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# RESEARCH ARTICLE DEMOCRATIC TRANSITION IN MYANMAR – FACT OR SHAM?

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#### **ABSTRACT**

The Burmese military regime under President Thein Sein has been promoting democratization of the country since Myanmar's last multi-party elections in 2010. I have previously argued that the elections were designed to prolong military supremacy rule in civilian guise. They were regarded by many as technically flawed but brought a nominally civilian government to power for the first time in fifty years. The new government has introduced several policy changes including abolishing direct censorship, reaching peace deals, allowing demonstrations, releasing political prisoners, welcoming back exiles, allowing private newspapers in any language, and the creation of labor organizations, but they are weak and have a limited impact on political change. The army continues playing an official role in governance and enjoys complete immunity from civilian control and justice. Western governments consider the changes introduced by the new government a sign of democratization, and as a result, they are lifting sanctions and normalizing aid and trade relations, despite serious ongoing abuses. This sends out the wrong message. It is important to remain critical when faced with the changes and reforms and not turn a blind eye to the quality of the reforms. Most of them do not meet international standards and are often misleading. Undeniably, Myanmar has started the process of liberalization, however, has not reached democratization yet. The aim of this paper is to bring clarity to a general myth that the democratization process of Myanmar is underway. While it is true that people now have basic rights, these rights need grow and develop until the changes are complete. Transitions may begin and never be completed, although a new authoritarian regime does not assume power. The approach used in this article is both descriptive and analytical, and offers a comprehensive review of the recent reforms, as well as an assessment of the degree of change they bring to the general population in Myanmar.

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#### INTRODUCTION

Since the third wave of democratization has begun in the 1970s, many Southeast Asian countries have made a significant progress toward democracy. Countries like the Philippines, South Korea, and Taiwan have held free and competitive elections and expanded political freedoms. On the contrary, Myanmar has been under military control since 1962 and for decades isolated from the rest of the world. At one point. Burmese citizens couldn't leave the country without a special authorization and foreigners were allowed to enter only for 24 hours. (Kironska, 2013) Burma/Myanmar was not of a big interest to the outer world before Aung San Suu Kyi came into play. Her party, the National League for Democracy (NLD), won in the relatively free and fair 1990 parliamentary elections the majority of seats, however, the results of the elections were not honored and power was never transferred. Most countries have condemned the behavior of the junta and imposed sanctions. The sanctions did not stop the military officials; they became more careful: they arrested and detained many opposition leaders, declared martial law, and promulgated laws and decrees weakening the parties that won the elections. Thirteen years later the military regime announced the Roadmap to Discipline-flourishing Democracy, a framework for the democratization process in Myanmar. According to Przeworski, transition to democracy usually occurs when authoritarian regimes feel the need to augment their legitimacy through liberalization while retaining as much power as possible. (Przeworski, 1979) The power of an authoritarian regime, in such a case, depends on the regime's ability to maintain unity and the opposition's capacity to create a ruling alternative. (Stepan, 1988) The coercive apparatus of the Burmese military has a great capacity whereas the opposition is small and divided (ethnic division plays a major role).

The process of democratization itself has three main stages: ending authoritarian rule, transition to a new regime, and consolidating democracy. In Myanmar, a formal end to the military rule came with the 2010 parliamentary general election, the fifth of the seven-step *Roadmap* (the seventh being the construction a new democratic state by the elected representatives of the parliament). The election was carefully planned and designed to prolong military supremacy rule in civilian guise. It was preceded by the approval of a new military-drafted Constitution (in a referendum with manipulated results) that ensures 25% seats in the parliament to the military. The electoral system *per se* was excluded from the Constitution and was overseen by an election commission responsible for the discriminatory Union Election Commission

<sup>&</sup>lt;sup>1</sup> The Constitution was approved in a referendum on 10 May 2008 with a 99% voter turnout. The results were manipulated by the State Peace Development Council (SPDC) which pushed ahead with the referendum in the immediate days after the Nargis cyclone, one of the worst natural disasters in Burmese history, had devastated the country.

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Law.<sup>2</sup> The election was regarded by many as technically flawed, but it brought a nominally civilian government, the Union Solidarity and Development Party (USDP), to power for the first time in almost fifty years.

The new government introduced several reforms, which the international community viewed very optimistically and perceived as signs of democratization. Sanctions against Myanmar were thus rapidly lifted despite serious ongoing abuses The Human Rights Watch summarized the situation as "Burma's human rights situation remained poor in 2012 despite noteworthy actions by the government toward political reform". (Human Rights Watch, 2013) Christensen, such as many other authors, describes the current reforms in Myanmar as a way how to "ensure the continuity of military power in a different guise in order to allow engagement with the international community, rather than a case of democratic reform for the sake of democratization itself." (Christensen, 2012) She calls for the need to set a benchmark for the reforms the Burmese government has introduced.

This paper is written as a continuation of my previous publication, The Electoral System of Myanmar (2012) that describes the flawed process of the general election for the People's Assembly in 2010. The aim of this paper is to look into the reforms introduced after March 2011, when the new government took office, in a more detailed way and assess their importance and degree of change they bring about. I examine the impact of the independent variables (several reforms introduced after 2010) on the dependent variable (the quality and degree of change in Myanmar in regard of the impact on the transition to democracy). On one hand, one cannot deny that change is happening – the new government introduced more reforms than anyone has expected and people enjoy freedoms they couldn't even dream of in the past – but on the other hand, are such minuscule changes relevant to the transition process from a dictatorship to a real democracy?

To answer this question, one has to understand that democratic transition begins by liberalization and opening up, but concludes only when the new democratic rules have been formally accepted. (Ethier, 1990) The process is complete when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*. (Linz and Stepan, 1996)

The two terms, liberalization and democratization are not to be confused as synonyms. Liberalization is under strict control, while during democratization the ruling elite cannot always control the process of rule change. Liberalization can result in policy and social changes, such as lifting censorship restrictions, releasing political prisoners, and acknowledging the existence of an opposition, however, there can be liberalization without democratization. Democratization is wider in scope by adding to liberalization a more political concept. The main condition of democracy, although not the

<sup>2</sup> The Union Election Commission Law set unreasonable rules on parties wanting to participate in the elections: new political parties had to register within 90 days, and existing political parties had to transform according to the new Constitution and register within 60 days from the date of promulgation of the law on 8 March 2010. A party had to have at least 1000 members and pay a registration fee of about US\$300 and an additional equivalent of US\$500 per candidate. Moreover, government employees and political prisoners (such as Aung San Suu Kyi) were barred from being members of parties.

only one, is a free and competitive election, that determines who will govern.

In Myanmar, where the previously ruling military relinquishes direct control of government with extensive prerogatives, changes are tightly controlled. Most of the newly introduced reforms are mere reformulations of their old versions or require changing other related laws in order to be regarded as democratic. This research aims to bring clarity to a general myth that the democratization process of Myanmar is underway. While it is true that people now have basic rights, these rights need grow and develop until the changes are complete. Transitions may begin and never be completed, although a new authoritarian regime does not assume power.

Throughout this paper, I use the country names "Myanmar" and "Burma" without political intent: "Myanmar" for the period under SLORC, "Burma" for the previous periods, and "Burmese" as an adjective. The name change, which took place in 1989, has become a domestic and international political issue, and usually indicates political persuasion. The new name, Myanmar, was accepted by the UN and by most countries, but is not recognized by some countries such as Canada, the United Kingdom and the United States, which claim that this name change had been made by an illegitimate military government. A change to this situation came in November 2012 when President Obama visited the country and during his speech at the University of Yangon referred to the country for the first time as "Myanmar," and not "Burma."

#### The New Reforms In Myanmar

The military rule in Myanmar came formally to an end in 2010 with the parliamentary elections. However, the emergence of elections, although a necessary condition, does not automatically mean democracy or democratic rule. Guatemala in the 1980s is an example of such an electoralist nontransition. To avoid the electoralist fallacy other measures have to be taken into consideration. Robert Dahl offers a list of conditions that must be present for modem political democracy to exist. Firstly, control over government decisions about policy must be constitutionally vested in elected officials chosen in frequent and fair elections. Secondly, practically all adults have to have the right to vote in the election of officials, and to run for elective offices in the government. Thirdly, citizens have to have the right to express themselves on political matters without the danger of being punished, the right to form associations and organizations, and the right to seek out alternative sources of information. Such alternative sources of information must exist and be protected by law. (Dahl, 1982) To meet these conditions, countries in the transition phase go through various changes and reforms. This chapter analyzes the reforms introduced by the new Burmese government in the last few years.

Myanmar's icon of democracy, Aung San Suu Kyi, who could not participate in the election due to the Union Election Commission Law barring political prisoners from becoming party members, was released from house arrest in November 2010, a few days after the election. A few months later, she was free to leave Yangon and travelled to the newly-established capital Nay Pyi Taw to meet the new civilian President Thein Sein, a former general and prime minister. He was elected President by the Parliament in February 2011 and sworn in a month later, thus completing the transfer of power

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to the new nominally civilian government. One of the first significant actions of this new government in the eyes of foreign observers was the release of prisoners, including Aung San Suu Kyi. However, many political prisoners still remain behind bars. Since assuming power, President Thein Sein has granted amnesty to prisoners on several separate occasions, resulting in the release of around 30,000 prisoners with around 3% of political prisoners among them. (Martin, 2013) Released were also some key political prisoners including veterans of the 1988 student protest movement (Min Ko Naing, Nilar Thein, Ko Jimmy), monks involved in the 2007 demonstrations (U Gambira), activists from many ethnic minority groups (Shan ethnic leader Khun Tun Oo), journalists (Zaw Thet Htwe and Hla Hla Win), and well-known dissidents (pro-democracy activist Htay Kywe and the famous comedian Zarganar). (BBC News Asia, 12 October 2013)

It is difficult to estimate how many political prisoners still remain behind bars. In April 2013, civil society groups believed there were still around 360 political prisoners in Burmese jails. Determining the number of political prisoners in Myanmar is complicated because of the lack of agreement about the definition of a political prisoner. There is no international standard for defining a political prisoner.<sup>3</sup> In the case of Myanmar it gets even more complicated since it is not clear whether to include also prisoners associated with the ethnic-based militias involved in armed conflict with the Burmese military.

 Table 1 Vacant seats at the parliament before the March

	Total amount of seats	Vacant seats
Lower house: People's Assembly	440	37 (originally 40)**
Upper house: National Assembly	224	6
Local parliaments*	(total seats vary)	2

<sup>\*</sup>Myanmar consists of seven states (Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shin) and seven regions or divisions (Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi, and Yangon).

In addition to releasing political prisoners, the Burmese President has welcomed back exiles and removed over 2000 names from the country's blacklist (for example the actress Michelle Yeoh, who played Aung San Suu Kyi in the movie *The Lady*). Another 4000 individuals, however, remain on the blacklist. (Holliday, 2013) People continue being arrested and some freed political prisoners may face persecution. The latter are not free to travel and lack adequate psychosocial support. (Human Rights Watch, 2013) In short, repressions remain in place.

Perhaps the most significant action of the new government in the eyes of the international community was allowing Aung San Suu Kyi to participate in the parliamentary by-election in April 2012. The Burmese government had realized it could not gain acceptance by the West without getting the democracy icon engaged in the reformation process of Myanmar and used her popularity to its advantage. The reason why by-elections were held is because there were 48 vacant seats (see Table 1):

45 of the seats were vacant because the elected member accepted a position in the Union Government; two seats were vacant because the elected member was removed from office; and the last seat was vacant due to the member's death. (Human Rights Watch, 2013)

According to Myanmar's Constitution members of the government have to give up their parliamentary seat from the date of appointment into office. All seats were previously held by members of the USDP. Given this situation, it was in the interest of the government that the NLD win the majority of the contested seats in order to gain the favor of the West. (Christensen, 2012) The USDP won only one upper-house seat, the Shan Nationalities Democratic Party won another, and the NLD took the remaining 43 seats: 37 in the lower house, four in the upper house and 2 in the local parliaments (see Table 2). (Holliday, 2013) The government need not have to worry about leverage of the NLD that could harm its intentions since the members appointed by the commander-in-chief of the Tatmadaw (25% of all seats) will continue to hold a sufficient majority to pass legislation, as well as to pass constitutional amendments.

**Table 2** Seats won in the by-election in April 2012

	NLD	USDP	SNDP
Lower house: People's Assembly	37	0	0
Upper house: National Assembly	4	1	1
Local parliaments	2	0	0

NLD = National League for Democracy

USDP = Union Solidarity and Development Party

SNDP = Shan Nationalities Democratic Party

The success of the NDL in the by-election led to widespread satisfaction. Both the European Union and the United States eased sanctions. The European Union responded by suspending its sanctions (this excludes the arms embargo which still remains in place) for one year at first. It lifted travel and visa bans on nearly 500 people and agreed to open an office in Yangon. The restrictions originally excluded the Government of Myanmar from receiving International Labor Organization technical cooperation and assistance, and withdrew access to generalized tariff preferences (originally applied in July 2008). After the one year period, in June 2013, these restrictions were lifted for good. Similarly, the United States waved parts of the Trafficking Victims Protection Act (which partially opened the door for the International Monetary Fund and multilateral development banks to provide support to Myanmar) in February 2012, and after the byelection results were officially released, Secretary Clinton announced that the US would undertake five steps to support reforms in Myanmar including exchange of fully accredited ambassadors (Derek Mitchell was nominated US ambassador to Myanmar in May 2012); establishing an in-country US Agency for International Development mission and supporting a country program for the United Nations Development Program; relaxing restrictions on private US organizations providing nonprofit activities in Myanmar; facilitating travel to the US for selected pro-reform Burmese officials; and beginning the process of easing of the ban on the export of US financial services and investment. (Martin, Consequently, the suspension of Western sanctions brought new investment projects and global corporations like General Electric, Ford, Visa, MasterCard, Pepsi, and Coca-Cola to Myanmar. The major investment projects include the oil and gas pipes sponsored by China, the Thai Dawei deep-sea port

<sup>\*\*</sup> Voting was cancelled in three Kachin state constituencies due to ongoing fighting.

<sup>&</sup>lt;sup>3</sup> The Assistance Association for Political Prisoners rejects the limitation of political prisoners to "prisoners of conscience" and uses this definition: a political prisoner is anyone who is arrested because of his or her perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means.

and economic zone project, and the Indian Gateway logistics project.

An important achievement of the new government is the new Labor Organization Law which cancels the Trade Unions Act, an anti-labor union decree from 1962 banning trade unions. According to the new law, unions are not illegal anymore, and so are strikes with the new Peaceful Protest Law. One of the first prerequisites to demonstrations is being allowed to gather more than five people at a time, a privilege the Burmese did not have before January 2013. The new law, however, sets certain rules for protesters: private sector workers have to give at least three days notice, public sector employees fourteen days, and workers in essential services are not allowed to strike at all. Those who protest without permission will be subjected to one year of imprisonment. Employers who punish their employees because they have gone on strike face a fine of up to US\$120 and a year in jail. (Zeldin, 2011)

Changes occurred also in the media sphere, but many argue that the reforms are vague. The most significant change is the abolition of direct government censorship. Under the new rules, journalists no longer have to submit reports to state censors before publication. However, significant restrictive laws (or restrictive articles) used to jail writers and opponents of the military rule remain in place and overshadow the freedom of speech. Despite the liberalization of media and loosening of press restrictions, journalists fear their reports could fall foul of various laws, for example the Printers and Publishers Registration Law, under which journalists can still officially face imprisonment for writing articles that are critical of the regime. (Christensen, 2012) Under the Section 5 of the Emergency Provisions Act (1950) it is a criminal offence "to spread false news, knowing, or having reason to believe that it is not true" punishable with up to seven years of imprisonment. Also, any act that may "affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or the restoration of law and order," is also punishable. Under the State Protection Law (1975, also called the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts) acts that may be considered as an "infringement of the sovereignty and security of the Union of Burma," or as a "threat to the peace of the people" are punishable with up to five years of imprisonment without trial. Another similar repressive law used to arrest journalists, Electronic Transaction Act (2004), authorizes the government to imprison citizens for sending unauthorized information over the Internet. (Christensen, 2012) Offenders can be jailed for up to 15 years. There was a motion to abolish the last of the above mentioned laws in January 2013, but was rejected by the People's Assembly. Amendment of the law, replacing its long prison terms with shorter ones or fines, is at the time of writing this paper still being debated.

Among other changes are the removal of propaganda slogans from magazines and newspapers, the permission to print photos of Aung San Suu Kyi, and the permission of private newspapers in any language. Among others, the exile-run *Irrawaddy* magazine started distribution inside of Myanmar, and the Burmese-language *Journal of Human Rights and Democracy* was allowed by the Press Scrutiny and Registration Department. (The Irrawaddy, 23 September 2013) It covers various topics, such as people's rights, democracy in transition, freedom of speech and hate speech in Burma, which

would not have been allowed a few years ago under the censorship of the military regime.

A vital component of any healthy democracy is a vibrant civil society – creating one has been one of the main hopes in the recent political reforms. The new draft of the *Associations Law* (July 2013) threatens the recent gains made by Burmese civil society groups and fails to meet international human rights standards. If passed, the law would require domestic and international non-governmental organizations to register with the government, essentially conditioning the right to freedom of association on gaining government approval. Members of organizations without a registration could be imprisoned for up to three years. (Human Rights Watch, 25 August 2013) The law would thus give the government arbitrary powers to crack down on any groups it does not like.

In the economic sphere, a lot has changed over the past months and years. Foreign investment in Myanmar jumped a massive 6500% from 300 million USD in 2009/2010 to 20 billion USD in 2010/2011. (Villasanta, 2014) Although infrastructure for business is very poor, Myanmar's low wage cost is able to attract foreign investments. The new foreign direct investment law (enacted in November 2012) meant a radical departure from Myanmar's former policies. It grants its foreign investment commission flexibility on many issues. While domestic equity ownership is desired, 100% foreign ownership in many areas of investments is not ruled out and is subject to further negotiations on a project basis with the investment authority. Also the banking system went through transformational changes with exchange bureaus and ATMs appearing throughout the country. (Human Rights Watch, 25 August 2013)

When President Barack Obama visited Myanmar in 2012, he gave a speech at the Yangon University raising human rights concerns, national reconciliation, and ethnic violence. Indeed, one of the biggest problems of Myanmar is the armed conflict between the Burmese Army and ethnic minorities. In 1996, the Burmese army launched a new strategy against armed rebels attempting to cut off their access to food, funds, intelligence, and recruits among the population. (Green and Mitchell, 2007) As a result, many villages have been destroyed and people killed or internally displaced. Hundreds of thousands left into hiding or across the borders to Bangladesh, China, India and Thailand. The Burmese military as well as the ethnic armed groups have committed serious abuses in the conflict areas, mainly the Kachin, Shan, and Arakan states. (Human Rights Watch, 2013) Recently, the Burmese authorities have reached preliminary ceasefires with some of Myanmar's ethnic armies. Despite these agreements being a milestone, many observers remain skeptic and fear the government is pretending to pursue peace politics while it continues to militarize the ethnic states. The government has not removed any of its troops or military bases and the military code of conduct has yet to be agreed upon. Conflicts in these areas remain unresolved because of the current government's refusal to accommodate the desire of ethnic minorities for greater-self-determination.

One of the most arduous problems of present-day Myanmar is religious violence in the Arakan state between ethnic Arakanese Buddhists and ethnic Rohingya Muslims, a long-persecuted stateless minority that has been denied Burmese citizenship since the 1982 *Citizenship Law* was enacted. This law recognizes three categories of citizens (full citizen,

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associate citizen, and naturalized citizen) based on how and when one's forebears obtained citizenship. The law does not recognize Rohingyas as one of the 135 legally recognized ethnic groups of Myanmar, and thus they are not allowed to travel without official permission, are banned from owning land and are required to sign a commitment not to have more than two children. The conflict resulted in extremism among Myanmar Buddhists that spreads very fast throughout the whole country. Radical Buddhist movements, such as the 969 movement, threaten the county's path to national reconciliation. Unless the government tackles the ethnic problem seriously, any reform is a sham and does not lead to democracy.

Today, Burmese people enjoy more freedoms than before the 2010 election, but the process of change is not complete yet. The question is whether these initial changes will be able to grow. In the future new major steps await Myanmar.

#### **CONCLUSION**

Although Myanmar has been emerging from a brutal military rule at a breathtaking pace since the last elections, its transition to democracy is still far from being complete. The military junta has loosened its grip, but there has been a limited political change. Although the inclusion of the NLD as an opposition force with legal platform is a major first step, the army continues having an official role in governance and enjoys complete immunity from civilian control and justice. It is the old regime that controls the process of change. This is clearly a case of liberalization, and not yet democratization. It is important to distinguish between these two terms. Liberalization may include renewed protection of at least some human rights, new offices made elective, new opportunities for opposition parties to participate in elections or policy-making, or some improvement in the degree of honesty or openness in the electoral process. The purpose is to enhance the legitimacy of the authoritarian regime, perhaps even through some sharing of power, as long as it does not jeopardize effective control by the ruling elite. (Ethier, 1990) Democratization, on the other hand, deals with more uncertainty. It certainly includes all elements of liberalization, but the ruling elite cannot always control the process of rule change. While liberalization in Myanmar can easily blend into democratization, it is not a rule and may also be halted by ruling elites if it seems to be getting out of control.

The reforms introduced by the new civilian government do not meet international standards and are often misleading. Most of them require changing other related laws in order to be regarded as democratic. For example after the abolition of direct government censorship, journalists can publish whatever they want according to this new law, however, they have to beware of other laws, namely the *Printers and Publishers Registration Law*, under which they can still officially face imprisonment for criticizing the regime. On the other hand, the introduction of reforms effectively changes the regional and global perspective to Myanmar. ASEAN invited Myanmar to chair the grouping in 2014, and Western governments lifted sanctions to the country. Moreover, the new reforms attracted a lot of new foreign investment.

Also, the reforms did not improve the political situation – they were mainly a matter of economic liberalization. The reforms are viewed by the Burmese people positively to some extent,

but for those who do not have purchasing power the situation in Myanmar became worse due to the increase of prices. On the other hand, if economic reforms continue to deepen, Myanmar's road forward could become less doubtable.

It is important to be critical when faced with the changes and reforms that have been introduced over the past two years. It is wrong to turn a blind eye to the quality of the reforms just for the sake of *change* in Myanmar, a dictatorship of five decades. The United States and the European Union recently scrapped nearly all of their sanctions. I argue this was a serious mistake and sent out the wrong message. This is not to say that democratization is all or nothing, but to call the transition in Myanmar democratic is a hasty conclusion unsupported by facts. Genuine democracy cannot be created overnight and needs a continuous step-by-step approach. The Burmese government needs to demonstrate its willingness to further engage on the path of democracy and implement much needed changes in the interest of people.

Democracy in poor countries is usually fragile, and can easily collapse back to military rule. (Przeworski, 2004) Also, transition to democracy is just the first step, far away from consolidation of democratic rule. Transition is a period which begins as liberalization, eventually spills over to democratization, and concludes with the formal acceptance of the new democratic rules, which in case of Myanmar would be the ratification of a new democratic constitution. So far there have only been calls for amendments of the 2008 Constitution (one with a questionable legitimacy) which only further demonstrates that the so-called transition is built upon a deceitful foundation.

One cannot deny that Myanmar has kick started the transition phase, however, has not reached the democratization phase yet. At this stage, it is too daring to say whether Myanmar will continue to make progress. Its situation may be similar to Taiwan that liberalized in the 1970s, but only democratized in the 1990s, or quite the opposite, follow El Salvador's path of regression without even reaching the democratization phase. For now, the Burmese government maintains the same set of characters as before, except for the military officers have swapped their military uniforms for *longyis* (Burmese traditional clothing).

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