



CHRONICLE OF VIOLENCE:

**Anti-union attacks at Maersk's
Mumbai contract operations**

A report by:
Human Rights Law Network (HRLN)

A Chronicle of Violence

An investigation into reports of anti-union violence and intimidation against contract port drivers at the Gateways Terminal India (GTI) in Mumbai

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Executive Summary Report

1. INTRODUCTION:

1.1 The Human Rights Law Network (HRLN) was approached by International Transport Workers' Federation (ITF) with a request to carry out an independent investigation into alleged threats and acts of violence committed on the transport workers employed by the contractors of GTI at Jawaharlal Nehru Port Trust (JNPT) at Nhava Sheva. A number of active members of Transport & Dock Workers' Union (TDWU) reported having been brutally attacked on various dates commencing from April, 2007, and March, 2008 and thereafter. In view of the apparent seriousness of the matter and the fact that physical threats to the workers were reported to be continuing unabated, the HRLN decided to conduct an independent investigation into the reported incidents of violence particularly in April, 2007, and March, 2008. The investigation made inquiries of the workers who reported being assaulted, sought to assess the severity of the alleged assaults, and sought to verify what persons and agencies might be responsible for the assaults and threats. The workers who reported being assaulted and threatened were interviewed by the team of HRLN on 27th and 28th March, 2008. Besides this, Government and Police officials were interviewed and various documents and records connected with the matter were scrutinized and verified for the purpose of corroborating the same with the statements of the workers.

1.2 The HRLN is a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights, struggle against violations, and ensure access to justice for all. A non-profit, non-Governmental organization, HRLN defines rights to include civil and political rights as well as economic, social, cultural and environmental rights. HRLN believes that human rights are universal and indivisible and that their realization is an immediate goal. It participates in the struggle for rights through its various activities including public interest litigation, advocacy, legal awareness programmes, investigations into violations, publishing 'know your rights' material and participating in campaigns. HRLN collaborates with social movements, human rights organizations, and grass root organizations to enforce the rights of children, dalits, people with disabilities, farmers, HIV Positive people, the homeless, indigenous people, prisoners, refugees, religious and sexual minorities, women and workers among others.

1.3 A three member fact finding team on behalf of HRLN was constituted consisting of (i) Ms. Gayatri Singh, Advocate, who practices in the Bombay High Court and handles human rights and labour cases (ii) Ms. Najmussahar Asadi, Advocate, who practices in the Family Courts and handles women's cases (iii) Parizaar Vakil is a Law student specializing in International Law. The team visited the homes of the workers who reported having been assaulted and threatened, spoke to them and their families, visited the Police Station and spoke to the Police Officers concerned and inspected the Medical Reports of the workers Union records and correspondence, settlements signed before the Conciliation Officer and other relevant records pertaining to licenses and registration of the contractors. The team also spoke to the TDWU officials involved in organizing the workers at JNPT particularly Mr. P.K. Raman, Secretary.

1.4 This report is mainly based on interviews with persons allegedly victims and witnesses of acts of violence at the Jawaharlal Nehru Port Trust. On all occasions, we found the witnesses credible and consistent in their interview responses and different witness accounts were taken for the same incidents. However it has not always been possible to independently verify all the witness statements from other sources.

2. **PROBLEM:**

2.1 The reports of violence and brutal incidents in which four active members of TDWU were kidnapped and several other workers were brutally beaten up on different dates commencing from April, 2007 up to March, 2008, was the focus of the fact finding team. It was alleged that the reason for the assaults on the workers was because a majority of the workers belonging to four Transport contractors of GTI had become members of TDWU. The workers joined TDWU in the month of February, 2007, and soon thereafter the workers started reporting being threatened and being told to leave its membership and become members of Navi Mumbai General Kamgar Sanghatana, which the workers refused to do. According to a number of credible witness accounts the supervisors engaged by the contractors including various officials of the contractors along with officers of the Sanghatana played a leading role in terrorizing and assaulting active members of TDWU, with GTI management appearing to turn a blind eye.

2.2 The **Terms of Reference** of this enquiry were as under:

(i) to investigate the reports of human rights violation of the workers engaged by the contractors of GTI at JNPT, Nhava Sheva, both in respect of physical violence and intimidation of the workers and their families as well as interference with the basic fundamental right to form an association of their choice.

(ii) to look into the role of the Government and Police officials, contractors, GTI and Board Members of the Port Trust and A.P. Moller - Maersk and to enquire into the connection of the various parties with one another as well as looking at the context and likely cause of the reported violent attacks on the workers.

(iii) to recommend and suggest action in order to restore normalcy and a safe working environment.

3. **FINDINGS & CONCLUSION:**

3.1 The workers employed by the contractors of GTI decided to organize themselves under the banner of TDWU in order to improve their working conditions. This has been strongly resisted by the contractors whose costs were likely to rise as a result of such actions. The decision to contract out this work by GTI was also likely to be driven by the desire to cut costs and outsource "non-core" work.

3.2 The contractors who engage the workers have political, social and financial clout in the area. As is evident from the investigation carried out they have substantial influence in the administration of the local Government. Our investigation also found that the Police authorities took no immediate action and cognizance against the accused despite complaints made by the workers. . From the information gathered from interviews there appears to be a close connection between the office bearers of the minority Union Navi Mumbai General Kamgar Sanghatana (Sanghatana) and the contractors. A number of interviewees reported that the supervisors employed by the contractors and the Office-bearers of the Sanghatana together played an active role in intimidating, terrorizing and assaulting active members of the TDWU. They reported that anonymous threatening calls were made on the cell phone of the workers belonging to TDWU. There were also threats made to the families of the workers belonging to TDWU, including children. Since the rented houses of the workers are located in the area, the workers and their families live under constant fear of eviction. The children have been traumatized to such an extent that their health and studies have been badly affected.

3.3 For those workers who live far away from the area, they report that transportation to and from work and home is a harrowing experience of not knowing whether they will reach home safely. There is the constant fear that they may be waylaid at any time and beaten up.

3.4 GTI, as the principal employer, is required by law to be acquainted with the acts of its contractors and the working conditions of its workers. The GTI officials have been kept informed about a number of allegedly illegal and unfair labour practices of their contractors. This is borne out by the letters, documents shown to the team by the TDWU. It is therefore hardly credible that GTI officials are not fully aware of what is going on inside and outside the premises of GTI. Complaints have been lodged at the Police Station regarding these assaults.

We understand that the ITF informed the headquarters of Maersk about the kidnapping and beating incidents in 2007. But at no point does the company seem to have sought to verify the incidents by interviewing the workers involved, seeking their medical or police reports, or speaking to officials of the TDWU. Neither the Police nor GTI officials have taken cognizance of these complaints as a result of which the assailants and their conspirators are free to repeat their acts.

3.5 With no active intervention from the GTI officials to make the work place a safe and secure one, the team is forced to arrive at a conclusion that the GTI management appears to have given its tacit support to the activities of the contractors and the rival Sanghatana.

3.6 Also the attacks on the workers appear to have the sole motive of preventing them from joining and continuing to remain members of TDWU. This infringes and violates the Constitutional and fundamental rights of the workers to form a Union of their choice. The employer cannot dictate terms by forcing the workers to join a particular Union approved and supported by the management.

4. **Recommendations:**

- * The persons named by the workers who assaulted and attacked them and those who were responsible for the attacks should be arrested, an official investigation should be carried out and criminal charges should be laid where appropriate. Also stringent action should be taken so that future attacks and threats are avoided.
- * Since the workers were attacked by a number of persons with deadly weapons and since they were grievously injured with fractures and were hospitalized, the relevant non-cognizable charges should be added to the minor charges that have been wrongly recorded by the police.
- * The working hours should be reduced to the legally required 8 hours' duty.
- * There should be no deductions in the salaries of the Transport workers and if any deductions are to be carried out workers should be informed about the same and it must be in accordance with the law.
- * The law relating to duty hours, overtime, maintenance of proper records and registers, provision of welfare facilities and other benefits should be complied with.
- * GTI as the principal employer should be held vicariously liable for the acts and conduct of its contractors and their supervisors. GTI cannot say that they are not aware of the reports of incidents of violence since the supervisors belong to the contractors.
- * Since TDWU appears to have a clear claim to majority membership, the Conciliation Officer should conclude the settlement with TDWU and the contractors and GTI within a time bound framework.

- * Since the work of the Transport workers is of a perennial and continuous nature, GTI should be directed to engage the existing Transport workers as their direct employees as is being done by them in some other countries.
- * A.P. Moller-Maersk / APM Terminals should own responsibility for the acts of its agents, contractors, officers and take not only any necessary action against them but also provide the essential facilities, benefits and protection under the law to the workers. GTI should be directed to provide bus service not only to its employees but also to the contract workers.
- * A.P. Moller – Maersk should instruct GTI to ensure that there is no interference in the rights of the workers to form an association of their choice. The management should have a regular dialogue with TDWU representatives to resolve the day-to-day issues.

5. **BACKGROUND: Principal Players**

A. JNPT

5.1 Jawaharlal Nehru Port Trust (JNPT) became functional in the year 1989. A major part of the container business which was being carried out from the Bombay Docks was shifted to JNPT, Nhava Sheva. The Terminal is about 70 kms. from Mumbai City with the nearest Rail Head at about 35 kms. There is no public transport system either by rail or by bus connecting the city and the adjoining township. The barren stretch of land about 35 kms. is dotted with hamlets (villages), the population of each village being less than 1000. The roads do not have street lights and there are only two Police Stations, one meant for Port and the other for the villages beyond the Port limits. There are recurring casualties of road accidents resulting in fatalities almost every week. The Transport workers have to start at least 2 hrs. in advance to reach the pick-up point at Vashi and Uran, which is about 35 kms. from JNPT for being transported to the Terminal by the Contractor's Bus. Similarly, the return journey also takes another 2 hrs. The workers, therefore, have to put in a total of 16 hours of duty which includes 12 hours actual duty. At present 60% of India's total containerized volume is being handled from JNPT. The entire work is supervised by the Port Trust which functions under the Major Port Trust Act 1963. Under this Act, transportation is identified as a core activity which is required to be performed by the Board of Trustees perennially. The Board has the power inter alia to undertake landing, shipping or trans-shipping passengers and goods between vessels in the port and the wharfs, piers, quays or docks belonging to or in the possession of the Board. It also oversees and supervises the works of receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises. Other functions of the Board are set out in Section 42 of the Act. The overall authority which is in charge of the work of container business on the premises of the Board are set out in the Act, and is the responsibility of the Board.

5.2 The work of transportation being a perennial activity, it is required to be carried out by regular permanent employees. There are three Terminals in operation at JNPT with about 3200 employees. One Terminal is operated by GTI with 1000 employees, another by Nhava Sheva International Container Terminal under Dubai Port World with about 1000 employees, and the third Terminal is operated by JNPT with 1200 employees. JNPT employs workers directly and their service conditions are regulated by periodical settlements entered into between Ministry of Shipping represented by Indian Ports Association and major Federation of Unions including TDWU which is affiliated to the Majority Federation of Port and Dock workers namely All India Port & Dock Workers' Federation. The service conditions revised under the settlements are applicable to all the Port & Dock workers in all the Major Ports of the country which have come into effect under the Major Port Trusts Act, 1963. The permanent employees employed by JNPT are drivers doing similar work as the contract workers of GTI. The salary of the permanent employees at JNPT are linked to Consumer Price Index with 100% neutralization. They are entitled to various allowances like City Compensatory allowance, transport allowance, piece-rate incentives, Leave Travel allowance, leave benefits, medical benefits and other welfare and retiral benefits. The average salary of a junior permanent driver employed by JNPT is about Rs.15,000/-,

whereas the contract workers at GTI receive a consolidated salary of about Rs.4,000/- for 12 hours' duty.

B. A.P. Moller – Maersk:

5.3 Maersk is the largest transport logistic company in the world maritime sector and has been in existence for the last over hundred years with its Headquarters at Copenhagen, Denmark. It carries out container handling operations at more than 40 terminals in 24 countries. Due to the upswing in the Asian economy, Maersk has decided to concentrate its business activities in Asian countries particularly in India. It has shipping activities in all the 12 Major Ports in India. Recently it has acquired a Terminal at Pipavav, Gujarat. In Mumbai its subsidiary is known as GTI.

C. Gateway Terminals India Pvt. Ltd. (GTI) Subsidiary of AP Moller – Maersk Terminals.

5.4 One of the largest companies operating at JNPT is M/s. Gateway Terminals India Limited (GTI) which is a subsidiary of A.P.Moller-Maersk's APM Terminals. APM Terminals has a 74% stake in GTI, the remaining 26% stake being controlled by CONCOR –A Government of India Undertaking under the Ministry of Railways. CONCOR provides the largest containerized railway transport in India operating a network of more than 58 inland container depots (ICDs) GTI was awarded a license agreement by JNPT to Build-Operate-Transfer (BOT), a state of the art common-user container terminal for a period of 30 years.

5.5 GTI is on the verge of surpassing its installed capacity of 1.3 million Twenty Foot Equivalent Units (TEUs) annually as it handles over a lakh containers every month. GTI was awarded a license agreement by JNPT to Build – Operate – Transfer (BOT), a state of the art common – user container terminal, for a period of 30 years. One of the salient features of BOT is that GTI is required to abide by the Indian labour laws. As a result of the BOT, GTI has entered into the shoes of the Board of Trustees of JNPT and ought to carry out the transportation of containers in the terminal through direct employees. All the rules and regulations applicable to the Board are equally applicable to GTI and the Port Trust is required to ensure that GTI complies with not only the provisions under the Major Port Trusts Act but also with all the labour laws. This the GTI follows more in its breach, since none of the drivers are employed by it directly.

5.6 GTI engages about 450 permanent and direct employees with better service conditions than the contract workers. The remaining workers are engaged through contractors who work full time at GTI Terminal, transporting containers with tractor trailers from the site of the ship to the on-dock Container Yard where they are picked up by outside drivers to be transported to their final destination. The kind of work done by the drivers engaged by contractors on the GTI Terminal is identical to that done by drivers directly employed by JNPT.

D. CONTRACTORS AND THEIR BACKGROUND:

5.7 Just as in the case of JNPT which directly employs drivers to carry out the work of container transportation, GTI is also required to employ direct employees for this work since it is of a perennial and continuous nature. Instead of doing so, however, it engages a large number of contract workers through contractors who are forced to work under much inferior conditions. From our investigations the contractors appear to brazenly flout most of the applicable labour laws such as Major Port Trusts Act, Payment of Gratuity Act, Payment of Wages Act, Dock Workers Safety, Health & Welfare Act, Industrial Disputes Act, Contract Labour (Regulation & Abolition) Act, 1970. There is also no security of employment e.g. a contractor named M/s. Gaurav was initially engaged by GTI to perform the work of container transportation. However, the contractor abandoned the contract midway without paying the legal dues of the workers like Provident Fund, earned wages, leave, bonus and other benefits. The services of the workers were also illegally terminated. Though it was the liability of GTI to continue the employees and pay their dues, GTI

did nothing. Presently GTI has engaged four major contractors viz. M/s. S.C.Thakur & Bros., M/s. Relogistics, M/s. Casby Logistics Pvt. Ltd. and M/s. Octopus Pvt. Ltd. All these contractors have been assigned to transport ISO containers in the Terminal. Each contractor engages about 72 to 80 employees. M/s. Relogistics who has the contract to transport containers at GTI has sub-contracted its work to M/s. Top Angle Security & Detectives Pvt. Ltd. Our understanding is that on 31.03.2008 Top Angle had suddenly abandoned the contract and M/s. Relogistics is in the process of engaging a new sub-contractor. Upon enquiry, neither GTI nor M/s. Relogistics was willing to disclose the details of the new contractor. It is believed that the new contractor is not licensed under the Contract Labour Act. Similarly, M/s. Octopus Pvt. Ltd. has sub-contracted its work to M/s. Alfa Omega Ship Management. It is not known whether this sub-contractor is licensed or not.

5.8 M/s. S.C. Thakur & Bros. is presently known as Thakur Infra Projects Pvt. Ltd. It is a registered Government contractor carrying out large scale civil works. It has wide ranging business interests in quarrying, transportation, earthmoving, asphalt plants and is presently engaged in over 100 civil contracts in the area. Mr. Ramsheth Thakur is the owner of the company and is a former Member of Parliament and is a prominent office-bearer of the Congress Party. His major business activities are in Uran, JNPT and Panvel where he has substantial financial and political control in the area and has his nominees elected on various local self Government Bodies like Village Panchayat, Zilla Parishad, Municipal Corporation, Constituent Assembly. He is also a Trustee of JNPT as a nominee of Congress Party. His son, Prashant Thakur, was recently elected to the post of First/Maiden Mayor in Panvel Municipal Corporation. These bodies all play a role in the awarding of contracts.

5.9 M/s. Top Angle is the sub contractor of M/s. Relogistics Private Limited which is a subsidiary of Reliance Group of Companies headed by Mr. Mukesh Ambani who is ranked amongst the top 10 fortune 500 companies in the world.

5.10 M/s. Casby Logistics Pvt. Ltd. is the successor to M/s. M.B. Eduljee Cassinath Sons established in 1857. It is one of the oldest Shipping Companies having varied business interests in transport, logistics, projects, turnkey projects, construction. It holds 5% stake in NSICT - Dubai Port World.

5.11 M/s. Octopus Pvt. Ltd. is a company floated by GTI. The vehicles in the Terminal on which the workers are employed have been purchased by GTI/Maersk. M/s. Octopus Pvt. Ltd. has subcontracted its work to M/s. Alfa Omega Shipping Management Pvt. Ltd.

E. ROLE OF CENTRAL GOVERNMENT:

5.12 Since the appropriate government authority in respect of the Transport employees at JNPT is the Central Government, it is this authority which has to ensure that the laws are implemented.

5.13 Under the Contract Labour Act it is the Registering Authority and the Licensing Authority that has to monitor and ensure that the Principal employer and the contractors comply with the Act.

5.14 The Central Government is also required to set up a Central Advisory Contract Labour Board to advise the Central Government on such matters arising out of the administration of the Act. These matters include the abolition of contract labour and the regularization of such workers who are working on jobs which are of a regular and perennial nature. No steps have been taken by the Central Government to regularize the contract workers and extend to them the benefits of permanent workers.

5.15 Under the Industrial Disputes Act, 1947, the Regional Labour Commissioner, the Asstt. Labour Commissioner (Central) and Chief Labour Commissioner (Central) are empowered to mediate and settle disputes between the employer and its employees. During conciliation

proceedings, the employer and the employees are required to maintain status quo and during this period no changes can be brought about in the service conditions of the employees. The Conciliation Officer is required to act fairly and make attempts to settle the disputes amicably. He is required to act as an impartial judge. If an agreement is arrived at, the Conciliation Officer is required to ensure that the settlement is not only fair and just but must also be in accordance with law and must enjoy the support of majority of workers. In the present case, it appears that the Conciliation Officer acted quite the contrary and not only permitted the employer to alter the service conditions of the employees while Conciliation proceedings were pending but became a signatory to a settlement between the contractors and a minority rival Union despite being aware of the fact that the settlements almost certainly did not have the backing of majority of the workers, and that conciliation proceedings in respect of the Charter of Demands submitted by TDWU were already pending.

F. ROLE OF POLICE:

5.16 The Police have also failed to perform their statutory duties. No proper investigations were carried out into any of the incidents. Appropriate charges against the accused have not been framed and most of the persons involved in the offences have not been arrested.

6. WORKING CONDITIONS OF THE WORKERS ENGAGED BY CONTRACTORS OF GTI:

6.1 The workers employed by various contractors perform the work of transportation of containers from the wharf to the Container Yard for GTI. This work is vital for the functioning of the Port. Despite the fact that JNPT engages all such workers directly, GTI prefers to employ workers through contractors on abysmal wages and poor working conditions. The workers employed through the contractors are grossly underpaid since their salaries are not linked to Consumer Price Index but they receive a consolidated salary of about Rs.4000/- for 12 hours duty with some incentives. They are not entitled to any medical benefits and in case of injury whilst on duty, the expenses are required to be borne by the workers. They are not even covered under the Employees State Insurance Scheme, a Government sponsored medical benefit which provides the minimal of medical care. The workers are also not entitled to any kind of leave including sick leave and if they are unable to attend work due to any illness or other unforeseeable circumstances, their salaries are deducted. There are no canteen facilities provided by the contractors. A canteen is in place for the employees of GTI but though the transport workers are allowed access, they cannot afford the tariff of Rs.50/- a meal.

6.2 The Terminal functions 24 hours a day, 7 days a week and 365 days a year. The workers are deployed on 12 hours continuous shift basis without any rest period for lunch/dinner/tea break. No weekly rest is given. Even after their 12 hour shift is over, the driver cannot leave the vehicle till he is relieved by the driver from the next rota shift. This system is known as Hot Seat Exchange. It should be noted that the contractors sometimes require drivers to work a double 12 hour shift (24hrs). The driver is then expected to work their normal 12 hour shift immediately following this which actually means that 36 hours are being worked.

The law stipulates maximum 8 hours duty with daily rest breaks after every 5 hours. The Motor Transport Workers' Act, 1961, provides for hours of work which cannot extend to 8 hours a day and 48 hours in a week, even in cases of breakdown, dislocation or stoppage of vehicles. The employer is required to display notice of hours of work and provide for weekly rest. These provisions of the Act appear to be blatantly violated and the Government Labour Officer who is required to ensure that the employer is following the law apparently turns a blind eye to these violations. ILO Convention 153 stipulates hours of work and rest periods in road transport and are as under:

* Every driver is entitled to a break after 4 hours continuous driving or after 5 hours continuous work.

- * The maximum daily total driving time should not exceed 9 hours.
- * The maximum weekly driving time should not exceed 48 hours.
- * The daily rest period must never be less than 8 consecutive hours.

6.3 Workers report that the contractors have been illegally deducting large amounts from the salary of the workers without giving any explanation or reason for the same. There is a constant monitoring of the movement of the vehicles and drivers are fined any time the vehicle is not moving when it is supposed to be. The fact that the truck may be stationary due to a defect in the vehicle or obstacle or for any reason not being the fault of the driver is not considered while making the arbitrary deductions. The contractor M/s. Top Angle has been illegally deducting salaries from the workers at times and to the tune of Rs.900 to Rs.3000/- from February 2008 onwards which is in gross violation of the Payment of Wages Act and the Contract Labour Act. The TDWU has lodged several complaints regarding these deductions to the relevant authorities. Upon the intervention of TDWU, the deductions were temporarily stopped but re-started after some time and have continued despite protests from the workers and TDWU. The team investigated the records and it was found that substantial deductions are being carried out under the heading "Non-Compliance Report" (NCR). The earnings of the workers are reduced as penalty for the malfunctioning of the vehicles below the average mileage of the vehicle. The below average mileage of the vehicle has been arbitrarily fixed by the Management and if the target is not met, large sums are deducted from the salaries without giving any reasons.

6.4 The workers have no security of employment. We were told that several active members of TDWU have been dismissed unilaterally without conducting any enquiry with a view to victimize them. The contractors can also withdraw their services unilaterally leaving the workers in suspense as to whether they will be continued in service.

6.5 The contractors are required to be licensed under the Contract Labour (Regulations and Abolition) Act, 1970 (Contract Labour Act) and the Central Rules. GTI as the principal employer is required to obtain a registration certificate from the Registering Officer under the Contract Labour Act along with the Contract Labour (Regulation and Abolition) Industrial Rules 1971 (Rules). The principal employer is required to give details about the nature of work carried out, names and addresses of contractors, nature of work in which the contract labour is employed or is to be employed, maximum number of contract labour to be employed on any day through each contractor. A register is also required to be maintained under Rule 18(3) giving details about the principal employer and the number of workers directly employed by it, as well as details about the contract workers. Salary and Muster Registers are required to be maintained strictly in accordance with the Rules. Proper salary slips with all the details as required under the rules must be supplied to each worker. It appears that neither the contractor nor GTI management are maintaining proper registers and no proper salary slips are issued to the workers. Enclosed with this Report are sample copies of the application for license, license issued to the contractor, format of a salary-cum-attendance register, salary slip showing deductions made by the contractor, deduction register. All these documents are not being maintained in accordance with the Act and the Rules. Each contractor engaging 20 or more employees is required to make an application for license giving all the details required under the Act. The Licensing Officer issues the license after scrutinizing the information furnished by the contractor. The license stipulates conditions under which the contractor can engage contract workers and if the work being performed by the contract workers is same or similar to those being performed by permanent workers, they should be paid the same salaries and benefits and enjoy similar service conditions. In other cases, the wage rates, holidays, hours of work and conditions of service of the contract workers are to be determined by the Deputy Chief Labour Commissioner (Central). This invariably is never done. If the contractor is to comply with the requirements under the Act, it is the Principal employer who is required to provide all the necessary facilities like canteen, rest room, first aid facilities and other welfare benefits. In cases where the contract does not pay the salaries to the contract workers in accordance

with law, it is the principal employer who is responsible for making the full payment without any deductions. It is also the principal employer who is responsible for ensuring that the hours of work, holidays, leave benefits and other benefits are extended to the workers according to law.

7. RIGHT TO FORM A UNION OF THE WORKERS' CHOICE - FORMATION OF TDWU AT GTI:

7.1 Article 19 (c) of the Constitution of India guarantees to citizens the right to form associations or unions of their choice. This is a Fundamental Right. Under International Instruments like Freedom of Association and Protection of the Right to Organize Convention, 1948, the workers and the employers have a right to establish and join organizations of their choice without authorization.

7.2 Overwhelming majority of the Transport workers of the sub –contractor M/s. Top Angle Security and the contractors M/s. Casby Logistics Pvt. Ltd. and M/s. S.C. Thakur & Bros. became members of TDWU in February, 2007. After ascertaining the majority of the workers the Union sent letters to the respective contractors on 02.04.2007 informing them that the workers had joined TDWU and sought recognition as the sole representative majority Union of the workers. Sometime later the workers of sub-contractor M/s. Alfa Omega Ship Management joined TDWU on 11.01.2008. Copies of the letters addressed by TDWU to the contractors and the principal employer was shown to the team and it was found that though the letters were received by the contractors and the principal employer, there was no response to the said letters. Instead, soon thereafter the intimidation began against workers in order to force them to leave their membership of TDWU. Soon after the letter dated 02.04.2007 was sent by TDWU to the contractor, some of the activists of TDWU were attacked on 06th April, 2007. It seems reasonable to conclude that the attacks on the union members were linked to this letter informing the contractors about the union with the object of discouraging membership of the union.

Drivers who protested against the beatings were dismissed by the contractors. When the TDWU threatened protest pickets outside the GTI Terminal the GTI management tried to obtain a court injunction against them. The court, however ruled in favour of the union's right to protest. It was only after this and international pressure that the drivers were reinstated.

7.3 TDWU served its Charter of Demands on 02nd February, 2008, on all the contractors with information to GTI Officers. As there was no response from the contractors, TDWU served a Notice of Strike on 15.02.2008 giving reasons for the strike which was to take effect from 01st March, 2008. In view of the Strike Notice, the Conciliation Officer took cognizance of the same and summoned all the parties for mediation on 28.02.2008. On the said date the contractors were absent; whereas a representative of GTI was present who assured TDWU that it would prevail upon the contractor to enter into a settlement with TDWU. Contrary to this assurance at the hearing on 10th March, 2008, before the Conciliation Officer at which both the contractor and the principal employer were present along with TDWU representatives, the contractors refused to discuss the demands with TDWU on the ground that they had already concluded a settlement with the Sanghatana. It appears that the settlements were hurriedly signed with the Sanghatana behind the back of TDWU on 28.02.2008 before the Conciliation Officer. Though he was fully aware about this, he did not disclose it to TDWU on 28.02.2008 on which date Conciliation proceedings were pending in respect of Charter of Demands of TDWU. If the settlements had been signed with the Sanghatana on 28.02.2008 there must surely have been meetings with the Sanghatana preceding the signing of the settlements. These meetings also were not disclosed. Meanwhile, on 20th March, 2008, the brutal and murderous attack on the workers took place which occurred soon after the signing of the settlement with the Sanghatana. The team has gone through the copies of the settlement which have purportedly been signed between the contractor and the Sanghatana. It was found that the settlement of Casby Logistics is unsigned by the parties concerned. All the other three contractors have signed the settlement on the same date of 28.02.2008 and all these settlements have been signed by the Conciliation Officer. The Settlements are contrary to the provisions of the Industrial Disputes Act.

7.4 After the incident of 28th March, 2008, TDWU tried to arrange a meeting with the officials of GTI. However, there was no response from GTI nor did it instruct its contractors to solve the issue with TDWU. The team was informed that when ITF representatives were invited to discuss the said incident of assault, GTI officials made it clear that they would neither speak with TDWU representatives nor invite them for the meeting to be held with ITF members. The actions and attitude of the GTI management towards the union appears to have been consistently hostile and negative

8. FORMATION OF RIVAL MINORITY UNION
NAVI MUMBAI GENERAL KAMGAR SANGHATANA:

8.1 Soon after majority of the workers of the four contractors of GTI joined TDWU, the workers started being threatened by thugs which ultimately manifested into kidnapping of four workers. Even after this intimidation, the workers remained staunchly behind TDWU.M/s. S.C.Thakur & Bros. has apparently been behind activating a Union by name Navi Mumbai General Kamgar Sanghatana sometime in October, 2007, as a measure to break the unity of the workers. The General Secretary of the Sanghatana Union, Mr. Mahendra Gharat, is a close associate of Mr. Ramsheth Thakur. The team found documentary evidence to support this. One such example was a recent Press Note, dated 06.04.2008 issued by the Sanghatana published in a Marathi Newspaper "Vartahaar" in which it was categorically stated that the President of the Sanghatana, Mr. Mahendra Gharat, under the active guidance of its Chief Adviser Ramsheth Thakur, former M.P., had "successfully concluded a settlement for a section of Transport workers engaged in operating equipment at GTI under a contractor". Further, a visual testimony of Ramsheth Thakur projecting Mahendra Gharat as his close confidant and associate can be seen exhibited in mammoth cut out signboards at several street corners and thoroughfare of JNPT, Panvel and Navi Mumbai area.

8.2 The way in which the Sanghatana acts in the interests of the management can be witnessed from the settlements which have been signed illegally before the Conciliation Officer. Prima facie the settlements suffer from inconsistency and legal sanctity. The settlements have no reference to the Industrial Dispute raised by TDWU and pending before the Conciliation Officer in respect of the Strike Notice with regard to the Charter of Demands of the workers. The preamble of the Settlements do not state the office-bearers and the official address of the rival Sanghatana. It states that negotiations with the Conciliation Officer took place on 14.02.2008, 16.02.2008, 17.02.2008 and 21.02.2008. But this could not have been true since. 16.02.2008 and 17.02.2008 were non-working days for the Government. It is ironic that the Sanghatana whose office-bearers reportedly played a pivotal role in indulging in violence by assaulting workers found it necessary to affirm the principle of non-violence in their settlements which reads as follows: "The parties reaffirm their faith in settling all future disputes and/or difference by mutual discussions and not by coercion, intimidation, violence, work to rule, go slow, suspension of operations/lockouts, sit down and/or stay in strike or any other similar direct action which is likely to impair service/productivity and peaceful industrial relations and that the workmen and the Union agree that they will not take recourse to such methods for resolving any grievances or disputes whatsoever. It is also agreed between the parties that in the event of their being unable to arrive at a mutually acceptable solution, both the parties will follow constitutional methods and resort to legal machinery for settling the dispute" By this clause the Sanghatana takes away even the basic and fundamental right to strike.

Under the heading "purpose and intent of settlement" the following has been provided:

"The company has signed the contract to manning of laden and unladen trailers inside the Gateway Terminals India Pvt. Ltd. and taken these drivers to provide the services as per terms and conditions of the contract. The expectation of the customers in the light of intense competition have reached unprecedented heights. Our business has limited scope within our territory. The Union and the management have recognized this demand and are committed to reduce trailers turn around time and remain customer oriented." It is clear from this clause that the management has the liberty to increase the work load of the drivers and also to increase the working hours which

are presently not in accordance with the law. The settlement does not spell out the scheduled working hours or the salary structures. There is no element of dearness allowance to neutralize inflation. No provision has been made for social security measures like medical facilities, canteen, leaves, etc.. The settlement has not provided any holiday for festivities. The entire settlement is based on the concept of consolidated salary for 12 hours' duty sans weekly off, hours of rest, which endorses and accepts the illegal practices and work environment continued by the contractors unconditionally. The agreement overrides even the minimum statutory requirements such as retirement age, workmen's compensation, Employees' State Insurance Scheme, Payment of Wages Act, Motor Transport Workers' Act, Dock Workers' Safety, Health & Welfare Act and the final irony is that the settlement is a perpetual settlement without specifying the required time period, which is normally three years. The settlements signed with the contractors before the Conciliation Officer are illegal and cannot be foisted upon the workers.

9. DETAILS OF THE INCIDENTS OF ASSAULT, VIOLENCE, INTIMIDATION AGAINST THE WORKERS WHO ARE MEMBERS OF TDWU AND THE THREAT AGAINST FAMILY MEMBERS:

9.1 In the various interviews recorded by the team the workers narrated at great length details about the terrorizing, assault and intimidation of workers during working hours when GTI allowed free access to outsiders inside the terminal. Active members of TDWU started receiving anonymous threatening calls on their mobile phones. They were threatened with violence unless they sign membership forms of "S.C. Thakur" Union which was what the Sanghatana came to be commonly known as.

9.2 On 22.03.2008 Mr.Ravindra Laxman Raut, a driver with S.C. Thakur and a member of TDWU was called out of his house at about 9.00 p.m. The person who called him out was a driver and a leader of the Sanghatana. As soon as Mr Raut came out, the other man gave him a few fist blows and was told to sign the membership form of the Sanghatana and if he did not do so, something dreadful would happen to him the next day. He was also threatened with eviction from his house.

9.3. On 06.04.2007, Kailash Koli, Supervisor of M/s. S.C.Thakur & Bros., falsely informed Ramesh Dhere, Anil Jadhav and Kumar Gaikwad that they have to bring in new vehicles from distant Container Yard to GTI and that they should get into the jeep to reach the Container Yard. When they proceeded to comply with the instructions of their supervisor, they were accosted and pushed into the jeep by certain persons who were waiting outside and they were taken away to the quarry owned by Thakur. The team interviewed Mr. Ramesh Dhere to verify the details of the said incident and the excerpts of his interview are as under:

"I was called by Kailash Koli, Supervisor of S.C.Thakur & Bros. to bring a new vehicle from the Container Yard outside the Port. When I went out, I was accosted and pushed into the jeep and taken forcibly to the quarry. At the quarry, Kailash Koli and Ramsheth Thakur's son Paresh Thakur along with about 10 persons were present."

After Ramesh Dhere was brought to quarry with his other colleagues, another worker viz. Tatya Khare was brought to the quarry by the contractor's representatives and he has narrated the incident as under:

"I was brought to the quarry under the pretext that Ramesh Dhere had met with a road accident on the over-bridge and that he is required to be rushed to the Hospital but I was taken directly to the quarry where I saw Dhere in the quarry under the gaze if Kailash Koli and Paresh Thakur. Then I realized that I had been tricked. ... About 10 to 12 persons were present and started hammering both me and Dhere with belts, fists and sticks. They abused us and continued the thrashing for quite some time with Kailash Koli urging the assailants to remove our hands and legs as they are forming Union. Paresh, son of Thakur asked me my name and he too assaulted me. My colleague Ramesh Dhere was also assaulted with sticks and belts. The beatings continued

from about 9.00 p.m. to 11.00 p.m. I was mercilessly beaten up and sustained severe injuries on my face and back." Mr. Ramesh Dhere has also furnished to the team his Medical Report which shows injuries on his body and the medical treatment given to him. The other persons present also started beating the two workers. All the documents and Passes of the workers were snatched from them and their personal mobile phones were smashed. They were abused and warned to keep away from the village and Mr. Taty and Mr. Anil were taken out and told not to make any Police complaint. They managed to walk and phoned Mr. P.K. Raman, Secretary, TDWU, at about 1.00 a.m. The assaults on Mr. Dhere and Mr. Kumar Gaikwad continued and they were then taken in a jeep and dumped at a place away from the quarry with a warning not to report the matter if they loved their lives. They managed to reach their village at about 3.30 a.m. and phoned Mr. P.K. Raman. They tried to lodge a complaint at the Uran Police Station. However, the Police refused to take cognizance of the matter even though the Police could see that they have been assaulted since they had severe bruises on their bodies.

Mr. Taty Khare was asked by the team as to what he thought was the reason both Mr. Dhere and he were assaulted in such a manner. He replied

"About seven workers had approached the contractor to enquire about why substantial deductions were being made from their salaries and why the number of trips had been reduced unilaterally. They wanted reduction in their working hours from 12 hrs. to 8 hours and commensurate increase in their salaries in accordance with their work. These workers were told by the contractor that their demands could not be granted and that they could leave the job if they so desired. Two days after this incident, we were assaulted."

Both Mr. Khare and Mr.Dhere stated that when their colleagues found that both of them had not returned from work, they were worried and approached Mr. Deshpande, who is the Manager of GTI and informed him about their apprehension. This information was given to Mr. Deshpande by the workers who were on his round supervising the work of transportation. Mr.Deshpande showed no concern and made no enquiry even though the workers were extremely agitated.

It was only at about 3.30 a.m. that Mr. Khare managed to reach home. He was so scared that he took his family and went to his native place where he underwent medical treatment and returned only after 12 days. When he returned back, he was not taken on duty and his Docks Entry Pass was taken away. His salary also was not paid.

The team also interviewed the wife of Mr. Ramesh Dhere. She narrated her experience and said that she was horrified when she saw the bruises over her husband's entire body when he returned home. She was extremely worried about the safety of her husband. She came to know about the incident only in the morning when she was informed by the other drivers since her husband had not returned home at night. She stated, "I was so horrified after looking at him that I could not restrain myself from crying. Even till this day, I have nightmares about the incident. My two children also witnessed their father and have been traumatized."

Mr. Mansingh Babar, who was instrumental in forming TDWU amongst the workers of M/s. Top Angle appears to have been a main target for the contractors but managed to escape from being kidnapped on 06th April, 2007. He was interviewed by the team and has expressed the fear and trauma that he had to undergo during the early formation of TDWU. He has stated that he started filling up the membership forms of the workers in the month of February, 2007, and from 06th April, 2007, the men of the contractors started pursuing him. However, on each occasion he managed to escape.

The team interviewed another worker Vinayak Jagannath Raut, a GTI Driver with S.C. Thakur. He has narrated the incident of 06/07th April, 2007, and has confirmed the statements made by Mr.Dhere and Mr. Khare that on 6th April, 2007, at around 9.00p.m. four of his colleagues

were kidnapped and were taken away and severely beaten up at Padeghar Quarry. When he came to know about the incident, he informed the Manager Mr.Pritam Deshpande as well as the Safety Officer Shyam about the assault on the four workers. However, they did not take any cognizance of the matter and he was told not to create a scene at the work place and that they would speak to S.C. Thakur later and he was told to go home.

He was threatened by the officers of GTI. Fearing that the same fate as his colleague would befall him, he ran away to his native-place at Satara and was too scared to come back to work. When he came back, his Pass was taken away and his salary was paid only after the Union's threat of demonstration in October, 2007.

A number of workers have also given statements stating that as soon as they became members of TDWU, they were routinely threatened with dire consequences if they continued to remain members of TDWU. They were told that they must work according to the directions of their Supervisors even if the instructions given to them are contrary to law and if they did not do so, they would not be given any bookings and they would not receive their salaries. Besides this, they were also threatened with bodily harm if they continued to protest against their working conditions. One worker Mohd. Muslim, a Driver working with M/s. Casby Logistics was told that he could not attend a Union meeting since there was a shortage of drivers. He asked how that was possible considering the number of Drivers. He was told not to argue and to take up the duty or else loose his job. He was, therefore, required to work and after he had completed 12 hours of work, he was told to work in the 2nd shift also. He refused to do so saying that he was tired and it was not possible for him to work for 36 hours at a stretch since it may cause an accident. Enraged by the answer given by him, the Supervisor slapped him on his cheek. This was witnessed by the workers who were present at work and apprehending that they might loose their job, they had to remain silent and witnessed the humiliation of their colleague. The workers have also stated that Mr.Agarwal, Operational Manager of Casby Logistics played an instrumental role in threatening the workers and forcing them to sign the membership forms of the Sanghatana.

(ii) **INCIDENT OF 20TH MARCH, 2008.**

From 10th March,2008, the acts of violence and intimidation increased greatly. The most serious incident occurred on 20th March, 2008, when the Transport workers were picked up from Vashi to drop them at GTI for their duties but were waylaid at Jassai Village. It was around 7.30 p.m. when the contractor's bus in which 12 workers were traveling was blocked by about 20 persons and a supervisor of Top Angle, Mr. Kamble, got inside the bus. Four assailants entered the bus and shouted for Mansingh Babar to stand up. It appears that they were not aware about the identity of Mr. Babar. Immediately the driver of the Bus, Mr. Syed Kabir, fled the scene along with the keys of the bus. Though Mansingh Babar was at the rear of the bus, the assailants could not identify him and the other workers did not expose him. Infuriated at not finding Mansingh Babar, they physically assaulted Navanath Balshiram Borhade, who was in the first row seat with hockey sticks, chains, knuckle dusters. All others were also badly beaten by the four assailants. Mr. Borhade was bleeding profusely with head and facial injuries and his clothes were completely drenched with his blood and the floor of the bus was also covered with his blood. The workers tried to save him and as they tried to get out of the bus, they were again mercilessly beaten up by the persons standing outside. After about 15 minutes of merciless beating, the assailants went away. The GTI service bus which was in tow was halted by the injured workers. Mr. Borhade was carried to the bus and reached GTI Terminal. At the Terminal the contractor's supervisor was present along with GTI officials. They saw Mr. Borhade profusely bleeding but did not extend even first aid nor rushed him to Hospital or summon the Police but took photographs. M/s. Top Angle diverted the Bus in the route of Uran and reached Borhade to Police Station. None of the representatives of the GTI and the contractor accompanied Borhade to the Police Station. A Police complaint was lodged and soon the Police sent him to Government Civil Hospital at Uran. At the Hospital, as there was no C.T. Scan and X-Ray facilities, he was advised to go to Chhatrapati Shivaji Hospital, Thane, at a distance of 50 kms. Shri Borhade made his own arrangements and went to the Hospital where he was treated for head and eye injuries. He was diagnosed to have

suffered fracture in the nose and that surgery could not be undertaken until his facial injury including eye injury are healed. He was given a cost projection of Rs.20,800/- for the surgery to be performed. Apart from this projection, he had expended over Rs.10,000/- for the initial medical expenses. He is still under medical treatment. However, the contractor M/s.Top Angle and the GTI management have to date refused to bear his medical expenses nor investigate into the said incident despite complaints made in this regard by TDWU to the management as well as to other authorities.

The team interviewed Mr.Borhade who narrated the details about the above incident. The team also scrutinized the medical documents and confirmed the injuries including the fracture of the nose of Mr.Borhade. The said reports are enclosed with this Report.

The team interviewed Mr.Borhade's wife, Mrs. Lata Borhade. She stated that as against the custom when her husband did not call at the usual time of 8.00 p.m. she sensed something was wrong and feared the worst. She rushed to the public phone and phoned her husband. She got a cryptic response that the matter was serious and the phone was disconnected abruptly. It immediately struck her that in the recent past, her husband was getting threatening calls from the men of Mahendra Gharat and in the threatening phone calls, the caller used to demand that he sign the membership form of the Sanghatana. She also explained that the frequency of the threatening telephone calls had increased in the last four-five days. From the interview it is also clear that despite reporting the matter to the Officers of Relogistics and their contractor M/s. Top Angle and Mr.Pritam Deshpande of GTI, no cognizance was taken by them. It also emerges that Mrs. Borhade came to know about the incident only on the following day through the friends of her husband who told her that something serious had taken place and that Mr. Borhade was at the Police Station. She was shocked and horrified on seeing her husband returning at 10.00 a.m. the next day with bloated face, head injuries and fully soaked in blood. Her daughter, Sonam, was also interviewed and she has narrated that her mother immediately contacted Mr.S.R. Kulkarni, President of TDWU, inconsolable sob and praying to save the life of her father. She also submitted that it was the first time that she had seen her father in such a state. Till today she has nightmare about her father's face.

10. VISIT TO THE URAN POLICE STATION AND NHAVA SHEVA POLICE STATION:

The team visited Nhava Sheva Police Station on 27th March, 2008, and spoke to Senior Police Inspector, Mr. R.Y. Galdhar. When he was asked as to whether he had taken any steps to maintain law and order situation in the JNPT area, he stated that the reported incident did not take place within his jurisdiction. He was then questioned about what steps he had taken regarding the directions issued by Deputy Commissioner of Police, Mr. Pravin Pawar, with regard to convening a meeting of all the responsible persons involved in the incident including the GTI management, the contractor and TDWU. He stated that he had called a meeting on 05th March, 2008. However, at the meeting only the TDWU and the workers were present. The GTI management and the contractor did not turn up. When asked as to what action he had taken regarding the refusal of the management to comply with his direction, he stated that he would call another meeting. When he was asked what action he would take if the management again refused to turn up, he stated that he would look into the matter. The team found that he did not take any serious cognizance about the directions issued by ACP and that he was not serious about the follow up. The team was informed that no follow up action has yet been called by Mr. Galdhar. While the team was at the Police Station, some workers employed with the contractor came to the Police Station and informed the team that they had received anonymous threatening calls on their Cell Phone. This fact had also been conveyed to the concerned Police Officer but neither the complaint was recorded nor was any enquiry conducted with regard to the threatening calls. Since the team was present at the Police Station, Mr.Galdhar informed the workers that the complaint would be recorded.

The team then visited the Uran Police Station under whose jurisdiction the incident of 20th March, 2008, had taken place. The team met the Senior Inspector of Police, Mr. R.K. Kotawle, and

enquired about the steps taken in arresting the main persons involved. The team was surprised to note that despite Mr. Borhade lodging an FIR and narrating the details about the incident and furnishing the Police with the medical records, the investigating Officer had merely recorded minor charges against only four accused viz. Mr. Umesh Kishor Gharat, Mr. Nitin Arun Gharat, Mr. Samadhan Pandurang Gharat, Mr. Rakesh Gajanan Patil, all from Jassai Village. Though Mr. Borhade was grievously injured and had suffered a fracture, minor charges under Section 323, 324, 327 and 34 of Indian Penal Code have been framed. No case of rioting, conspiracy, intimidation, grievous injury have been recorded against the accused. None of the persons whose names have been given by the workers have been arrested. Our conclusion from the record of the case is that the Police have been negligent in the investigation in a way which seemed designed to allow the accused to go scot-free. No Panchanama of the Bus in which the workers were assaulted, was conducted. Instead the blood stained bus was withdrawn from service by the contractor and all the evidence destroyed. The Driver of the vehicle as well as the Supervisor of the contractor and other assailants whose names were given by the workers have not yet been arrested. Since the charges were minor, the four accused have been released on bail. The fact that the assailants drove the bus away and returned it to M/s. Top Angle seems to indicate complicity of the contractor in the attack. The Police has not made any enquiry in this regard nor recorded the statements of the contractors.

10. CONCLUSION:

The incidents narrated by the workers consistently maintain that the threats made to the workers were issued by the office-bearers and agents of the Sanghatana. The workers report that they were threatened to sign the membership forms of the Sanghatana. Also, when they refused to do so, they were targeted with physical violence with intent to grievously and permanently injured and even cause death to the victims of the attack. The fact that the assaults on workers were not a result of Union rivalry is in our opinion obvious since all the major assaults were carried out in the presence of and under the supervision of the supervisors of the contractors. The report mentions the names of the supervisors and the officers of the contractors who were present when the assaults took place. In the case of Casby Logistics, the supervisors were Mr. Amjad and Mr. Lahoo Gharat and in the case of Alfa Omega, the supervisors were Mr. Amit Singh and Mr. Vignesh Parkar. These supervisors appear to have been acting in close collaboration with the officers of the Sanghatana. Their relationship was far from professional as they shared information with each other regarding the movements of the active members of TDWU. The supervisors are senior officers of the contractors. In our opinion, no supervisor would play an active part in coordinating and supervising the assaults unless they were so directed by their superiors. The apparent active participation of the supervisors in the assaults shows that the contractors were interested in undermining and damaging the popularity of TDWU amongst the workers. This agenda of the contractors had nothing to do with inter-union rivalries.

The interviews of the workers and the records of TDWU also clearly show that though the officers of GTI had knowledge about the various incidents of threats, intimidation and brutal assaults, they chose not to do anything in the matter. The workers have categorically stated that the officers of GTI were informed about the various incidents. The assailants were also connected with the various contractors. The principal cannot claim ignorance of the acts of his agents in light of the fact that the workers who were assaulted were performing work for GTI on its premises and GTI was involved in the industrial dispute. Assuming that GTI was not aware about the attack even then the principle of vicarious liability for the wrongs committed by the agent would apply. So also would statutory provision under the Indian Law make the principal responsible for the acts of the agents. Even after GTI came to know about the assaults, it seems that they took no proactive steps to ensure that such attacks did not take place in future.

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