MAKING LAWS AND INSTITUTIONS WORK FOR PEOPLE: IDLO'S WORK IN ENHANCING ANTI-CORRUPTION AND TRANSPARENCY



Corruption, with its inherently corrosive effect on societies, poses a significant challenge to the achievement of the 2030 Agenda for Sustainable Development and its commitment to "leave no one behind". Its profound negative impact on the rule of law, good governance, and human rights threatens peace and security, hampers the provision of public services, and thwarts inclusive economic development. This not only undermines trust in public institutions but also fuels discontent and insecurity. Corruption's broad social costs are felt disproportionately by women, youth, and other marginalized and vulnerable groups, making it a threat to peace and sustainable development by increasing inequality and preventing the distribution of resources to intended beneficiaries.

The United Nations General Assembly in its <u>resolution</u> adopting the United Nations Convention against Corruption (UNCAC) expressed its concern about "the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law".

Addressing multidimensional challenges posed by corruption requires a holistic approach that, in addition to relying on law enforcement and investigations, also eliminates the opportunities leading to corruption, promotes economic competition, enhances accountability in the political sphere and increases the participation of civil society in decision-making processes. The rule of law is critical to that effort. It can help eliminate discrimination in law and in practice and enable institutions to better understand and meet people's needs. It can strengthen their ability to tackle corruption and to resolve grievances before they can fester into conflict.

As the only global intergovernmental organization exclusively devoted to promoting the rule of law to advance peace and sustainable development, the International Development Law Organization (IDLO) works with partners around the world to combat all forms of corruption by making justice institutions transparent and more responsive, reducing conflicts of interest, and enhancing the capacity of institutions and justice actors to fight fraud and economic crime.

This brief includes examples from IDLO's global anti-corruption portfolio with specific case studies from Armenia, Indonesia, Kyrgyzstan, Somalia, and Ukraine, providing key insights on

promising rule of law approaches, good practices and lessons learned from implementation.

IDLO'S ANTI-CORRUPTION WORK

Through a comprehensive approach encompassing programming, research, and policy advocacy, IDLO supports partners' efforts in tackling corruption and promoting greater transparency, accountability, and integrity in public institutions, particularly in the justice sector. IDLO does this through nationallevel and cross-border efforts focused on strengthening legal frameworks, institutional and professional capacities in prevention, investigation, prosecution, and adjudication of corruption and related offences, asset recovery, as well as mechanisms of integrity and transparency, such as public procurement and declaration of assets. IDLO assists country partners to develop effective national anti-corruption strategies and provides support for their implementation. This includes support for preventive measures, criminalization and law enforcement, international cooperation, technical assistance, and information exchange.

IDLO's work on anti-corruption is anchored in the 2030 Agenda and the UNCAC. It aligns with the UN Secretary-General's call to rebuild trust in institutions by preventing and countering corruption in his report "Our Common Agenda". It also seeks to advance the commitments made in

the United Nations General Assembly Special Session (UNGASS) Political Declaration against Corruption.

IDLO also supports the UNGASS Declaration's commitment to advance international cooperation and strengthen collaboration at the national. regional, and international levels through dedicated policy advocacy. IDLO participates actively in the intergovernmental meetings on anticorruption including the meetings of the UNCAC, the UNGASS Intersessional Meetings, the G20 Anti-Corruption Working Group, the Organization for Economic Co-operation and Development (OECD) Anti-Corruption and Integrity Forum, the World Justice Forum, and the World Bank Anti-Corruption for Development (AC4D) Global Forum.

IDLO'S ANTI-CORRUPTION PROGRAMMES



Active:1

The Bahamas, Democratic Republic of the Congo, Ecuador, Honduras, Indonesia, Kenya, Moldova, Mongolia, Mozambique, Peru, The Philippines, Tanzania, Somalia, Ukraine

Completed:

Afghanistan, Armenia, Bulgaria, Burundi, Cambodia, Central African Republic, Chad, Congo, Kyrgyzstan, Mali, Montenegro, Papua New Guinea, Rwanda, Togo, Tunisia

¹ As of December 2023

Examples

Among its initiatives, from the very beginning of its operations in **Ukraine** in 2015, IDLO contributed to establishing, developing institutional capacities of and improving coordination between the anti-corruption institutions. IDLO has been supporting the National Anti-Corruption Bureau of Ukraine (NABU) and Specialized Anti-Corruption Prosecutor's Office (SAPO) with enhancing their institutional independence through technical assessment and broader expert advice. IDLO also contributed to the efforts aimed at facilitating professional dialogue between NABU, SAPO, and the High Anti-Corruption Court (HACC). One of IDLO's most recent initiatives is the creation of the NABU Training Centre, a modern, flexible, needs-oriented training facility that could serve as a provider of anti-corruption training services to other institutions as well. At the policy level, IDLO actively participated in efforts to align national legislation with the OECD Anti-Bribery Convention and develop the concept of liability of legal entities for corruption crimes.

As part of its capacity development programme in the **Philippines**, IDLO contributed to the delivery of a Financial Investigation Course for the Anti-Money Laundering Council and the Presidential Anti-Organized Crime Commission. The course covers objectives and processes, investigative triggers, and tools for financial investigations. In **Armenia**, the organization supported trainings for the officers of the Anti-Corruption Committee. In **Mongolia**, IDLO organized trainings on investigative journalism with regards to allegations of corruption and authorities' accountability.

In Mongolia IDLO also evaluated the implementation of the country's previous National Anti-Corruption Programme (2016-2023) and its subsequent 2017 Action Plan. Based on the evaluation, IDLO supported the development of a new National Anti-Corruption Programme (2023-2030), which was approved by the Parliament. IDLO also built the capacity of Citizens' Oversight Councils and the Independent Authority Against Corruption, promoting greater public awareness of corruption challenges.

IDLO supported the Independent Anti-Corruption Advisory Committee of **Moldova** in the release of its third report, examining corruption vis-a-vis political and campaign finance in the country. A new project is also assisting Moldova in implementing an extraordinary vetting commission for prosecutors – one of nine key recommendations made by the European Commission in preparation for Moldova's European Union accession negotiations. IDLO's support draws on its experience with similar work in Ukraine and Armenia.

In **Honduras**, IDLO is assisting the Supreme Court to strengthen judicial transparency, efficiency, and accountability through the enhancement of key tools such as the digital case management system and platforms, as well as portals that allow access to judicial information for citizens. Additionally, IDLO has created a methodology to assess the anti-corruption legal and policy framework, which resulted in the identification of needs and the creation of a workplan for key actors' capacity development, including the Ministry of Transparency and the National Institute for Access to Public Information. The assessment methodology will be replicated in other countries in the Latin America and Caribbean region.

In **The Bahamas**, IDLO works to promote legal reform towards strengthening transparency, integrity, and accountability through the analysis and review of the policy and legal frameworks and the development of recommendations to improve whistle-blowers' protection and public disclosure, and to support the establishment of the ombudsperson.

In the **Democratic Republic of the Congo**, following the conclusion of the Host Country Agreement, IDLO has initiated efforts to establish an operational presence on the ground and scale up support to the National Anti-corruption Commission.

CASE STUDIES

SUPPORT TO SPECIALISED INSTITUTIONS

Specialised Anti-Corruption Courts

UNCAC emphasizes the crucial role of the judiciary in combating corruption and requires states to promote its integrity. Concerns over the ability of some justice systems to deal appropriately with corruption have prompted the establishment of specialised anti-corruption courts which are dedicated substantially, and in some cases exclusively, to corruption-related cases. Ukrainian civil society organizations, with the help of the international community, advocated for the creation of such an institution. IDLO contributed to the establishment and strengthening of the capacity and integrity of Ukraine's anti-corruption court, and in turn improved public trust in the country's anti-corruption efforts.

Ukraine

In 2018-2020, IDLO supported the establishment and operationalization of the High Anti-Corruption Court (HACC) - an institution to adjudicate highlevel corruption cases. IDLO advocated for the adoption of the respective law and supported the drafting process with a focus on independence, impartiality, and effectiveness. IDLO further assisted the Public Council of International Experts, a unique auxiliary body consisting of six highprofile international experts, tasked with ensuring that HACC judgeship candidates were interviewed for professional ethics and integrity and vetted prior to being admitted to other stages of the competition. Following the appointment of judges to the HACC, IDLO delivered trainings and assisted in streamlining the Court's workflow. IDLO also supported the Court in addressing significant challenges

in its operationalization, including the organization and conducting competitive staff recruitment, identifying court premises and facilitating security arrangements.

Prior to the establishment of the HACC. there were only few court judgments in top corruption cases in Ukraine. By September 2020, marking one year of its existence, the HACC had issued 15 convictions and one acquittal out of 272 criminal cases transferred to it, including 198 from the general courts and 74 from the National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecutor's Office. In 2021, the European Court of Auditors stated in its report that while HACC's effectiveness, independence and sustainability were still considered to be under threat, the institution showed promising results in comparison with

the general courts in Ukraine in which corruption cases had been stalling for many years. The 2023 study of the capacity, management, and interaction of anti-corruption infrastructure bodies by Transparency International Ukraine showed improvement in the average overall score, with HACC obtaining the best score. In its March 2023 report, the Council of Europe Group of States against Corruption (GRECO) provided that a total of 72 verdicts had been issued by the HACC since 2019, out of which 39 are final convictions, including against members of parliament. Nonetheless, observers note the improvements to be made in effectiveness, consistent court practices and in terms of legislation.

IDLO's experience in Ukraine showed the importance of considering various agencies, albeit with different mandates, as one system working organically to address corruption. Thus, the HACC is part of a multiagency approach with different bodies working together to address corruption. This approach requires putting in place several operational safeguards to ensure that the different entities maintain their integrity and independence. For instance, by adopting requisite and comprehensive laws which state respective mandates, provide for transparent and meritbased competition procedures and independent audit, threats to the work of such bodies through legal challenges can be avoided. Another key operational safeguard is the provision of adequate

resources and funding as, in their absence, anti-corruption bodies may be unable to execute their mandate properly. Adequate funding also reduces the risks of undue influence from political figures or other institutions.



270 candidates for judicial positions at HACC



27 judges appointed at HACC and 11 judges at HACC Appeals Chamber



35% female judges

Specialised AML/CFT² Institutions

Establishing financial intelligence units is among the UNCAC's recommendations for preventing corruption and detecting transfers of proceeds of crime. The key functions of these units include acting as centralized repositories of reports of suspicious transactions, performing strategic analysis to detect evidence of potential criminal activity, and disseminating the ensuing intelligence both domestically and internationally to support efforts against money laundering and the financing of terrorism. IDLO strengthened the work of financial intelligence units in Somalia with a view to building a well-regulated financial sector that can operate in accordance with international standards.

Somalia

Somalia's Financial Reporting Center (FRC) was created through the Anti-Money Laundering and Countering the Financing of Terrorism (AML/ CFT) Act of 2016 to operate as a national central agency responsible for all information relating to money laundering and terrorism financing. Since 2017, IDLO assisted the FRC in defining and implementing clear standard procedures to strengthen its operational capacity. This included mentorship and specially designed training programmes, as well as increasing collaboration with relevant law enforcement agencies such as the Somali Police Force, the Office of the Attorney General, and regulatory and supervisory bodies, such as the Central Bank of Somalia.

Already in 2020, the FRC reported significant progress in strengthening the AML/CFT legal framework and proactively promoting compliance reporting by financial institutions.

It fostered the governing rules of the National AML/CFT Committee (NAMLC) by acting as its Secretariat, facilitating the adoption of the Committee's governing rules and assisting with the creation of a NAMLC Task Force. This, in turn, helped to support the implementation of the Committee's decisions and strengthen institutional cooperation, coordination, and information exchange between government agencies to effectively combat money laundering and financing of terrorism. The FRC also established a National Compliance Forum to foster close working relationships with financial institutions and to exchange best practices and emerging money laundering and terrorist financing crimes and trends, to perform customer due diligence checks, and to identify and report suspicious financial transactions through training of front-line customer service staff and supported financial institutions. Finally, IDLO has supported the FRC

² Anti-money laundering and combating the financing of terrorism.

in strengthening its ICT infrastructure including the acquisition of the goAML application, completion of Somalia's first national risk assessment as well as preparing the country for the mutual evaluation by the Middle East and North Africa Financial Action Task Force in 2024.

The effectiveness and sustainability of Somalia's FRC is connected to the security and stability of the political environment, including financing, and improving the effectiveness of the national AML/CFT regime. Those

factors need to be addressed as part of a broader strategy to consolidate already initiated AML/CFT measures. The Somali context also presents challenges that can be faced by financial intelligence units when laws on the operations of financial institutions are not properly streamlined to codify sanctions for non-compliance. The existence of a comprehensive legal framework that promotes financial transparency among financial institutions necessitates the synchronization of financial laws, as well as ensuring that all financial institutions are uniformly regulated.



263 FRC staff given on-site mentoring



230 on-site mentoring/ training sessions provided



59 officials from reporting entities based in Somaliland trained on AML/CFT



25 customs officers trained on cross-border money laundering

STRENGTHENING PROCESSES AND MECHANISMS

Merit-Based Selection and Vetting Processes

One of the corruption prevention measures mandated by UNCAC is the adoption, maintenance and strengthening of systems for the recruitment and hiring of public officials that are based on principles of efficiency, transparency, and objective criteria such as merit, equity, and aptitude, with specific regard to candidates for public positions who are considered especially vulnerable to corruption. IDLO has been supporting Ukraine to ensure merit-based selection and vetting processes within anti-corruption institutions.

Ukraine

Since the adoption of the legislation integrity that envisaged major reform of the prosecution system in Ukraine in 2019, IDLO supported the country's efforts towards mandatory reattestation of prosecutors throughout the prosecution service, including at the level of the Office of the Prosecutor General, and the establishment of the commission charged with selecting Ukraine's new prosecutors. IDLO designed and supported the mandatory re-attestation process of more than 10,000 Ukrainian prosecutors.

Further, IDLO provided expert, technical, and logistical support to the open competition for the vacant position of the Head of the Specialized Anti-Corruption Prosecutor's Office (SAPO). This included carrying out candidates' checks as well as holding legislation knowledge and general aptitude tests. Despite significant hurdles, including the pandemic and the full-scale invasion of Ukraine, the competition did result

in the appointment of the new Head of SAPO. IDLO also led on providing technical assistance to the open competition for the leadership positions at the National Anti-Corruption Bureau of Ukraine (NABU) and the Asset Recovery and Management Agency (ARMA).

IDLO's work in Ukraine has shown that the creation of merit-based recruitment and vetting systems only succeeds if these processes are explicitly provided for in the legislation and managed through independent commissions with direct and meaningful participation of international experts. Relevant laws and bylaws must be improved through introduction of clear standards on the qualifications and performance required for each vacancy, as well as a transparent procedure to enable candidates to participate in the recruitment process. Further, fair and merit-based vetting and selection procedures should be complemented

with transparent and objective performance evaluation and promotion systems as well as adequate professional growth mechanisms and opportunities. It is evident that significant resources need to be allocated by both national and international stakeholders for safeguarding the selection and vetting procedures and their outcomes.



11,278 prosecutors participated in re-attestation



8,351 prosecutors passed re-attestation

Ensuring Asset Recovery

Asset recovery is the process by which the proceeds of corruption transferred abroad are recovered and repatriated to the country from which they were taken, or to their rightful owners. IDLO is increasingly supporting partners' efforts to strengthen capacities of relevant law enforcement agencies to detect and prevent transfers of the proceeds of corruption and develop measures for direct recovery. Asset forfeiture (or confiscation) is a step in the process of asset recovery and refers to the permanent deprivation of property by order of a court or other competent authority by transferring the ownership of specified funds or other assets to the state. It can be done through criminal forfeiture or non-conviction based asset forfeiture not requiring a criminal prosecution and conviction. IDLO implemented a project in Armenia supporting the operationalization of the latter.

Armenia

In 2020, Armenia introduced mechanisms aimed at confiscation of property of illicit origin, including the enactment of a new law On Confiscation of Property of Illicit Origin. It defined the criteria for launching an inquiry, specified the authorities that can initiate proceedings and carry out an inquiry, and outlined the procedures for international cooperation in this field. IDLO supported the establishment

of the new department within the
Office of the Prosecutor General
dealing with forfeiture of property
of illegal origin and provided technical
support to the Qualification
Commission responsible for selection
of the prosecutors and department
leadership through an open, meritbased recruitment process. In
assessing candidates, the Qualification
Commission considered their knowledge

of national and international legislation and practices related to the forfeiture of assets of illicit origin, alongside an evaluation of their integrity.

Following the appointment of the first composition of the department, IDLO extended institutional capacitybuilding support by developing Standard Operating Procedures, aiding in Mutual Legal Assistance requests and facilitating cooperation with the Camden Asset Recovery Inter-Agency Network (CARIN). Furthermore, in coordination with the Office of the Prosecutor General, IDLO harnessed the input of international and national legal experts to train judges and other officials with the purpose of capturing international best practices for mutual legal assistance in asset recovery using the civil confiscation route.

Following a set of legal changes, the prosecutors can petition courts to seize assets in instances where they identify discrepancies, even if the property owner has not been convicted of any offence, and the procedure for forfeiture is handled by the aforementioned department of the Office of the Prosecutor General. Since January 2022, the department forwarded a total of 38 cases to court, and the cumulative value of assets slated for confiscation amounts to several billion drams.

Armenia's example provides an insight into the general dependence of asset forfeiture on the existence of a robust legal system that provides law enforcement officials with the power to

confiscate assets. Furthermore, because of the tendency of civil forfeiture laws to be legally challenged, the effectiveness of asset recovery depends on the adoption of such laws against the backdrop of a well-functioning legal system and an independent judiciary.



3 anti-corruption institutions supported



52 prosecutorial candidate integrity checks



9 trainings conducted



94 vetted judges, prosecutors and operative investigators trained

DIGITAL SOLUTIONS TO STRENGTHEN TRANSPARENCY AND EFFICIENCY

Judicial Procedures

Corruption thrives in weak institutions, while absence of transparency and poor enforcement mechanisms also shield wrongdoers, thereby creating a conducive environment for corruption. One of the key measures that can contribute to strengthening institutions and transparency is setting up digitalized systems for the delivery of public services, including in the judiciary. IDLO supported Kyrgyzstan's judiciary in digitising judicial procedures and advancing e-justice.

Kyrgyzstan

In 2014-2021, IDLO implemented two programmes in Kyrgyzstan to increase public trust in the judiciary's role to protect citizens' rights, uphold the rule of law, and advance the use of information systems within the judiciary. IDLO supported the establishment of information systems, online audiovideo streaming of court proceedings, self-monitoring and self-evaluation instruments for courts, the creation of an online portal for the judiciary, and the provision of e-services. This included information technology support in the development, launch, and independent maintenance of a website to host and provide access to all court decisions and creating a domain infrastructure for the implementation of the automated information system (AIS Suda).

The introduction of the automated information system was a significant step in advancing e-justice and ensuring that all the transactions in courts have a digital footprint. From 1 September 2019, all incoming correspondence and

internal document flow of the Supreme Court were registered in the system and thus the documents started to be digitised. Any unlawful change to or intentional "loss" of a document to delay a case can be traced to the responsible individual. This considerably reduced entry points for external pressure and illegal practices. Further, a component that is helping to reduce corruption is the automated case distribution, fully operational in the Supreme Court, as it minimises bias and undue influence in the outcome of a case through assigning a compliant judge.

Online publication of judicial decisions made judicial decision-making more transparent and easily accessible. It allowed legal professionals, academics, journalists, and participants in court proceedings to analyse judicial practice, produce data-driven materials, and develop a common understanding of how legal proceedings are handled. By the end of the programme in 2021, almost 90% of all judicial acts were published online.

IDLO's work in Kyrgyzstan showed that the success of e-governance measures is linked to the comprehensive and holistic approach to the digitisation process, which needs to focus on support across the legislative, financial, technical, and human resources aspects of e-governance measures. E-governance initiatives need close coordination with local counterparts and consideration of their needs, uptake capacity and requirements. They also need to include technical training and capacity building for the judiciary to make new systems

accessible and implementable. Further, local stakeholders need to be involved in e-governance systems development to ensure sustainability. This will equip them with the capacity and know-how to manage the e-governance structures in place. In the Kyrgyz context, the local-driven nature of the process enabled the involvement of working groups in many of the processes leading to the creation of the e-governance systems, comprising representatives of the relevant institutions from within the judiciary.



723 justice sector personnel trained on automated information system



77 justice sector personnel trained on document management system



61 IT specialists trained on court decision publication and dispatched across the country



611 cases analysed from court decision publication website

Handling of Electronic Evidence

Digitisation can create space for sophisticated acts of corruption, including the use of complex technology to conceal illicit activities. This increases the relevance of digital evidence for solving crimes and preparing court cases. Although different forms of electronic evidence are increasingly being used in both civil and criminal litigations, courts and other law enforcement authorities continue to face considerable challenges. In Indonesia, IDLO joined partners in improving the handling of electronic evidence.

Indonesia

In 2017-2019, the Partnership for Governance Reform Kemitraan together with the Institute for Study and Advocacy for Judicial Independence LeIP, supported by the IDLO-managed Indonesia-Netherlands Rule of Law Fund, implemented a project to improve electronic evidence handling and management in corruption trials. The project focused on strengthening the regulatory framework in accordance with international standards and building the capacity of law enforcement and justice actors by improving guidelines for the digital forensic laboratory and enhancing access to international networks on electronic evidence handling.

To strengthen regulations and procedures on electronic evidence in alignment with international standards, the project formulated draft stipulations to be included in the Draft of the Criminal Procedural Law. It also supported enabling regulations meant to improve the admissibility of electronic evidence in court, especially in corruption trials. These drafts included international standards relating to computer-based electronic evidence, integration of forensic techniques into incident response, and guidelines on the identification, collection acquisition, and preservation of digital evidence. The project further influenced the issuance of The Ministry of Communication and Information Circular Letter No. 4 of 2019 on Guidelines in Identification, Collection, Acquisition and Preservation of Digital Evidence. The project's capacity development initiatives improved judicial competence in relation to electronic evidence and led to the institutionalization by the Supreme Court's Judicial Training Centre of an E-learning curriculum and modules developed by the project into their Candidate Judges Education Program.

Indonesia's experience showed that one of the challenges that prevented stronger regulatory framework on electronic evidence is that law enforcement agencies lacked adequate skills to handle such evidence. It is therefore important to channel resources to address investigative and evidentiary issues, including the use of new forms of evidence. Moreover, there are no internationally accepted uniform standards and guidelines on collection of digital evidence in corruption cases. Policy makers should remedy this gap through the development of more unified guidelines on collection, storage, and management of digital information to address corruption.





49 participants
engaged in developing
the legal framework of
electronic evidence

KEY INSIGHTS FOR ANTI-CORRUPTION PROGRAMMES



1. Reforms must be context-sensitive

In most contexts, corruption is linked closely to different socio-economic, political, and cultural factors. Each contextual factor will demand different programming responses. In fragile societies with systemic and grand corruption, anti-corruption initiatives must be accompanied by efforts to address its underlying causes.



2. Build a comprehensive legal framework

Strengthening the legal framework in relation to the scope and definitions of corruption offences, the powers and mandates of anti-corruption bodies and law enforcement authorities, enables the proper functioning of anti-corruption programmes and protects anti-corruption bodies and initiatives from regular legal challenges in the execution of their mandate.



3. Harness technical expertise

The involvement of local and international experts in the design and implementation of anti-corruption programmes is key for their success. Experts provide valuable contextual analysis and needs assessment, as well as advice on how to best address those needs. They promote the overall integrity and objectivity of the processes leading to the initiation and implementation of anti-corruption programmes.



4. Provide digital solutions and build digital capacities

Anti-corruption efforts should channel more resources to addressing investigative and evidentiary issues on digital evidence, including the use of new and emerging forms of evidence. This includes the development of E-Systems and more unified guidelines on collection, storage and management of electronic evidence and digital information to address corruption.



5. Local ownership and uptake capacity is key

Anti-corruption programmes require a holistic, tailor-made approach to ensure societal ownership. Such processes must be inclusive and participatory, and involve relevant authorities and civil society organisations at all stages, from inception to implementation. Local ownership strengthens the acceptance of the initiatives and their long-term sustainability.



6. Cooperate with civil society

Support to and work with civil society is crucial in the implementation and effectiveness of anti-corruption programmes to promote rights awareness, legal literacy, and legal aid, and to ensure transparency and strengthen accountability. Civil society plays a key role in monitoring anti-corruption reforms as well as sustaining the work of anti-corruption and oversight bodies and initiatives where there is no political will.



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