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Energy sector reforms in Nigeria: Plugging the loopholes in petroleum revenue management

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Abstract

Oil resources are finite while the revenues they generate are huge. The quantum of revenues requires institutionalizing the highest standards of transparency and accountability in the management process for sustainable development of any country. This is besides the volatile nature of oil and gas revenues. An observed fundamental change that took place in the last few decades was the rise in the number of energy consumers in the world to over two billion, most of whom are located in the developing countries. Utilizing composite theoretical and statutory enquiries, the paper examines incidences of centrifugal and unsynchronized streams in oil and gas revenues. The paper identifies negative economic impact due to inability of the government to effectively coordinate crude oil revenue collection in the energy sector. Furthermore, lack of accountability and transparency in the management of revenue processes created huge gap in sharing information across relevant agencies involved in national planning for economic and national transformation.

Keywords: Energy Sector; Oil Resources; Oil Revenue; Transparency; Nigeria

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1. Introduction

The natural priority of a commodity – dependent economy is constructing an integrated micro – macroeconomic planning that seeks to manage resource – wealth on which a nation can bloom in diverse forms. The curious lack of correlation between Nigeria's oil resources and state of development led to the admission in 1985, that:

> *"I concede that we are all dissatisfied with the progress we have so far made. That is natural and progressive. Considering our infrastructural base, our natural resource endowment, our large population of producers and consumers, the dynamism of Nigerians in business, our educated manpower resource and the wealth derived from our oil, Nigeria could have achieved more advances in industrialization, technology, and agricultural modernisation and in raising the standards of living of our people than we have been able to do so far" (Adedeji, 1985).*

Following series of development strategies and discourses Adebayo's subsequent projections for economic outcomes was 'that human and material resources, particularly financial resources, will be well managed and efficiently used to optimize national development efforts'(Adebayo, 1985). Inability to properly manage oil and gas revenues has evolved into a variety of untoward consequences in many countries and characterised as 'resource curse'.[1] Nigeria, through its ongoing energy sector reforms seeks to isolate itself from the category of nations struggling with proper management of its petroleum sector revenues. Oil resources are by their very nature finite; although the revenues they generate can be tremendous. The highest standards of transparency and accountability in the collection management of oil and gas revenues are necessary for sustainable development of the economy in general. This is besides the volatile nature of oil revenues. It has therefore been noted that the petroleum sector may generate a large number of different cash streams that move to the government, for example, bonuses, taxes, royalties, and receipts from the sale of government oil; but there is a question then about which of these should be covered by the law (Bell and Faria, 2007).

The size, international characteristic, and role assumed by the oil industry were noted to have originated from the notion that petroleum is versatile as it currently satisfies a wide variety of energy and related needs. Petroleum is the most vital source of energy, providing over 50 percent of all commercial energy consumption in the world. Given the huge amount of revenue which the industry generates, transparency, accountability and access to information in the management of such revenue becomes even more critical.

Section 44(3) of the Nigerian Constitution vests the Federal Government of Nigeria with overriding powers of control of the nation's natural resource revenue. It enacts thus:

[1] The 'resource curse' – in particular its association with petroleum resources – is the negative economic, political and social effects that are associated with countries that export large amounts of petroleum. It is important to note that it is not the petroleum wealth itself that is not beneficial; rather it is the way that such wealth is managed and distributed and its subsequent impact on socio – economic and political conditions, including institutions and social cohesion that determine whether the benefits outweigh the potential pitfalls. See: Ke Wei, 'The "Resource Curse": Current Schools of Thought and Policy Responses' in Getting it Right: Lessons from the South in Managing Hydrocarbons Economies (United Nations Development Programme, Washington DC 2011).

> *"...the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."*

The effect of the above is to saddle the Federal Government with the responsibility of collection and management of the nation's petroleum revenue; through its numerous agencies (Tullow oil Report, 2012). Over the years however, this responsibility has been fraught with lack of transparency and almost absolute inaccessibility of information on petroleum revenue. There is no gainsaying that management elongates life span; and it is the space between progress and retrogression; development and underdevelopment.

This paper seeks to examine petroleum revenue management in Nigeria in the light of transparency, accountability and access to information in the Petroleum Industry Bill 2012. It further argues that the multiplicity of the sources themselves as well as the multiple agencies responsible for their collection calls for overt supervision to ensure accountability and transparency.

2. 2. Sources of petroleum revenue: Pre – Petroleum Industry Bill

Under the pre – PIB regime, petroleum revenues are essentially statutory. This represents an arrangement consistent with general principles governing the imposition of financial burdens on 'persons'. Consequently, revenue sources extend to regular taxes including royalties, signature bonuses and rents on companies operating in the downstream, midstream and upstream oil and gas sectors as well as the mining industries. The revenues are statutorily required to be remitted into the Consolidated Revenue Fund of the federal government. Section 80, sub – section 1of the 1999 CFRN provides that:

> *"All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation."*

Further, sub – section 3 of the Constitution makes emphasis on prior authorisation to precede depletion of the fund in this manner:

> *"No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly"*

However, varied sources of revenue have bypassed the statutory fund and incidentally provided widening loopholes for non – remittances, wastages and losses in crude oil sales and transactions. The enormity of wastages has been succinctly itemised in a recent report commissioned by the Nigerian Extractive Industries

Transparency Initiative (NEITI) 2009 – 2012. In a striking indication of unaccounted revenue and shortfalls, the report catalogued shortfalls to include the following:

i. Over 2.5billion barrels reported as total crude oil production. This is made up of 780.9 million barrels produced in 2009, 894.5 million barrels produced in 2010 and 866.2 million barrels produced in 2011.

ii. Total revenue of $143.5 billion earned from equity crude sales, royalty, signature bonuses, taxes etc.

iii. N3 Trillion made up of N1.4 Trillion fuel Subsidy claims by NNPC and N1.60 trillion payments to other independent marketers reported as total Subsidy payments.

iv. N175.9 billion reported as disparity between subsidy claims paid from the Federation account and that made by the PPPRA.

v. Nigeria lost over 136million barrels estimated at $10.9 billion to crude oil theft and sabotage within the period.

vi. 10million barrels valued at $894 million lost as a result of pipeline vandalism in downstream operations.

vii. N4.423 billion reported as over-recovery from some marketers is yet to be remitted to the Federation account.

viii. NNPC and two other companies are yet to refund N3.715billion being over-recovery for the period 2009-2011.

ix. No agreed pricing methodology between NNPC and the companies for the determination of fiscal values for royalty and PPT computations.

x. MOU for joint venture partners JVs which expired in 2008 yet to be renewed.

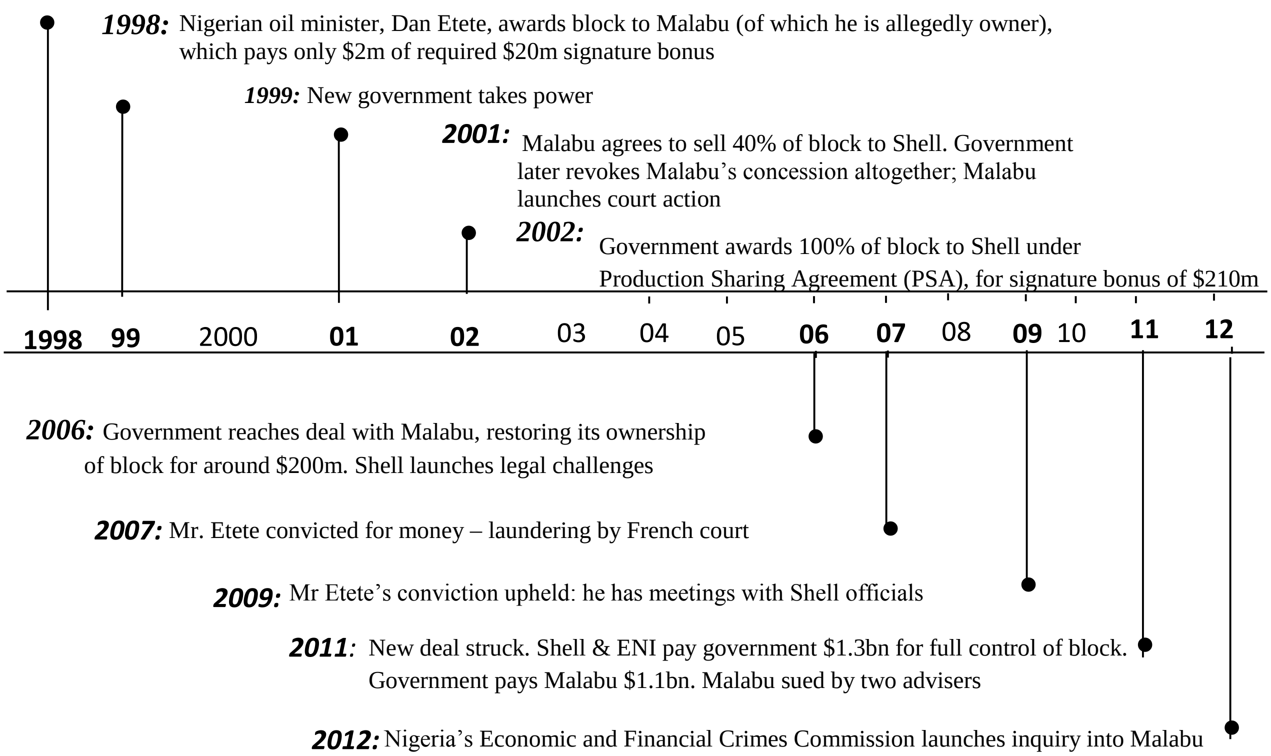
xi. Companies covered by JVs still use expired MOU in their transactions with Nigeria, resulting in revenues loss of a difference between NNPC and covered entities positions of over $1.7billion (The Punch, 2013)

3. Leakages in oil revenue streams

Shortfalls in oil earnings evoke different reactions from governments, operators in the industry and stakeholders generally. The real losers remain the populace where accountability is lacking. Recently, for example, the Nigeria National Petroleum Corporation (NNPC) debunked allegations by the Chairman of the House of Representatives Committee on Finance, Abdulmumin Jibrin, that the corporation had not remitted over N320 billion to the Federation Accounts Allocation Committee. The acting Group General Manager, Public Affairs, NNPC, Tumini Green, had stated that "We refer to a statement credited to Chairman, House of Representatives Committee on Finance, alleging that the NNPC has short-changed the Federation Accounts Allocation Committee to the tune of N320.654 billion between January and September.'' The acting GGM maintained that the figure did not emanate from the NNPC, adding that it only existed in the imagination of the lawmaker. The acting GGM noted that the management of NNPC had been operating an open-door policy and would have responded if the member had requested to be informed on the issues raised (Premium Times, 2013)

Losses are represented by unpaid taxes through evasion and avoidance by companies operating in the Nigeria oil, gas and mining industry. While tax evasion is criminal, tax avoidance is not. Further, losses occur through underassessment and underpayment of statutory payments to governments due to weak institutional frameworks for effective collection and management of revenues.

Pass the Parcel: The saga of Nigeria's Oil block OPL 245 – $1.09b Malabu Oil Deal:



Source: The Nation (2013) Pass the Parcel, The Economist (2013), Safe sex in Nigeria.

In a weak regulatory regime, what trickles to government through taxation are derived from external process such as may be initiated by non – governmental organisations, foreign governments and the judicial system. Consequently, sustained loss of oil and associated revenues is a continuing focus of concern and research to scholars and observers in the Nigeria petroleum industry. The local media commentaries draw public awareness and possible legislative response. A recent indicator pointed to the loss of approximately $680bn to corruption in the oil sector. This figure represents an annual estimate of loss largely due to sharp practices and apparently, lack of transparent and competitive process in the bidding process for oil bloc and oil – related contracts. It further results from non adherence to strict rules and international best practices (Disu, 20123) Isolating this problem, there is a projection that is capable of being resolved if Nigeria could muster the courage at the political level to begin the process of cleansing the stable (Disu, 2013). Scholars have attributed success of government in approaches that represent economic administration best practices capable of optimizing resource management and ensuring political dividend. Fukuyama suggests for example, " … four approaches: (1) procedural measures, such as the Weberian criteria of bureaucratic modernity; (2) capacity measures, which include both resources and degree of professionalization; (3) output measures; and (4) measures of bureaucratic autonomy. It rejects output measures and suggests a two-dimensional framework of using capacity and autonomy as a measure of executive branch quality. This framework explains the conundrum of why low-income countries are advised to reduce bureaucratic autonomy while high-income ones seek to increase it (Economists, 2013). Alternative approaches point to measures that are capable of ensuring quality outcomes, especially those that seek to "to bring market-like incentives into the public sector through creation of exit options, competition, manipulation of wage scales, shortening of accountability routes, and better methods of monitoring and accountability (Disu, 2013).

Nigeria, comparable to other African states struggle to reposition its resource and administrative priorities as noted in a report that:

> *"African governments are beginning to accept the importance of good governance, not least for improving the lot of the poor. Rulers travelling on presidential planes strut their stuff at the World Economic Forum in Davos and declare their undying interest in "capacity-building". Behind the jargon a remarkable change is taking place. The default means of allocating power in Africa now is to hold elections, and elections are generally becoming fairer. Skeptics rightly bemoan voter fraud and intimidation, and plenty of polls are still stolen. But the margins of victory that autocrats dare to award themselves are shrinking. Indeed, quite a few have discovered, in forced retirement, that by allowing notional democracy they have started something they cannot stop (Economists, 2013).*

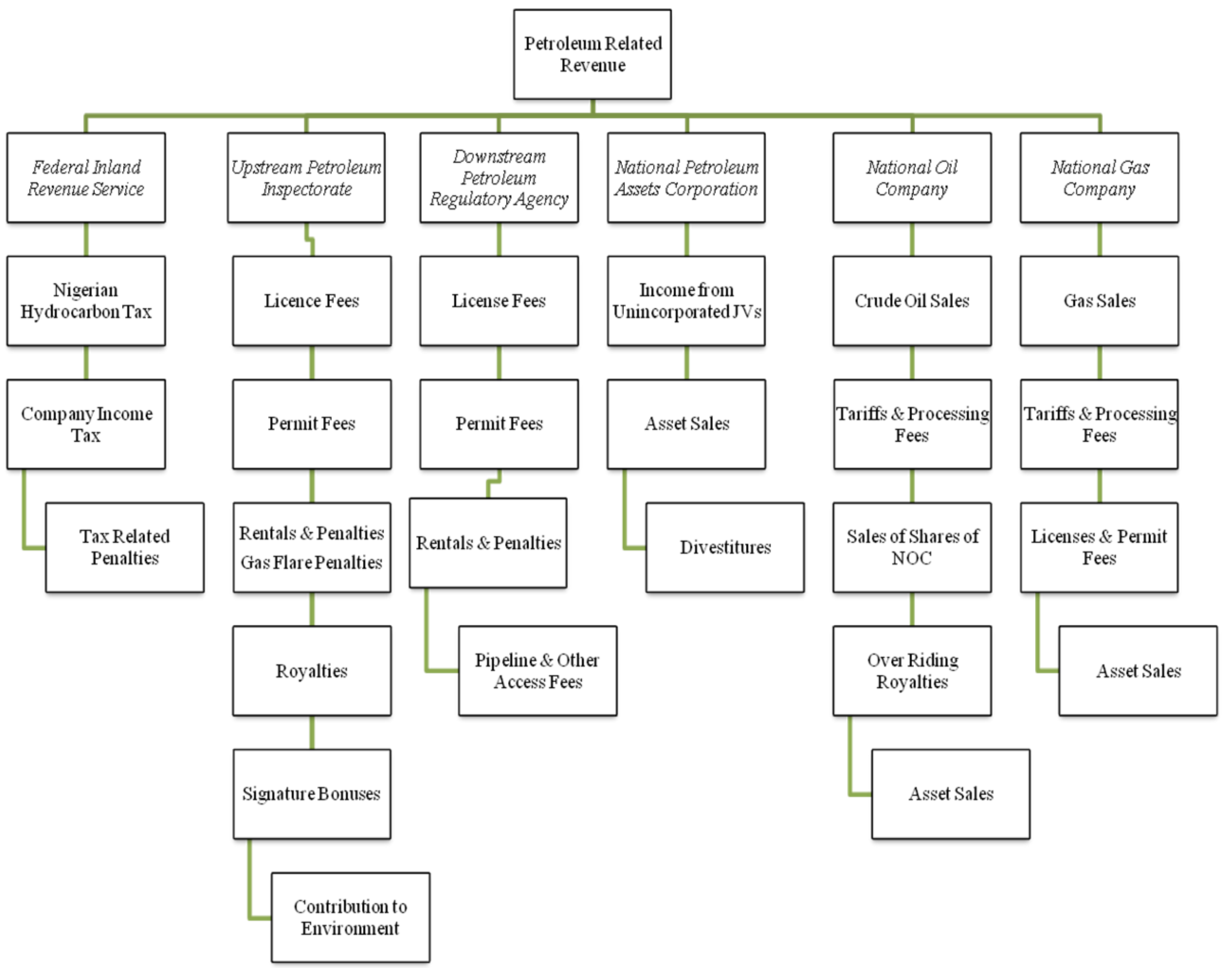
This observation compares the perennial weakness in many Africa's institutions on the one hand and the systemic predisposition to conduct government businesses without concern to remote outcomes on the other. Citing for example, that:

> *"Governance in Côte d'Ivoire is rarely as good as it looks. Bribes still solve problems faster than meetings. The opposition spitefully boycotted the most recent elections. Deep cleavages run across the political landscape. And yet the national accounts are in order, debts are coming down and new roads are being built. This is the picture in much of Africa. The allocation of power is becoming fairer and its use more competent, as in Ghana, though there is much more to do, especially in resource-rich nations like Nigeria (The Economists, 2013).*

3.1. Sources of revenue under PIB

The Petroleum Industry Bill has emerged as a complete overhaul of the current legislations regulating the sector, many of which have become obsolete or are out of tune with the 21st century realities or international best practices. The Bill is intended to be an Act for establishment of the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, and establishment of guidelines for the operation of the upstream and downstream sectors. The PIB is a most welcomed development in the industry as it promises the revamping of regulations in the sector and infusion of best practices, which will in turn ensure more rapid and decipherable development in the sector. In addition to establishing a more robust, accountable and transparent oil and gas industry, the PIB would also serve to consolidate a plethora of laws, statutes and regulations which regulate the Nigerian oil and gas industry and would, if passed, reform, review and streamline existing legislations, in order to deliver a fair, economic return for Nigeria as well as for investors.

Figure (i)



Source: Petroleum Industry Bill 2012

The Bill vests the property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the Exclusive Economic Zone and the extended continental shelf in the sovereign state of Nigeria for and on behalf of the people of Nigeria (PIB/section 2). This is in consonance with the Constitution. It further proposes that the management and allocation of petroleum resources and their derivatives in Nigeria shall be conducted strictly in accordance with the principles of good governance, transparency and sustainable development of Nigeria by providing for an orderly, fair and competitive system; clear and effective legal and institutional frameworks for organising petroleum operations; and a fiscal regime that offers fair returns on investments while optimising benefits to the Nigerian people (PIB/section 3).

i. The Upstream Petroleum Inspectorate established pursuant to Section 13 of the Bill is empowered to compute, Assess and ensure payment of Royalties, rentals, fees, and other charges for Upstream Operations (PIB/15(91) (S)).
ii. The Downstream Petroleum Regulatory Agency is empowered to issue, and renew licences, permits or other authorizations, and modify, amend, extend, suspend, review, cancel and reissue, revoke or terminate such licences, permits or other authorizations (PIB/section 45 (1) (i)).
iii. The National Petroleum Assets Management Corporation is established by Section 120 to acquire and manage investments of the Government in the Nigerian upstream petroleum industry.
iv. The Federal Inland Revenue Service has the responsibility for the administration of PART VIII relating to the assessment and collection of the Nigerian Hydrocarbon Tax, and is empowered by Section 299 (2) of the PIB to play a supervisory and management role in the assessment and collection of taxes. Further, the Service may do all such acts as are necessary and expedient for the assessment and collection of the tax and shall account for all the amounts collected. No mention is however made for the modalities which the FIRS will adopt in ensuring that the revenue collected will make it into the federation Account.

The Petroleum Industry Bill is silent on the procedure for remittance of the petroleum revenue from the different sources into the Federation Account. This raises the question of some revenue avoiding the Federation Account, since the Federation Account is created to hold "All Revenue" accruing to the Federal Government. Anything short of this would appear opaque and unconstitutional.

It has been expressed that transparency can help make up for the deficits of even weak institutions, as civil society, the press, and responsible elements of government can use such information to demand accountability and to press for reform. While it may be impossible to directly pay all revenue accruing to the Federal Government direct from source, the same cannot be said for the various collecting agencies and institutions.

An overt way to track petroleum income is to make their receipt public; this will help ensure that they are channelled into the right account, because then they have to be accounted for. In Ghana for example, Clause 8 of the Petroleum Revenue Management Act 2011 (PMRA) requires the publication of records of petroleum receipts in national newspapers and online. Successful natural resource management requires government accountability to an informed public (Precept 2 of the Natural Resource Charter). Lack of transparency and as such defeats the NEITI objective which is to, among other things; ensure due process and transparency in the payments made by all extractive industries to the Federal Government and statutory recipients (NEITI Act, 2007).

4. Plugging the loopholes

The multiplicity of leakages that exist in revenue sources and management in Nigeria create significant concerns for proper planning for development objectives in Nigeria. Recently, the Chairman of the House Committee on Finance disclosed that the House of Representatives have unearthed the pilferage of the sum of N320.654 billion from the coffers of the government. According to the report, the amount is a shortfall in the payments for Joint venture Cash calls (i.e. cost of production) and petrol subsidy payments to the government from January to September 2013 (Guardian, 2013).

While it is not certain that the losses will abate under the evolving legal regime, institutional measure necessary to remedy the situation could be implemented through establishment of credible safeguards. The IOCs given benefit of the doubt under an unequivocal legal obligation for fiscal declarations could be made revenue agents for purposes of strengthening federal governments collecting capabilities. Further, various revenue agents could further be required to make quarterly accounts on accruable revenues to government and held accountable for shortfalls in the remittances. Under Nigeria taxing systems, self assessment is not unfamiliar. Lack of reliance in the effectiveness of the taxing measure suggested is not sufficient to discountenance its utilization in the process. Particularly considering that the process contemplated is sufficiently cost – effective, more integrated and structurally unitary for an effective revenue management regime, notwithstanding complex processes in the emerging regime.

5. Conclusion

Transparency across revenue streams, collections and appropriation is imperative. The need for robust supervision cannot be over emphasized. A framework should be put in place to provide, among other things, a procedure for remittance, oversight of the numerous agencies, and ensure that petroleum revenue makes it into the federation account. This is imperative given the various streams of income as well as the agencies responsible for their collection.

There is also a glaring need for the use of information technology and sophisticated electronic process in promoting access to information relating to petroleum revenue management; and all ancillary data.

Strict compliance with relevant statutory requirements has its challenges, especially considering exigencies and misconceptions with rule of law. An allusion to the latter indicates inherent difficulties but requiring clarity in institutional and oversight guidelines in breaches. Fukuyama for example notes that:

> *"The rule of law is defined differently by different scholars and can mean, alternatively, law and order, property rights and contract enforcement, observance of substantive Western norms of*

human rights, and constitutional constraints on the power of the executive. Some scholars have distinguished between rule by law, in which the executive uses law and bureaucracy as an instrument of power, and rule of law, in which the executive is itself constrained by the same laws that apply to everyone else. In many respects rule by law overlaps with state quality, as we want states to operate by general, transparent, impartial, and predictable rules. Rule of law in the narrow sense of constitutional constraints on the executive, on the other hand, is closely associated with democracy (The Economist, 2013).

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