministry, have a very opaque procurement process that makes it hard to tell if money is being utilized in the right way* (Interviewee 8, 2022).

The findings are consistent with those of Meijer et al. (2012), who observed that transparency increases accountability and clarity in the management of public institutions, leading to lower levels of corruption. The findings are also congruent with the study by Williams and Andrew (2020), which revealed that public officials in Nigeria were more likely to make procurement decisions that adhered to existing laws and standards when the process of procurement was open and visible to members of the public.

IV. CONCLUSIONS & RECOMMENDATIONS

4.1 Conclusions

The research findings underscore the pivotal role of leadership transparency in mitigating corruption within the judiciary's procurement department. Notably, over one-third of the procurement stations exhibit a concerning deficiency in leadership transparency. These findings highlight the imperative for implementing policy and practice interventions aimed at bolstering transparency in leadership within these procurement stations, ultimately fostering accountability and reducing corrupt practices.

4.2 Recommendations

To improve leadership transparency, JSC should direct all court stations to publish their procurement histories on the judiciary website on an annual basis. Parliament should enact laws that require all government entities to have a website through which they should publish their financial statements on an annual basis. This will ensure that different stakeholders have access to information regarding the financial transactions of the public agency.

Parliament should also provide more resources to the auditor general's office, which is responsible for scrutinizing the financial transactions of public entities. The resources will enable the office to recruit more staff and acquire advanced technologies that will enhance their effectiveness in scrutinizing the financial transactions of the stations. The JSC should also enhance internal scrutiny by hiring internal auditors and equipping them with the requisite resources that they need to conduct timely audits.

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