

AFRICAN HUMAN RIGHTS POLICY PAPER 5

HUMAN-RIGHTS BASED DURABLE SOLUTIONS AND STATE OBLIGATIONS TO INTERNAL DISPLACEMENT

ANALYSIS OF THE CASE OF INTER-COMMUNAL CONFLICT-INDUCED DISPLACEMENT IN GEDEO ZONE OF ETHIOPIA

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AFRICAN HUMAN RIGHTS POLICY PAPERS

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INTRODUCTION

Addressing the challenge of achieving durable solutions for protracted displacement in Africa requires prioritising human rights-based approaches that are tailored to the unique circumstances of the continent. Therefore, fostering discussions on human rights-based durable solutions by critically assessing existing practices regarding the rights of forcibly displaced persons and proposing effective pathways towards lasting solutions is crucial.

To facilitate these efforts, the Migrants' Rights Unit of the Centre for Human Rights, Faculty of Law, University of Pretoria, convened a Forum of Experts on Durable Solutions to Protracted Displacement in Africa on 19 September 2022, in Pretoria. The Forum brought together scholars from African universities, practitioners from civil society organisations and other stakeholders to contribute to the development of policy papers that

offer insights, empirical analysis, and practical recommendations to address the challenges faced by internally displaced persons (IDPs) and refugees in Africa.

We express our appreciation to Fikire Tinsae Birhane, Lecturer at Hawassa University in Ethiopia and author of the policy paper titled 'Human-rights based durable solutions to internal displacement: Analysis of the case of inter-communal conflict-induced displacement in Gedeo Zone of Ethiopia.' The paper, which was presented during the Forum in September 2022 and subsequently reworked, analyses the situation faced by internally displaced persons in Gedeo Zone, examines the human rights obligations of the Ethiopian government towards internally displaced persons, identifies gaps in the response to the situation, and proposes a human rights-based durable solution. The findings underscore the need for a more robust commitment by the government to fulfil its obligations and address the protection

concerns of the affected community.

This paper is part of a group of policy papers that are published to provide further insights and perspectives on finding durable solutions to protracted displacement in Africa. It is our hope that the knowledge generated through these policy papers would stimulate further research, inform policy development, and inspire practical interventions aimed at advancing durable solutions for refugees and internally displaced persons in Africa.







ABSTRACT

Recent years in Ethiopia have witnessed the internal displacement of a large number of people induced by conflict, intercommunal violence, natural disasters, and other impacts of climate change. Among these are those, numbering over half a million, internally displaced in Ethiopia's Gedeo Zone and West Guji due to an intercommunal conflict. Many have accused the government of a lack of effective response to the situation. As noted by the United Nations High Commissioner for Refugees (UNHCR), the Gedeo-West Guji situation is one of those characterised by the limited presence of humanitarian responders or the reduction in the overall response capacity, resulting in serious gaps in the response to the situation, compounding existing and creating new protection concerns and leading to the absence of opportunities for durable solutions. This paper aims to suggest a human rights-based durable solution to internal displacement induced

by inter-communal conflict in Ethiopia, taking the situation of internally displaced Gedeos (Gedeo IDPs) as a case study. In doing so, considering that Ethiopia is a state party to numerous human rights treaties, it assesses the obligations of the State as applicable to internally displaced persons. A qualitative method is adopted to gather relevant data for this paper, and the data is obtained from both primary and secondary sources. Finding that the measures taken as durable solutions in the case of Gedeo IDPs exhibit a certain disregard for the human rights obligations of the State towards internally displaced persons, this paper recommends that the planning and implementation of durable solutions to internal displacement should be based on human rights considerations of members of the affected community, and requires a serious commitment by the government to observe its obligations.





INTRODUCTION AND BACKGROUND

In recent years, Ethiopia has been experiencing internal displacement of a large number of people induced by conflict, inter-communal violence, natural disasters and other impacts of climate change. Reports indicate that an estimated four million people are currently internally displaced across the country. Among the recently internally displaced persons (IDPs) are those, numbering close to a million, in Ethiopia's Gedeo Zone (in Southern Nations, Nationalities

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See IOM, National Displacement Report 2021: Ethiopia https://dtm.iom.int/reports/ethiopia-%E2%80%94-national-displacement-report-10-august-september-2021) (accessed 6 October 2022).

and Peoples' (SNNP) Region)) and West Guji (in Oromia Region) due to an inter-communal conflict triggered by competition for land and resources.²

Many have accused the government of lack of effective response to the situation, including for failure to officially recognise several thousands of people as IDPs and failure to facilitate humanitarian access. As noted by the UNHCR, the Gedeo-West Guji situation is one of those characterised by the limited presence of humanitarian

responders or the reduction in the overall response capacity, resulting in serious gaps in response to the situation, compounding existing and creating new protection concerns and leaving durable solution opportunities unmaterialised.3 Currently, the government and other stakeholders are taking various measures to support the IDPs and bring durable solutions for the displacements. However, the measures that have been taken, in particular with durable solutions being implemented in the case of the Gedeo IDPs, seem to disregard the human rights obligations of the State towards IDPs. Accordingly, this paper aims to explore a human-rights based durable solution to internal displacement induced by inter-communal conflict in Ethiopia, taking the situation of Gedeo IDPs as a case study. It is written with the

underlying belief that durable solutions to internal displacement such as the case of Gedeo IDPs highly depend on human rights considerations of members of the affected community and commitment by the government to undertake its state obligations vis-à-vis those rights.

It is noted in a 2021 IOM report that 'In April and later in June 2018, conflict which was aggravated by competition for land and resources broke out between Gedeo and Guji Oromo tribes in West Guji. It is estimated that by August 2018, 748,499 IDPs were displaced from the Gedeo-West Guji conflict alone'. See https://reliefweb.int/report/ethiopia/ ethiopia-national-displacement-report-8-site-assessment-round-25-villageassessment> accessed 6 October 2022. For a recent (2022) UNHCR update on the situation see https://data.unhcr.org/en/ documents/download/9415 >(accessed 6 October 2022).

³ UNHCR 'Response to internal displacement in Ethiopia: January to June 2021' https://data.unhcr.org/en/documents/download/88756 (accessed 6 October 2022).



METHODOLOGY

A qualitative method is adopted to gather relevant data for this paper, and the data is obtained from both primary and secondary sources. Primary data is obtained through semi-structured interviews with returnee members of the Gedeo IDPs and officials at Zonal. Woreda, and Kebelle levels in which the IDPs are displaced and returned to. The participants were selected by purposive sampling, and their responses were collected by data enumerators who speak the community's local language. On the other hand, secondary data is obtained through desk analysis of various documents, including legal and policy documents, human rights instruments applicable to the situation and other relevant literature.

Legal and policy context

A. International human rights law instruments

The African Convention for the Protection and Assistance of Internally Displaced Persons (the Kampala Convention)⁴ is the most relevant international human rights law instrument applicable to the context. Though the Kampala Convention is meant to address directly the issue of IDPs, other international human rights instruments ratified by Ethiopia also could be applicable depending on the situation. These include the International Covenant on Civil and Political Rights (ICCPR),⁵

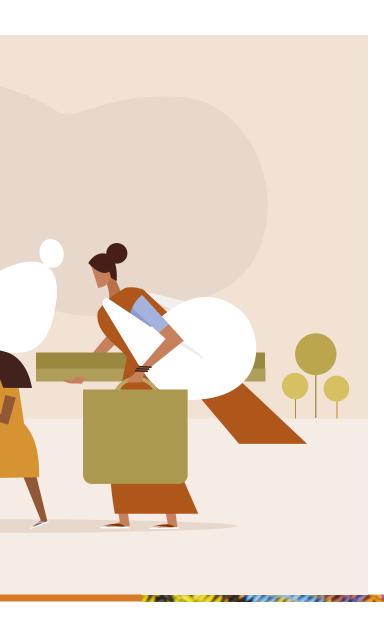
the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ the Convention on the Rights of the Child (CRC)⁸, the Convention on the Rights of Persons with Disabilities (CRDP), the African Charter on Human and Peoples' Rights (ACHPR),⁹ and the African Charter on the Rights and Welfare of the Child (ACRWC).

- 1966, entered into force 23 March 1976) (ICCPR).
- 6 International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) (ICESCR).
- 7 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 03 September 1981) (CEDAW).
- 8 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 02 September 1990) (CRC).
- 9 African Charter on Human and Peoples' Rights (adopted 01 June 1981, entered into force 21 October 1986) (ACHPR).



⁴ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Adopted 23 October 2009, entered into force 06 December 2012) (Kampala Convention).

⁵ International Covenant on Civil and Political Rights (adopted 16 December



The Kampala Convention is the first of its type and the only legally binding human rights document that specifically addresses the rights of IDPs.¹⁰ The protection provided to IDPs in other pertinent international and regional human rights instruments was considered when the Convention was drafted. The vast number of human rights documents in the Convention's preamble makes this clear.¹¹ Consequently, it can be deduced

that the protections included in the aforementioned regional and international human rights agreements are subject to the Convention's substantive content and scope of application.

Concerning the substantive protections entrenched in it, the Kampala Convention classifies the right of IDPs in three phases. It provides for the protection

Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions.

¹⁰ It has to be noted that in Africa, in addition to the Kampala Convention, member states of the Great Lakes Region (Angola, Burundi, Central African Republic, Congo, Kenya, Rwanda, Sudan, Uganda and Zambia) adopted a Protocol on the Protection and Assistance to Internally Displaced Persons in December 2006; the Protocol entered into force in June 2008.

¹¹ The following regional and international human rights instruments are recalled in the preamble of the Kampala Convention:
The 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva

of IDPs from displacement, protection during displacement, and the provision of humanitarian assistance. The Convention stipulates that state parties to the Convention are obliged under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to the arbitrary displacement of persons.¹²

IDPs are to be protected during displacement if states cannot prevent displacement or if displacement is unavoidable. The obligation and responsibility of states to provide protection and humanitarian assistance to internally displaced persons within their territory or authority without discrimination of any kind is one of the most crucial safeguards during displacement.¹³ Particularly, the Convention offers vulnerable groups special protection. States are, therefore,

The Convention emphasises durable solutions. Accordingly, state parties are obligated to 'seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity. The other important component of a durable solution is the right to compensation for IDPs. Therefore, the Convention stipulates that states parties shall provide persons affected by displacement with effective remedies; establish an effective

Domestic legal and policy framework

i. The FDRE Constitution

When the supreme law of the land in Ethiopia, i.e. the FDRE Constitution, ¹⁷ is read in the context of IDPs, one could observe a provision that obliges the government to take 'measures to avert any natural and man-made disasters, and, in the event of disasters, to provide

obliged to offer IDPs with special needs extra security and assistance, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases.¹⁴

legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to IDPs for damage incurred as a result of displacement.¹⁶

¹² Art 4(1), Kampala Convention.

¹³ Art 5(1), Kampala Convention.

¹⁴ Art 9(2)(c), Kampala Convention.

¹⁵ Art 11(1), Kampala Convention.

¹⁶ Art 12(1)(2), Kampala Convention.

¹⁷ FDRE Constitution (1995). Proclamation No. 1/1995, A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year, No. 1, 21st August 1995 (FDRE Constitution).

timely assistance to the victims. In addition to this constitutional stipulation, Article 9(4) of the FDRE Constitution provides that international human rights instruments ratified by Ethiopia, which includes the Kampala Convention, are part and parcel of the law of the land. This means that the Kampala Convention and relevant provisions of general and special international human rights instruments ratified by Ethiopia apply to the situation of IDPs in the country. Moreover, the specifically provided human rights protections in the Constitution also apply to IDPs as appropriate. 19

ii. The Kampala Convention Ratification Proclamation

Ethiopia signed the Kampala Convention on 22 October 2009 and ratified it on 13 February 2020 through the Kampala Convention Ratification Proclamation No. 1187/2020.²⁰ It should be noted that, although ratifying the Kampala Convention can be viewed as a positive step forward, the ratification Proclamation is replete with declarations and reservations.²¹ Article 3 of the Proclamation provides reservations and declarations that will, arguably, curtail the scope of application of the Convention.

One of the reservations entered by Ethiopia is on the issue of compensation. Article 3(2) of the Ratification Proclamation states that 'compensation is due when displacement results from expropriation procedures'. Regarding displacement due to natural and man-made causes,

Ethiopia has only committed to providing humanitarian assistance.²² Additionally, Ethiopia has disclaimed responsibility for compensating IDPs for harm caused when it fails to protect and help them in the event of natural disasters, which is recognised under Article 12(3) of the Convention.²³ Moreover, Ethiopia has reserved to avoid the African Court of Justice and Human Rights jurisdiction.²⁴

Regarding declarations, Ethiopia has made declarations on the following provisions of the Convention: article 1(k), article 5(6), and article 5(7).²⁵ It is argued that such reservations and declarations will negatively affect the protection of IDPs as recognised in the Convention. Yet, it can

¹⁸ Art 89(3), FDRE Constitution.

¹⁹ See Chapter 3 of the FDRE Constitution.

²⁰ African Union Convention (Kampala Convention) for the Protection and Assistance of Internally Displaced Persons in Africa Ratification Proclamation No. 1187/2020 (Kampala Convention Ratification Proclamation).

²¹ Ethiopia has entered its reservations on arts 12(2), (3), and 22 of the Kampala Convention.

²² Art 3(1)(a), Kampala Convention Ratification Proclamation.

²³ See art 3(1)(b), Kampala Convention Ratification Proclamation.

²⁴ Art 3(1)(c), Kampala Convention Ratification Proclamation.

²⁵ Art 3(2), Kampala Convention Ratification Proclamation.

be argued that, though Ethiopia may not be liable under the Convention as such, IDPs whose human rights are violated but could not establish recourse under the Convention due to the reservations and declarations could still resort to other avenues through other relevant international human rights instruments and domestic laws.

iii. National Durable Solutions Initiative

In 2019 Ethiopia launched the National Durable Solution Initiative (DSI) for IDPs. The initiative was developed under the auspices of the Ethiopian government, national and international NGOs, and donors.²⁶ The DSI sought to support durable solutions for IDPs at five

The policy level focuses on mainstreaming the issues of displacement in key policy/ strategy documents. The legislative level supported the ratification of the Kampala Convention and the development of implementing legislation and policy.²⁸ The institutional level seeks to strengthen the coordination and operations of the federal and regional levels working for groups on durable solutions and seeking to enhance a whole of government approach to durable solutions. The planning level focuses on mainstreaming the issues of displacement in regional spatial plans, city-wide structure plans, and neighborhood development plans. The focus of the operational level is

When durable solutions are provided to IDPs, their vulnerability resulting from their displacement ends, and hence they can resume leading the typical lives they did before being displaced. The Ethiopian Durable Solutions Initiative notes that 'durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their

levels.²⁷ These are the policy, legislative, institutional, planning, and operational levels.

implementing area-based, comprehensive, government-led and community-driven programmes in areas of voluntary return, relocation or local integration, supporting internally displaced households to find individual solutions (e.g. through microfinancing or portability of social protection entitlements), and mainstreaming solutions into development programmes and humanitarian action.

²⁶ National Durable Solution Initiative of Ethiopia https://ethiopia.un.org/sites/default/files/2020-01/DSI%20
Ethiopia%20low%20res.pdf> (accessed 7 September 2022).

²⁷ As above.

²⁸ Since the Convention was ratified after the launch of the initiative, it can be noted that the DSI has succeeded at its legislative level aim.

displacement'.²⁹ The effectiveness and appropriateness of such durable solutions can be measured in light of 'reinstating' IDPs to the normal life they had been living before the displacement. In this regard, three types of durable solutions are suggested in the United Nations Guiding Principles on Internal Displacement: viz. returning them to their place of habitual residence, local resettlement in places where they have temporarily resided as IDPs (reintegration), and settlement in other places in the country other than places of habitual residence and temporary settlement (relocation).³⁰

Experts note that these alternatives can be taken as durable solutions if certain conditions are fulfilled. The conditions, inter alia, are 'enjoying the protection of the

29

state of nationality (citizens) or residence; the voluntariness of the decision to return or settle elsewhere; the prevalence of safety and security in areas of settlement or return; real prospects for restitution of or compensation for the lost property; no discrimination in the enjoyment of their rights, and equal access to public services and economic opportunities.'31 These objectives and standards serve as a benchmark for evaluating the effectiveness of the relevant durable solutions. In other words, finding a durable solution does not involve the simple reintegration of IDPs into society or their relocation to another region of the country.

ANALYSIS OF FINDINGS BASED ONTHE CASE OF GEDEO IDPS

The legal and policy instruments discussed above recognise that IDPs are entitled to humanitarian assistance and protection of their rights. While these entitlements are to be ensured as provisional measures, the law stresses durable solutions as a permanent measure. It stipulates that IDPs must be returned to their habitual residence, relocated to other places, or reintegrated voluntarily. Finding one of these durable solutions based on the consent of IDPs is the obligation of the state. In this section, measures taken by the Ethiopian government in relation to ensuring durable solutions in the case of Gedeo IDPs will be analysed.

As noted above,³² the Ethiopian DSI recognises that 'durable solution is

National Durable Solution Initiative (n 26).

The United Nations Guiding Principles on Internal Displacement 1998, Principle 28(1).

³¹ Handbook for the Protection of Internally Displaced Persons (Global Protection Cluster Working Group, March 2010) 323.

² See sec B, iii.

achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. In relation to this, it is widely accepted that returning IDPs to their place of habitual residence, local resettlement in places where they have temporarily resided as IDPs (reintegrating), and settlement in other places in the country other than places of habitual residence and temporary settlement (relocation) are the three alternative types of durable solutions.

It is found that the reason for the displacement of the Gedeo IDPs relates to inter-communal conflict triggered by competition for land and resources between the Gedeo and Guji communities in the West Guji area. ³⁵ Recent data indicates that the Gedeo IDPs have been returned to their original place of residence. This indicates that the returning alternative has been implemented as a durable solution for the IDPs. Accordingly, this paper focused on analysing and drawing lessons from issues related to the return process and protection of rights of the returned IDPs.

According to the local officials and returnees, the Gedeo IDPs have returned to their places of residence based on their full and free consent. However, the data shows mishaps, in particular implicating on the durability of the solution accorded to these IDPs. This is because effectiveness of the solution chosen, i.e. returning of the

The respondents from the returned IDPs indicated that their properties were destroyed by the conflict that caused their displacement. All the respondents noted that the government took no measure to recover their properties during the process and at the time of return. The usual justification narrated by the local government officials is that the property is destroyed during the conflict and the

IDPs to their place of habitual residence, in addition to the voluntariness of the decision to return by the IDPs, depends on various other conditions, including having real prospects for restitution of or compensation for the lost property owing to their displacement; no discrimination in the enjoyment of their rights, and equal access to public services and economic opportunities upon their return.³⁶

³³ National Durable Solution Initiative (n 26).

The United Nations Guiding Principles on Internal Displacement 1998, Principle 28(1).

³⁵ See https://reliefweb.int/report/ethiopia-national-displacement-report-8-site-assessment-round-25-village-assessment>(accessed 6 October 2022).

Handbook for the Protection of Internally
 Displaced Persons (Global Protection
 Cluster Working Group, March 2010)
 323.

identity of the perpetrators remains unknown. The officials assert that it is impossible for the government to avail remedies for the loss of property suffered by the IDPs due to this reason. This is despite the State being duty-bound to take all appropriate measures to resolve disputes relating to the property of IDPs per article 11(4) of the Kampala Convention. Additionally, according to the DSI, facilitating restitution of land and other property and addressing other challenges related to housing, land, and property rights is one of the interventions in ensuring durable solutions that are envisaged by the Ethiopian government.

The returnee respondents stated that upon their return, they were able to get shelter but have so far been unable to have the household utensils and furniture the authorities promised them. This is in contradiction with the duty of the State to establish conditions that allow relocated IDPs and returnees to live safely, and with

dignity, as provided in article 11(1) of the Kampala Convention and article 11(1) of the ICESCR.

Returnee IDPs have the right to education as provided in Article 41(4) of the FDRE Constitution and article 13(1) of the ICESCR. Specifically, the importance of access to education for relocated communities and returnees is also emphasized in the National Durable Solution Initiative. In the case of Gedeo IDPs, schools and educational infrastructures were damaged by the conflict that caused their displacement. Officials noted that various measures are being taken in collaboration with NGOs to repair the damaged infrastructure and ensure access to education for the returnee community's children. However, irrespective of the measures taken so far, the current data reveals that students cannot return to schools and resume their education fully. Consequently, the percentage of dropouts has increased.

Additionally, the infrastructure and capacity of existing schools in the return area do not meet the needs and number of returnee children.

On the other hand, analysis of secondary data indicates that the government has been accused by many of lack of effective response to the situation from the start of the displacement, including for failure to officially recognise several thousands of persons as IDPs and failure to facilitate humanitarian access. As noted by the UNHCR, the Gedeo-West Guji situation is one of those characterised by the limited presence of humanitarian responders or the reduction in the overall response capacity, resulting in serious gaps in response to the situation, compounding existing and creating new protection concerns and leaving durable solution opportunities unmaterialised.³⁷ This flags

^{37 &}lt;https://data.unhcr.org/en/documents/download/88756> (accessed 6 October 2022).

concerns related to the commitment of the government to ensure the durability of the return solution accorded to the IDPs based on a human rights approach.

RECOMMENDATIONS

To the government

- There is a need to adopt a comprehensive durable solution planning and implementation policy and strategies;
- 2. There is a need to put in pace a mechanism to keep and regularly update statistics of IDPs in all cases of internal displacement, and provide effective response corresponding to each respective case;
- When situations that create internal displacement occur, take appropriate measures to protect the property of IDPs from

- destruction or appropriation, and avail mechanisms to ensure the recovery or compensation of lost property of returnee IDPs;
- Establish efficient institutional framework that coordinates and facilitates the provision of humanitarian assistance to IDPs and other support required to ensure durable solutions for returnees;
- 5. Consider withdrawing the reservations made to the Kampala Convention on compensation and the jurisdiction of the African Court of Justice and Human Rights since this will negatively affect the protection of the rights of IDPs recognised in the Convention.

To humanitarian actors and civil society organisations

- 1. Assist the government in availing adequate response required by each case of displacement and regularly strengthen their response capacity to avoid gaps in ensuring the rights of IDPs; and
- 2. Strengthen advocacy activities on the rights of IDPs, and provide support to ensure effectiveness of the durable solution being implemented for IDPs.



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