

León, Dorian Fernando

Preprint

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Suggested Citation: León, Dorian Fernando (2017) : Differential Approach and Capabilities: An Analysis for the Colombia's Population Displaced, KSP Journals, s.l., <http://kspjournals.org/index.php/JEST/article/view/1379>

This Version is available at:

<https://hdl.handle.net/10419/170474>

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ABSTRACT

Differential Approach and Capabilities: An Analysis for the Colombia's Population Displaced

The conceptual framework of the capability approach proposed by Amartya Sen has never been used specifically in the dynamics of forced displacement or in the analysis of the quality of life of the population victims of the Colombian armed conflict. Reason why, this article affirms that the approach of capabilities agrees with the differential approach proposed by the Colombian Constitutional Court. Consequently, the objective is to provide a conceptual approximation to the Amartya Sen's capability approach and differential approach proposed by the from Colombia Constitutional Court and to point out that the capability approach is relevant in the design, implementation and evaluation of public policies directed at the victim population. Similarly, recent data on the dynamics of forced displacement in the city of Bucaramanga (Colombia) are provided.

Keywords: capability approach, forced displacement, colombian armed conflict

JEL Codes: I31, I32, D63

Corresponding author:

Dorian Fernando León
Faculty of Economics and Management
University Industrial of Santander
68002Bucaramanga (Colombia)
Email: dorian.leon@correo.uis.edu.co
Tel. +573183203617

1. Introduction

The Sen's capability approach evaluates the quality of life in function not only of what we get to live but also of the freedom we really have choose between different styles and ways of life. Consequently, the capability approach emerges as an alternative to standard economic theory by incorporating ethical principles into economic theory (see Note 1 at the end).

Sen's approach changes the perspective on poverty, inequality and human development by introducing concepts such as functionings and capability, where the first ones indicate what a person can do or be (their results) and the second ones go beyond what has been achieved and include the real but latent opportunities that in the case of selection would happen to become functioning: in other words capability represents the freedom that a person has to enjoy valuable functionings.

Finally, the capability approach emphasizes the importance of conversion factors: product of the heterogeneity of people.

On the other hand, the differential approach is the appropriate legal instrument in Colombia to reverse or avoid processes and acts that generate conditions of discrimination and violence that impede the effective enjoyment of rights of the victim population of the armed conflict.

The differential approach is divided into:

(1) Ethnic groups, for Identify and act on the differential needs for care and protection that public policies must have and state action as a whole for the protection of the individual and collective rights of ethnic groups that they live in Colombia. In turn, this includes three human groups: (a) Indigenous Peoples, (b) Afro-Colombians, Blacks, Palanqueros and Raizales and (c) Rrom (gypsies).

(2) Gender, for Identify the stigmatization, discrimination and violation of rights by reason of sexuality and the gender roles and identities of people. Is divided for women and the LGBTI community.

(3) People's with disabilities, (4) life cycle, ie, children and adolescents, that not only more vulnerable to situations against their integrity, but that damage to them can irreversible.

2. Aproximation to the capability approach

The capabilities approach (hereafter CA) proposed by Amartya Sen is an evaluative normative framework (not explanatory: However, the concepts of functioning and capability can be used as explanatory elements in social phenomena or can be used in descriptions of poverty, inequality, quality of life and social change), conceptual and flexibly ie, applicable and open to different disciplines and contexts for the design, formulation, implementation and evaluation of social agreements (Robeyns, 2003). The CA proposed by Sen's not a theory of justice, even if there is in

him the *idea of justice* and some version of a partial theory of justice such as proposed by Martha Nussbaum (see Note 2 at the end).

Some authors consider that the CA of Amartya Sen is an economic and philosophical proposal with roots in Aristotle, Adam Smith and Marx (Nussbaum, 2001; Robeyns, 2011). Sharing with Aristotle the perspective of human well-being and having, consequently, a vision of welfare broader than that of the economy centered in the utilitarian metric. Consequently, Crocker (2003) mentions that Sen proposes attack such problems from a conception of development formulated in terms of ethical principles and through the empowerment (see Ibrahim & Alkire, 2007).

As an intellectual discipline - which does not fall within a specific field - the capability approach evaluates the fulfillment of achievements or realizations "functionings" understood as sets of beings and doings, circumscribed to a space of capability. Such space is defined as the interrelation of elected (achieved) and potentially eligible functionings that provide a broader information base than utilitarianism and that Rawlsian primary goods.

The functionings indicate the achievements of a person, that is, what it do or be (its results) and capabilities go beyond what has been achieved, including the real opportunities, although this is generally not explicitly observed. For example, a person may be in malnutrition (functioning) not because of lack of access to food (capability) but because he is in a fasting state, however, what is observed is his malnutrition and not the capability that has that person for to choose not to eat.

From the above it can be said that (1) The functionings distinguished from the resources that are used to achievement them, where the latter can be the same for two people, and yet achievement different states (functionings) of well-being; (2) The functionings are constitutive of the being of a person; (3) Individuals have reasons to give value different the same functionings and the reasons for this are due to differences in the needs and capabilities, ie personal differences (age, disability, etc.) and environmental variabilities, geographical, social and cultural) of the context; (4) a functioning can be bad (kill animals), however, the goodness or evil of other functionings may not be so simple, but rather depend on the context and/or normative theory.

Other issues to be taken into account are:

(a) Sen (1979) proposes at the outset is to demonstrate that the issue of distributive justice involves defining *equality of what?* Question that was raised from his Tanner Lectures at Stanford University in 1979 and published in 1980.

(b) In '*Equality of what?*' Sen emphasizes the importance of taking into account the heterogeneity of people, diversity not contemplated by Rawls, hence, this is the distance Sen takes from Rawls: for not regard to what the primary goods make to people.

(c) Regarding freedom, for Sen and his CA (focused on real human development), this translates into a development of freedom not only negative but also positive, very similar to the notion of freedom of republicanism.

(d) the approach to capability does not postulate that personal income is not an important element in the fight against poverty, exclusion and other deprivations, what it says is that due to human diversity and contexts, there are those who more easily convert income and other goods into better forms of life. In this sense, such diversity must be kept in mind in the formulation, implementation and evaluation of public policies aimed at distribution.

(e) Exists sufficient consensus to consider that absence the capabilities affects life in different dimensions and its impact reaches the displaced population within the framework of internal armed conflict: aggravating well-being and quality of life (see Note 3 at the end).

(f) The dynamics of the armed conflict and its manifestations of poverty have been significant in the country where today there are large numbers of displaced persons, most of them housed in precarious settlements.

(g) The capability approach and specifically its conceptual framework, allows the analysis of the *raison d'être* of social mobilization, namely, the empowerment and to agency of affected communities victims of the internal armed conflict.

3. Conceptual Framework of the Capability Approach

Conversion Factors

The concept of conversion factors applied to the CA has been widely disseminated by Robeyns (2000, 2003, 2004, 2005, 2011, 2016), who argues that the conversion factors are classified into three groups: (1) personal conversion factors, which are internal to the person, such as the metabolism, physical condition, sex, reading skills, or intelligence; (2) social conversion factors, related to the society in which one lives, such as public policies, social norms, practices that discriminate unfairly, and (3) environmental conversion factors, which arise from the physical or built environment in which the person lives: climate, pollution, propensity for earthquakes, and the presence or absence of seas and oceans. Ingrid Robeyns proposes the example of cycling that it contributes to the mobility of a person, however, depends on the physical condition of the person (a personal conversion factor), social mores, including whether women are allowed socially to ride a bicycle (a social conversion factor), and the provision of passable roads (a factor of conversion of the environment).

Therefore, the advantage of a person who does not suffer any disability or who learned to ride a bicycle as a child is higher than a person with a physical disability or someone who was never taught to ride a bicycle.

Agency

A crucial element of human well-being understood in a broad sense that goes beyond utility is the human agency. The agency is related to the quality of life (Sen, 1985, 1985a, 1992), but also includes the objectives of others and a deep commitment with actions that do not benefit (in the conventional sense) necessarily the agent that acts. Although there is no single agency definition (see Alkire, 2005), it is understood as the capability to act in terms of what a person values and has reason to value, or in other words, what a person is free to do and achieve in the pursuit of the achievement of the goals or values that the person considers important (Crocker, 2008; Crocker and Robeyns, 2009). The agency, although related to well-being, is distinct from this and, in turn, distinct from another concept as empowerment. In this regard, says David Crocker "The experts in ethics are indebted to Sen for his distinction made in 1985 between agency and wellbeing" (2016, p.66).

Empowerment

The concept of empowerment presents many definitions (Malhotra and Schuler, 2005, Alsop, Bertelsen and Holland, 2006), in other words, is a term that generates debate, which has been attributed to the existence of a wide variety of definitions and meanings in various socio-economic contexts (Ibrahim and Alkire, 2007). However, there is a consensus that it deals with the degree to which people are able to control their own destinies, even when their interests are opposed to those of other people with which they interact (Mason and Smith, 2003). In that sense, empowerment "grants" a power based on the accumulated resources and the results obtained with those resources (Uphoff, 2005). However, it is also argued that this power can either (1) create a radical change or (2) afford control (Rowlands, 1997, Oakley, 2001, Narayan, 2002). Finally, the agency, although necessary, is insufficient to empower. For example, women are empowered to the extent that, individually and collectively, they struggle with and (sometimes, at least) overcome the display of powers against their agency and wellbeing.

Functionings

Freedoms according to Sen represent capabilities to realize or achieve functions defined as sets of valuable being (s) that represent parts of a person's state (in particular the various things that he or she allows lead a good life) and which to be valuable must have an intersubjective component. In turn, according to Sen, one must distinguish between different types of functioning: some elementals such as being adequately nourished, being in good health, etc., and other more complex ones such as

achieving self-respect or being socially integrated. In this regard it has been pointed out that people can value (ponder) these in different ways.

Capability

If a person's functionings reflect his achievements, the set of capabilities represents the freedom to achieve, that is, the alternatives or functional combinations that this person has to choose from.

Evaluation

The evaluation proposes to order the functions and capabilities, keeping in mind that each person evaluates each functioning and capability in a different way (Sen, 1985). For example, an inhabitant of a religious community of whom he is not, or a person from a rich country of a poor one. These capabilities and functionings make up what would be a good life. Thus, for Sen, capabilities are a better way of assessing wellbeing, utility, income, or resources.

Means

They are considered as an input, but their value depends on the capability of individuals to convert them into valuable functions (such as riding a bicycle), which depends, for example, on personal physiology (such as health), social norms and physical environment (for example, road quality).

Valuation

By valuation Sen understands that which is valued based on justified reasons, in other words it must be fulfilled that what is valued is valued by the person and by any impartial spectator. That is, the valuation is intersubjective.

Utility

The utility is a way out, because what people choose to do and be has an effect on their sense of subjective well-being. However the capability approach also considers utility (feeling happy) as a valuable functioning.

Wellbeing

Means that - unlike welfare - mere presence and/ or possession of resources is worthless if they cannot be transformed into valuable functionings.

Quality of life

Multidimensional concept and includes aspects of well-being and social and cultural policies of type material and non-material, objective and subjective, individual and collective.

4. Brief approximation to conflict armed

In Colombia the internal armed conflict has been the result of a social, political and economic conflict dating back to long before the formation of guerrilla groups. In this sense, literature points out that even today the underlying issues that have led to conflict persist today (Robinson, 2015) and

more precisely James Robinson (2015) says: "My contention is that conflict [in Colombia] is an inevitable result of a situation in which there is no state" (p.64). In other words, the causes of the armed conflict in Colombia's particular (but not unique) case are that its extractive "political and economic" institutions are the rule and the exception the inclusives (see Acemoglu and Robinson, 2012).

Colombia to date reports - according to Unit for Attention and Integral Reparation to Victims (UARIV) - 8,425,398 victims of armed conflict and 7,176,886 in situations of forced displacement. Displacement that has occurred through direct and indirect attacks on the civilian population (Ibáñez and Velásquez, 2008). As results in threats (346,676), "disappearances" (166,424), selective assassinations, massacres, etc., and high intensity of conflict between the different armed groups, respectively.

On the other hand, it should be noted that:

(1) The period 2000-2002 showed the highest rates of victims and displaced persons expelled, with Antioquia being the department with the highest number of victims to date (1,625,161). Nevertheless, departments like Choco register a total of 411,933 victims: which is in excesses alarming if the population size is taken into account.

(2) Among the responsibilities that the Constitutional Court establishes as obligations for the Colombian State, are (a) to guarantee in any circumstance certain minimum rights to the displaced population; (b) respect for the essential core of the fundamental constitutional rights of the displaced, implying that "in no case can the authorities act in such a way as to end up ignoring, damaging or threatening the essential core of the fundamental constitutional rights of the displaced" (Constitutional Court, Judgment T-025, p.97) Finally, in the pronouncements of the Constitutional Court, the differential approach has always been present.

5. Differential Approach

Speaking of a differential approach anywhere in the world and specifically in Colombia (see Note 4 at the end) deserves our attention and approximation, given the importance that our plurality of cultures, ethnicities and races that come precisely from that diversity of regions, idiosyncrasies, traditions and customs.

For this, it is important to make an approach to its conceptualization. According to the Office of the United Nations High Commissioner for Human Rights, the differential approach has a double meaning: on the one hand it is a method of analysis and also a guide for action. In the first case, it uses a reading of reality that pretends to make visible: the forms of discrimination against those groups considered different by a hegemonic group. In the second case, it takes into account this analysis to

provide adequate attention and protection to the rights of the population. Therefore, the differential approach is fundamental and relevant in the country, insofar as it must become a tool that is articulated in both the public and private spheres, to ensure the well-being and enjoyment of the rights of citizens that is one of its purposes.

5.1 Gender Differential Approach

The gender differential approach refers to the analysis of social relations that starts with the recognition of the specific needs of women and aims to allow real and effective equality between men and women. It is recognized that the conflict exacerbates unequal power relations, finding that women are the main victims of sexual crimes, inequality and disproportionate impacts of armed conflict. Added to this, given that women have historically been discriminated against, violated and placed in an unequal power relation in relation to men, the implementation of measures of Attention, Assistance and Integral Reparation with a differential approach has the objective of avoiding limiting the enjoyment and exercise of their rights and freedoms. In this sense, differential attention seeks to reduce gender gaps by recognizing and facilitating the access and effective enjoyment of their rights, as well as identifying and addressing the specific affectations that derive from victimizing facts (sic) associated with gender and inequality of power.

In the specific case of Bucaramanga it should be noted that according to data from April 2017 of the Unit for Integral Care and Reparation for Victims: 73,184 people in displacement have arrived in the municipality, population mainly coming from municipalities the same department (including Girón, Floridablanca and Piedecuesta) and the Cesar.

Of the total displaced population that has arrived in Bucaramanga, 48.75% are women. In 2001, the largest number of displaced women received, ie a total of 4,387 cases subdivided as described in table 1.

Table 1. Displacement women for Bucaramanga (Ethnicity / Life Cycle)

Ethnic Membership	Life cycle				
	0 - 5	12 - 17	18 - 28	29 - 60	61 - 100
Afrocolombiana		11	17	18	
Zero	301	580	1235	1858	367
Sub total	301	591	1252	1876	367
					Total: 4387

Source: Own elaboration based on UARIV data

5.2 Community LGBTI Differential Approach

Victims of armed conflict with sexual orientation and diverse gender identities suffer discrimination, stigmatization, persecution and the invisibility of the impacts of the armed conflict on their individual and collective life projects. According to the above, this approach provides conceptual, socio-juridical and political tools applicable to public policy designs for the formulation, implementation, monitoring and evaluation of plans, programs and projects, aimed at the effective enjoyment of the rights of these subjects of protection.

Also it has been observed that the violation of rights suffered by persons with sexual orientation non-hegemonic are organized into three main nodes that form the axes of analysis of the differential effects of LGBTI; these are:

(1) Systemic discrimination in the environment, which refers to the pre-existence of discrimination.

(2) Normatization and annihilation in the context of armed conflict, which refers to how the accumulated discrimination is added to the violence in the context of armed conflict, which are intended to subordinate, standardize, "correct", teach and exemplify.

(3) Institutional violence refers to inaction, barriers or harmful action by public employees towards people with sexual orientation and non-hegemonic gender identities.

Therefore, care, assistance and reparation measures must respond to the recognition of equal and non-discriminatory treatment and generate actions that allow the transformation of the discrimination and exclusion schemes derived from violence through prejudice.

According to reports UARIV, in Bucaramanga 22 people have declared belonging to community LGBTI. However, there are 736 cases where people do not report on their gender. Consequently, it is plausible to suppose that these cases also correspond to reasons of discrimination among others.

5.3 Ethnic communities Differential Approach

Indigenous people are those who recognize themselves as people who belong to a collective in which they can share a territory, beliefs and customs. Each village has its own territorial and spatial referents, they have organizational schemes with defined authorities and mechanisms of social control. In this sense, victims in considered are:

Individual members of indigenous peoples and communities who have suffered damages as a result of violations of International Humanitarian Law, Human Rights, and fundamental and

collective rights that relate to underlying factors and linked in the context of the armed conflict by events occurring from Of 1 January 1985.

Based on the above, the recognition of historical injustices and effects on human, ancestral and territorial rights in the context of the armed conflict leads to the public policy provide, assistance and reparation to victims to restore the rights of indigenous peoples and communities as collective subjects, ie, in the context of the armed conflict these collective factors and individual identity were affected and in this sense care, assistance and reparation measures must respond to the reestablishment of these rights.

Finally, the marginalization and segregation that black communities, Afro-Colombians, raizales and palenqueras have historically faced, together with the affectations to fundamental and collective rights, violations of International Humanitarian Law and human rights oblige the Colombian State to Attention assistance, repair and restitution of land: which translates into protect their culture, their physical existence and their ancestral and cultural rights and, guarantee your rights as victims.

5.4 Disability Differential Approach

People with disabilities face day to day barriers that impede the effective exercise of their rights. Barriers can be: attitudinal, communicative and physical.

In relation to the above, the differential approach for victims with disabilities is concretized in differentiated care, assistance and reparation measures for people with disabilities and must be recognized regardless of the type of disability (physical, sensory, mental, intellectual or Multiple), regardless of when disability was acquired or developed.

Therefore, comprehensive care, assistance and reparation measures for persons with disabilities should, as far as possible: guarantee effective access to their rights, identify and respond to the specific needs of the person according to their disability; And promote the social and effective inclusion of the person recognizing him as a subject of rights, with interests, needs, a life project and not as a person who only requires medical treatment or rehabilitation of their functions.

Finally, the total of the displaced population received in Bucaramanga and in disability situation amounts to 5,202 people, distributed as shown in the table 2.

Table 2. Displaced Bucaramanga by disability-gender-ethnicity.

LGBTI	5
Man	2.613
Woman	2.521
Does not informgender	63
Gypsy ROM	3
Indigenous	10
Black	141
Raizal of the Archipelago of San Andres and Providencia	3

Source: Own elaboration based on UARIV data

5.5 Differential Focus on Aging and Old Age

It is recognized that in the armed conflict, older people experience risks that make them more vulnerable in their lives and integrity and that require special protection from the State. On the other hand, it is recognized that they may have restrictions to access and enjoy effective measures of care, assistance and integral repair.

They are older people victims of the conflict, who in addition to having experienced some of the victimizing acts recognized by Law 1448 and Decree 4800 of 2011, are 60 years of age or more. It does not matter if the age was before, during or after the occurrence of the victimizing event, all are considered special protection and therefore have the right to access comprehensive care and assistance differentiated and prioritized.

Based on the above, it is recognized that, comprehensive care, assistance and reparation measures for older people must respond to the specific impacts and impacts that affect the elderly in the context of armed conflict. Identifying and responding to your needs, interests and expectations as a priority: Promoting the re-signification of their role as a political subject within their territories and society from an integral perspective of aging that allows to minimize the intergenerational gap.

6. The role of the Constitutional Court

On the basis of the importance of guaranteeing rights - particularly to populations that have been victim - and due to the high incidence and intensity of the armed conflict that occurred in the early 2000s, where the greatest cases of forced displacement. The Constitutional Court declared the *State of Unconstitutional Things* (Lyons, Monterroza and Meza, 2016) arguing that there was evidence of massive and systemic violation of fundamental rights to millions of people, many of them

traditionally discriminated, marginalized, excluded and invisible. In more precise terms, the State of Unconstitutionality was due to non-compliance with the Constitutional mandate, which states:

“The authorities of the Republic are instituted to protect all persons living in Colombia in their life, honor, property, beliefs and other rights and freedoms” (Political Constitution of Colombia, 1991, Article 2, quoted by: Constitutional Court, Judgment T-025, page 27). Consequently and

Because of this multiplicity of constitutional rights affected by displacement, and vulnerability and defenselessness in which the displaced are found, constitutional jurisprudence has emphasized that these have, in general terms, a right to Urgently receive preferential treatment from the State (CONSTITUCIONAL, Judgment T-025, 2004, p. 1).

Although the Constitutional Court does not affirm that the State is the cause of the massive violation of the fundamental rights of the displaced population, it does maintain that public policy on providing and / or responding to this phenomenon has been inefficient, in other words , for a long time the government showed a denial of the problem of forced displacement, and it had to wait until September 1995 for the recognition that displacement was related to violence and not only the result of natural disasters. This involved developing a political proposal, which was done through document CONPES 2804 of 1995. However, it should be remembered that Law 387 of 1997 was followed by an increase in the number of displaced persons. However, in terms of public policies, the results were precarious and the Constitutional Court declared the State of Unconstitutional Affairs in the face of the situation of the displaced, through sentence T-025.

7. Conclusion

The capability approach accords with a differential approach. More specifically, the perspective of rights as Sen's goals does not mean that they are entirely consequentialist, that is, that they only value the rights on the basis of their results. Therefore, its capabilities approach converges towards the same objectives as the differential approach proposed by the Constitutional Court, however, the conceptual and theoretical framework constructed by Sen broadens and nourishes the differential approach. In summary, the capability approach agrees with a differential approach such as that proposed by the Constitutional Court where each person is not only to end and not a means but must also be treated according to their ability to achieve valuable functionings.

Finally, we can point out some of the concepts provided by the capability approach. For example, the concept of agency is applicable to the case of the armed conflict in Colombia and one of the reasons is in the social struggle that has recently taken momentum as a result of the agreements signed between the guerrilla of the Revolutionary Armed Forces of Colombia Army of Pueblo (FARC-EP) and the government of President Juan Manuel Santos. It should also be noted that social mobilization

in Colombia has long been a result of social, political and economic exclusion that has been developed by governments, institutions, landowners, entrepreneurs, etc. An example of this was the massacre of the banana plantations in 1928 in the government of former President Miguel Abadía Méndez, which decided to end a one-month strike organized by the workers' union (which sought to guarantee better working conditions) of the United Fruit Company, the strike ended with a bloodbath on the night of December 5, 1928, where military forces fired on a peaceful gathering of thousands of strikers, killing and wounding many.

On the other hand, the concept of well-being takes into account that there are ancestral perspectives and cosmogony as (but not only) in the case of the indigenous, where the productivity vision has no space. Quite the contrary, these communities consider that their well-being is based on nature and the environment (for example clean air).

By last, the conclusion reached is that the displaced population finds in their situation of forced displacement, that their well-being and quality of life is affected not only because they have been stripped of their property, but of their territory. Territory that saw them born.

Notes

[1] Amartya Sen has drawn attention to the gap between ethics and economics by pointing out that the nature of modern economics has been substantially impoverished by distancing itself from ethics.

[2] Nussbaum's affirms that the main topic of Sen's is the quality of life, while she is the search for the social justice and democracy in a liberal framework. In this regard, it is worth mentioning that recently Ingrid Robeyns has questioned Nussbaum's position of reduce the "capabilities approach" in "two threads". First, Robeyns (2016) argues that Nussbaum has reduced the capabilities approach as an approach to (1) benchmarking quality of life and (2) theory of basic social justice, omitting that there are many purposes other than (1) and (2). Among purposes are (a) evaluation of small-scale projects (see Alkire, 2002); (B) technology for development (see Oosterlaken, 2009), (c) criticism of contemporary capitalism (see Claassen, 2009); (D) education (see Saito, 2003; Walker, 2003; Hart, 2009; Unterhalter, 2013).

[3] For example the analysis of multidimensional poverty of people in situations of forced displacement does not imply that it is intended to reduce the causes of displacement to a "simple" phenomenon of poverty but rather that the well-being and quality of life of the displaced are doubly affected as a result of the deprivation of their capabilities.

[4] Consult the website: <http://www.unidadvictimas.gov.co/es/enfoque-diferencial-de-g%C3%A9nero-y-derechos-humanos-de-las-mujeres/359>

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