

7.2: International Standards and Afghanistan’s Law on Prisons and Detention Centers

Summary

This chapter provides an overview of the standards and obligations set forth by the United Nations for the treatment of prisoners and the management of custody institutions in the context of Afghanistan’s Law on Prisons and Detention Centers.

Introduction

“The goal of a correctional system is to provide various degrees of confinement in a safe (for the offender and staff), secure, humane, and transparent manner, and to provide programs that give offenders the opportunity to reform and successfully reintegrate into society. A correctional system should support the rule of law, protect and advance human rights, and contribute to the stability and security of the country.”¹

The United Nations has developed international standards to help protect the rights of individuals who are detained or imprisoned. The Standard Minimum Rules for the Treatment of Prisoners (UN Rules),² along with the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment,³ and the Basic Principles for the Treatment of Prisoners⁴ provide a “comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned.”⁵ Specific standards and guidelines have been further developed for the treatment of women and juveniles including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,⁶ the Beijing Rules,⁷ the Riyadh Guidelines,⁸ and the

¹ *A Practical Guide to Understanding and Evaluating Prison Systems*, United States Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL), Bureau of Democracy, Human Rights and Labor (DRL), Bureau of Consular Affairs, A/GIS/GPS, May 2012, p. 6 (hereinafter *A Guide to Prison Systems*): <http://www.state.gov/documents/organization/210347.pdf>.

² United Nations Standard Minimum Rules for the Treatment of Prisoners 1955 (hereinafter UN Rules): http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988: <http://www.un.org/documents/ga/res/43/a43r173.htm>.

⁴ Basic Principles for the Treatment of Prisoners, A/RES/45/111, 14 December 1990: <http://www.un.org/documents/ga/res/45/a45r111.htm>.

⁵ *Human Rights and Prisons: Manual on Human Rights Training for Prison Officials*, United Nations Office of the High Commissioner for Human Rights (OHCHR), 2005, p. 14, para. 42: <http://www.ohchr.org/Documents/Publications/training11en.pdf>.

⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113, 14 December 1990: <http://www.un.org/documents/ga/res/45/a45r113.htm>.

⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), A/RES/40/33, 29 November 1985: <http://www.un.org/documents/ga/res/40/a40r033.htm>.

Bangkok Rules.⁹ The UN standards, although not legally binding, are widely accepted internationally. These standards together with international treaties that set forth obligations of States Parties related to human rights - including but not limited to the International Covenant on Civil and Political Rights,¹⁰ the Convention Against Torture,¹¹ the Convention on the Rights of the Child,¹² and the Convention for the Elimination of All Forms of Discrimination Against Women¹³ - provide a foundation for the treatment of prisoners and detainees.

No universal international obligation exists to govern the operations of all corrections systems. Each sovereign nation is governed in accordance with its laws and the international obligations it has assumed. This chapter will look at the UN standards and obligations in the context of Afghanistan's correctional system.¹⁴ Afghanistan has committed to treat every prisoner equally with respect to Islamic principles and human rights and to build and adjust the physical condition of detention facilities and prisons in line with UN standards.¹⁵ Moreover, as a States Party to the ICCPR and the Convention Against Torture, as well as other treaties, Afghanistan is committed to the humane treatment of individuals detained or imprisoned with the objective of reformation and social rehabilitation.¹⁶ This chapter compares Afghanistan's Law on Prisons with the UN Rules as it relates to the general conditions of freedom deprivation facilities and Afghanistan's commitment to humane treatment and rehabilitation of prisoners.

⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), A/RES/45/112, 14 December 1990: <http://www.un.org/documents/ga/res/45/a45r112.htm>.

⁹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, 21 December 2010: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/229.

¹⁰ International Covenant on Civil and Political Rights (ICCPR): <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

¹² Convention on the Rights of the Child: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

¹⁴ For a more detailed comparison of international standards and Afghanistan's laws regulating prisons and detention centers see *Basic Training Manual for Prison and Detention Center Workers on the practical application of Constitution of Afghanistan, Law of Prisons and Detention Centers and Prison and Detention Center's Regulations for Management Affairs*, Instructor's Version, United Nations Office on Drugs and Crime (UNODC) and the International Institute of Higher Studies to Criminal Sciences (ISISC): http://www.unodc.org/documents/afghanistan/Prison_Reform/Basic_Training_Manual_for_Prison_and_Detention_Centre_Workers.pdf.

¹⁵ Islamic Republic of Afghanistan, Law on Prisons & Detention Centers, 2007 (hereinafter Law on Prisons), Articles 3 and 23. Unofficial English Translation by the UNODC: http://www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf; see also Presidential Decree No. 85 (2012) amending the Law on Prisons to reflect the move of the GDPDC from the MOJ to the MOI.

¹⁶ Afghanistan accessed to the ICCPR on 24 January 1983. See United Nations Treaty Collection (UNTC), ICCPR: http://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSOnline&tabid=1&mtdsg_no=IV-4&chapter=4&lang=en#EndDec; Afghanistan ratified the Convention against Torture on 1 April 1987. See UNTC, Convention against Torture: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec.

General Conditions of Detention Centers and Facilities

The Constitution of Afghanistan:¹⁷

Article 24

Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law.

Liberty and human dignity are inviolable.

The state shall respect and protect liberty as well as human dignity.

Article 25

Innocence is the original state.

The accused shall be innocent until proven guilty by the order of an authoritative court.

The Law on Prisons and Detention Centers (Law on Prisons) governs all civilian physical places of custody in Afghanistan.¹⁸ The law defines detention centers as “a place where the accused individuals awaiting their trial are held” and prisons as “a place where individuals after the final decision of the court are held.”¹⁹ The Law on Prisons states:²⁰

(1) Detention centers and prisons shall be built in accordance with the Islamic principles and United Nations standard principles and terms.

(2) [The] Ministry of Justice is required to adjust the existing detention centers and prisons construction with the Islamic principles and United Nations norms and standards.

As discussed in Chapter 7.1, the responsibility for all prisons except juvenile rehabilitation centers was transferred from the Ministry of Justice (MOJ) to the Ministry of Interior (MOI) in January 2012. In 2012, a Presidential Decree amended the Law on Prisons only to reflect the move of the GDPDC from the MOJ to the MOI.²¹

The UN Rules seek “to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.”²² In general, the UN Rules

¹⁷ 2004 Constitution of Afghanistan (Translated by Sayed Shafi Rahel for the Secretariat of the Constitutional Commission)(hereinafter Constitution), Articles 24 & 25:

http://supremecourt.gov.af/Content/Media/Documents/constitution2004_english3012201016726844.pdf.

¹⁸ The Law on Prisons does not currently address the Afghan National Detention Facility (ANDF) or ANDF-Parwan administered by the Ministry of Defense.

¹⁹ Law on Prisons, *supra* note 15, Art. 7.

²⁰ *Ibid*, Art. 23.

²¹ Presidential Decree No. 85 (2012).

²² UN Rules, *supra* note 2, para.1.

require: a valid commitment order and proper registration; separation of prisoners according to legal status, gender, and age; adequate light (both natural and artificial), ventilation, sanitation, food and potable water, medical care; and access to legal aid, recreation, and visitors.²³

In line with the Afghan Constitution and the UN Rules, the Law on Prisons states that an individual can only be deprived of his liberty upon a court order.²⁴ Moreover, every person entering a detention facility must be registered including “their background, legal status, medical checkup, and medical history [and] any other relevant information.”²⁵ As discussed in Chapter 3.3: Case Management System, the Ministry of Interior along with the other relevant Afghan justice institutions have adopted a uniform case management system that includes a standard registry book.²⁶

The Law on Prisons also requires an initial assessment of the accused or prisoner in order to properly classify the individual.²⁷ Classification is based on the type of crime alleged, the personality and behavior of the individual, and the common sentiment of the group.²⁸ Individuals are required to be separated according to gender and age.²⁹ Men and women should be held in separate facilities; juveniles should be in a separate facility; and individuals between the ages of 18 and 25 should be separated from the older detainees and prisoners.³⁰ The General Directorate of Prisons and Detention Facilities (GDPDC) initiated a classification system in 2008 in order to meet these obligations. To date, nearly 30,000 prisoners have been classified.³¹

The physical conditions of confinement, including the size of the cells, the amount of light, ventilation, and heating are the responsibility of the Ministry of Interior with support from the Ministry of Health.³² The UN Rules do not set forth a specific cell size, but rather state: “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”³³ The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment of Punishment has suggested a single occupancy cell should be seven square meters and a collective accommodation cell to provide at least four square meters per prisoner.³⁴ The U.S.

²³ Ibid.

²⁴ Law on Prisons, *supra* note 15, Art. 2.

²⁵ Ibid, Art. 29.

²⁶ See Chapter 3.3: Case Management System for an overview of the case management system and standard registry book adopted by the Afghan justice institutions.

²⁷ Law on Prisons, *supra* note 15, Art. 29.

²⁸ Ibid, Articles 5(2) & 29.

²⁹ Ibid, Art. 9.

³⁰ Ibid.

³¹ INL Afghanistan Pakistan Office (INL/AP), Corrections Programs in Afghanistan Factsheet, Updated January 2014.

³² Law on Prisons, *supra* note 15, Art. 24(3).

³³ UN Rules, *supra* note 2, para 10.

³⁴ Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 April

Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) along with other international and non-governmental organizations have adopted the International Building Code and require 3.4 square meters of living space per person.³⁵ Afghanistan has adopted a two square meter space per prisoner without bed space. Afghanistan's Prisons and Detention Center's Regulation for Management of Affairs (Prison Regulation) states that each cell "shall as much as possible meet the following requirements:"³⁶

- i. Allocation of two square meter space for each prisoners or detainees without bed space;
- ii. Windows shall be large enough to allow sufficient natural light and ventilation to enter into cells;
- iii. Artificial lights shall be provided in all cells, halls and common areas to provide sufficient lighting;
- iv. Heating and cooling systems shall be installed in each prison and detention center's cell by keeping in mind seasons of the year and in accordance with the specific norms;
- v. Cells in each prison and detention center shall be equipped with beds, bed sheets, blankets, mattresses, pillows and necessary equipment and utensils;
- vi. All sanitary and hygienic requirements shall be met.

"In order to observe the sanitary and hygienic rules and regulations, the doctor-in-charge is required to control the daily food provided for detainees and prisoners and inspect at least twice a week their cells and other services provided for them."³⁷ Prisoners and detainees are to be provided "proper and healthy food and water."³⁸ The Prison Regulation requires three meals a day except during Ramadan when food is provided in accordance with the tenants of Ramadan.³⁹ The GDPDC, in coordination with the Ministry of Health, is required to provide free health care.⁴⁰

The UN Rules provide that every prisoner should have at least one hour of open air exercise a day.⁴¹ Prisoners and detainees in Afghanistan are entitled to two hours of recreation a day.⁴² In

1999, p. 35, para. 80: <http://www.cpt.coe.int/documents/prt/2001-12-inf-eng.pdf>.

³⁵ INL/AP Corrections System Support Program (CSSP) Briefing April 2013.

³⁶ Islamic Republic of Afghanistan, Prisons and Detention Center's Regulation for Management of Affairs 2007 (hereinafter Prison Regulation), Art. 15(1)(i). Provided by INL/AP.

³⁷ Law on Prisons, *supra* note 15, Art. 27(3).

³⁸ *Ibid*, Art. 25.

³⁹ Prison Regulation, *supra* note 36, Art. 14(1) & (5).

⁴⁰ Law on Prisons, *supra* note 15, Art. 27(1).

⁴¹ UN Rules, *supra* note 2, para. 21(1).

⁴² Law on Prisons, *supra* note 15, Art. 26.

exceptional circumstances the warden may reduce the recreation time to no less than one hour a day, but the relevant prosecutor must be notified.⁴³

The UN Rules provide for supervised communication – by correspondence and visitation - with family and reputable friends.⁴⁴ Prisoners and detainees in Afghanistan are entitled to contact through supervised meetings, letters, and “any other means that does not disrupt order” with family members who have been listed in their file.⁴⁵ Visitations may occur one to three times per month and each visit can last up to one hour.⁴⁶ If a family member has traveled 30 kilometers or more the warden may allow an additional hour of visitation.⁴⁷ Afghanistan’s Constitution guarantees every individual the right to counsel.⁴⁸ Prisoners and detainees are by law allowed to meet confidentially with their attorney without any restrictions.⁴⁹ The right to counsel and access to legal aid are discussed in Chapter 3.5: The Afghan Advocate.

Treatment of Prisoners

Afghanistan is a States Party to the International Covenant on Civil and Political Rights (ICCPR), which obligates members to treat individuals deprived of liberty “with humanity and with respect for the inherent dignity of the human person.”⁵⁰ The Universal Declaration of Human Rights, the ICCPR, as well as the Convention against Torture, to which Afghanistan is a States Party, forbid torture, or cruel, inhumane or degrading treatment, or punishment.⁵¹

The UN Rules provide that disciplinary actions may not be more restrictive than necessary to maintain safe custody and order.⁵² What constitutes a disciplinary offence and the consequences must be defined in the law or prison regulations.⁵³ Any disciplinary action must be in accordance with the law or regulation.⁵⁴ The UN Rules completely prohibit as punishments for disciplinary offences “[c]orporal punishment, punishment by placing in a dark cell, and all cruel,

⁴³ *Ibid*; see also Prison Regulation, *supra* note 36, Art. 19.

⁴⁴ UN Rules, *supra* note 2, para. 37.

⁴⁵ Law on Prisons, *supra* note 15, Art. 31; see also Prison Regulation, *supra* note 36, Art. 28(2).

⁴⁶ Prison Regulation, *supra* note 36, Art. 28 (1) & (4).

⁴⁷ *Ibid*, Art. 28(4).

⁴⁸ Constitution, *supra* note 17, Art. 31.

⁴⁹ *Ibid*, Art. 28(6).

⁵⁰ ICCPR, *supra* note 10, Art. 10(1). Afghanistan accessed to the ICCPR on 24 January 1983. See UNTC, ICCPR: http://treaties.un.org/Pages/ShowMTDSDetails.aspx?src=UNTSO&tabid=1&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

⁵¹ See Universal Declaration of Human Rights, Art. 5:

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf; ICCPR, *supra* note 10, Art. 7;

Convention against Torture, *supra* note 11. Afghanistan ratified the Convention against Torture on 1 April 1987.

See UNTC, Convention against Torture: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec;

⁵² UN Rules, *supra* note 2, para. 27.

⁵³ *Ibid*, para. 29.

⁵⁴ *Ibid*, para. 30(1).

inhuman or degrading punishments.”⁵⁵ In addition, the use of restraints, “such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment.”⁵⁶ The UN Rules state that the use of restraints should be determined by the central prison administration and cannot be applied for any longer than necessary and only in the following circumstances:⁵⁷

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

The Constitution of Afghanistan forbids torture and punishment contrary to human dignity.⁵⁸ The Law on Prisons requires every prisoner to be treated equally with respect to Islamic principles and human rights:⁵⁹

The staff of detention centers and prisons, attorneys, judges and other people who deal with prisoners in a way [are] required to respect Islamic orders and human rights while performing their duties and dealing with the detainees and prisoners, they should treat them equally and impartially irrespective of their tribe, citizenship, religion, race, color, gender, language and social and political status, etc.

Prisoners’ rights “cannot be restricted or taken away ... except when the order, discipline and security of the detention centers and prisons are in jeopardy. In this case, the Minister of [Interior] can partially restrict these rights temporarily. Reasons of rights restriction should be recorded in a file.”⁶⁰ The law provides that separate bills should establish the order and discipline of prisons, rewards and punishment, and the circumstances warranting the use of physical force against prisoners or detainees.⁶¹ Prisoners and detainees are required to abide by the order and discipline of prisons as established in the relevant bills.⁶² Prisoners can be awarded

⁵⁵ Ibid, para. 31.

⁵⁶ Ibid, para. 33.

⁵⁷ Ibid, para. 33 & 34.

⁵⁸ Constitution, *supra* note 17, Art. 29.

⁵⁹ Law on Prisons, *supra* note 15, Articles 3(1).

⁶⁰ Ibid, Art. 4(1).

⁶¹ See Ibid, Articles 39, 42, 43 & 46.

⁶² Ibid, Art.39(1).

for good behavior and punished for failing to observe order and discipline.⁶³ Specifically, the Law on Prisons states:⁶⁴

(1) Detainees and prisoners, who do not observe order and discipline, shall be punished by prisons and detention centers authorities as follows:

1 – Warning in private.

2 – Warning in public.

3 – Depriving them of work and other common activities for a maximum period of 15 days.

4 – Repealing their leave grant.

(2) Pregnant women and nursing mothers shall only be punished by keeping in mind the provisions mentioned in clauses 1 and 2 of paragraph (1) of this article.

(3) The duration of the punishment mentioned in clauses 3 and 4 of paragraph (1) of this article regarding men and women between 18 and 25, cannot exceed half of the maximum period.

The use of restraints is not addressed in the Law on Prisons, but the use of physical force against prisoners and detainees is restricted. The Law on Prisons forbids the use of force “unless the detainee or prisoner is escaping, resisting or attacking others or causes disorder which cannot be prevented by any other means but use of force.”⁶⁵ The circumstances warranting the use of force are to be defined in a separate bill.⁶⁶ At the time of this writing several bills addressing order and discipline, rewards and punishment, and circumstances warranting the use of force were in draft form, but not yet approved by the Supreme Council of Prisons.⁶⁷

Reformation and Social Rehabilitation

The ICCPR states the aim of a penitentiary system shall be “reformation and social rehabilitation.”⁶⁸ The UN Rules provide:⁶⁹

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as

⁶³ Ibid, Articles 42, 43 & 44.

⁶⁴ Ibid, Art. 43.

⁶⁵ Ibid, Art. 46(1).

⁶⁶ Ibid, Art. 46(3).

⁶⁷ Information provided by the INL/AP CSSP August 12, 2013.

⁶⁸ ICCPR, *supra* note 10, Art. 10(3).

⁶⁹ UN Rules, *supra* note 2, paragraphs 58 & 59.

possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

The UN Rules set forth standards in support of the rehabilitation of prisoners including the establishment of libraries, educational and vocational programs, social services, religious rights, as well as recreational and cultural activities.⁷⁰

Afghanistan is committed to the objective of reformation and social rehabilitation of individuals detained or imprisoned. According to the Law on Prisons, the purpose of imprisonment is to prevent crime and rehabilitate prisoners; “to prepare and correct the prisoners to abide by the laws and social and moral standards of living, to do the beneficial social work and not commit crimes again.”⁷¹ To that end, and in line with the UN Rules, the law provides for educational and vocational training, employment, social services, religious rights, and the creation of libraries.⁷² The challenges in implementing the law are discussed in Chapter 7.3.

Conclusion

Afghanistan has committed to treat every prisoner equally with respect to Islamic principles and human rights and to build and adjust the physical condition of detention facilities and prisons in line with UN standards.⁷³ Moreover, Afghanistan is committed to the humane treatment of individuals detained or imprisoned with the objective of reformation and social rehabilitation. To that end, the Law on Prisons incorporates many of the standards set out in the UN Rules. The current state of prisons and detention centers in Afghanistan, however, makes it difficult to implement the law. The reality is the prisons are overcrowded, underfunded, and rundown. These challenges and the conditions of the prisons are discussed in the next Chapter.

⁷⁰ See *Ibid.*

⁷¹ Law on Prisons, *supra* note 15, Art. 1(2).

⁷² See *ibid*, Articles 30, 32, 33, 34; see also Prison Regulations, *supra* note 36, Articles 16, 20, 21, 22, 24, and 26.

⁷³ Law on Prisons, *supra* note 15, Articles 3 and 23.

Resources

- A Practical Guide to Understanding and Evaluating Prison Systems, United States Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL), Bureau of Democracy, Human Rights and Labor (DRL), Bureau of Consular Affairs, A/GIS/GPS, May 2012:
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- United Nations Standard Minimum Rules for the Treatment of Prisoners 1955:
http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.
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<http://www.un.org/documents/ga/res/40/a40r033.htm>.
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- Briefing on the UN rules for the treatment of women prisoners and non-custodial measures for women offenders (‘Bangkok rules’):
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http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf;
- The International Covenant on Civil and Political Rights (ICCPR):
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- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture):
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