

Gender Legal Reforms in Zambia: Motivated by International Conventions

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Abstract In 2023, Zambia ranked 17th among African countries on the World Bank’s *Women Business and the Law* index, a notable decline over a half century. The practice of protecting the rights of women is more precarious still, as around ninety percent of land and family disputes are handled by customary courts, which do not recognize advancements in the law as regards women’s rights. The two waves of legal changes that have taken place during the 1970-2023 period to improve women’s rights were the result of ratification of international treaties, the Convention on the Elimination of All Forms of Discrimination against Women in 1985 and the African Women’s Rights Protocol in 2006, suggesting that external motivation played a primary role in gender legal reforms in Zambia. Each wave of reform has taken over a decade to permeate into domestic law. The biggest challenge that stands in the way of increasing women’s rights in practice is the divergence between law on the books and customary law.

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Introduction

According to the World Bank's *Women Business and the Law* (WBL) Index, which measures gender inequality in the law, Zambia ranks 86th of 190 countries in 2023, with a score of 81.3 out of 100 (World Bank, 2023). This places Zambia 17th among African countries, a notable decline from its ranking (6th among African countries) in 1971. The World Bank has identified ten legal reforms in two waves of change that have advanced the equal treatment of women in the law over the past half century, ranking the country around the global average in terms of equal legal treatment of women and men.

This legal progress runs counter to the United Nations' *Gender Inequality Index*, created on the basis of health, women's empowerment and labour market indicators in practice. The United Nations rank Zambia 138th out of 191 countries on the practice of gender equality (UNDP 2022). This is a large difference between the World Bank and United Nations rankings and one not seen in our previous study of gender reform in another African country, Rwanda (Sinha and Djankov 2023). The apparent discrepancy between laws and practice in the equal rights of women and men is the motivation for this case study of gendered legal reform in Zambia.²

Gender disparities in Zambia are high in various economic and social dimensions. For example, the female labour force participation rate for those aged 15 years and over is 54% in 2021, lower than the 66% mark for males. Only fifteen percent of parliamentary seats were held by women in 2022, indicating the weakness of women's political power in Zambia (Inter-Parliamentary Union, 2022). In terms of education, although girls' primary school enrolment rates are higher than for boys, the proportion of the female population entering secondary education is about ten percentage points lower than that of males, due to early marriage and

² The divergence between law on the books and its implementation in practice is studied in other fields of institutional development, for example in public procurement law (Bosio et al 2022).

adolescent births (UNDP 2022). Gender-based violence remains prevalent in Zambia. According to the 2015 Zambia Demographic and Health Survey, 29% of women aged 15-49 experienced intimate partner violence in the past year (Central Statistical Office, 2017).

The disadvantaged position of women is often attributed in previous academic studies to Zambia's dual system of statutory and customary law (for example, Tripp et al 2008). Customary law contains traditional patriarchal rules that take into account prevailing culture and this customary law is practiced in local courts. Customary law consists of the unwritten rules of each of Zambia's 73 ethnic groups. Since these rules have never been unified or codified in Zambia, the term 'customary law' does not refer to a single common system accepted in the whole country but to customary laws regulating the rights, liabilities and duties of the different ethnic groupings in the different regions of Zambia. The exclusion of customary law from the anti-discrimination provisions of the Constitution perpetuates unequal gender practices. For example, the Constitution guarantees equal property and inheritance rights for men and women. However, since 94% of land in Zambia is under customary law, inheritance by men is a matter of custom (Japan International Cooperation Agency 2016).

During the colonial era Zambia also employed a dual system of law. The colonial regime recognised customary law, especially in the areas of property and family law. Article 14 of the Royal Charter of Incorporation of 1889 provided that in the administration of justice careful regard was to be had of the customs of the class, tribe or nation to which the parties to a dispute belonged (Himonga 1989; Coldham 1990).

The 1929 Native Order-in-Council, which was established to administer the local customs and traditions of the indigenous people of Zambia, also recognised the customary courts. These were initially called the native courts and were presided over by chiefs and paramount chiefs (chiefs of chiefs). There was also a territorial jurisdiction which similarly distinguished between paramount and junior chiefs. Whereas a paramount chief could deal with

cases in the whole of his territory, a junior chief or headman could only deal with disputes in his sub-territory (Coldham 1990).

The deleterious effect of customary law and courts on the equal legal treatment of women go beyond constitutional rights. Although the Zambian marriage law sets the minimum age for marriage at 21 years, for example, it excludes any customary law from this requirement. This omission has resulted in a child marriage rate of 29% for females and 3% for males in 2021 in Zambia, measured as the percentage of population aged 20 to 24 who are married before the age of 18 (UNDP 2022).

Customary law is presided over by the chiefs of the local courts who field loyalty to the government under the Chief Act. Chiefs can invoke statutory law, which means that local court rulings do not always contravene statutory law (Keller 1989). It however takes time for the customary law to accept the changes so that the statutory reforms take effect in practice (Gould 2012; Tripp et al 2008).

Legal change in Zambia is often dictated by external factors – the ratification of various international conventions - unlike in other African countries like Rwanda, where legal change in the protection of women’s rights has been motivated by domestic economic and social development (Sinha and Djankov 2023). This finding illustrates the beneficial role that some international institutions can play in a country’s development path.

2. Customary law in Zambia

Article 23 of the Constitution of Zambia recognises the application of customary laws in matters impacting on family matters, especially those of women and children, and property matters. Customary law places women in a subordinate position to men with respect to property, inheritance and marriage (Taylor 2006). Under the traditional customs prevalent in most ethnic groups in Zambia, all rights to inherit property are vested in the family of the deceased husband.

However, the aim of the Intestate Succession Act, 1989 (Act 5 of 1989) was to ensure that women get a share of the joint estate. In terms of the Act the children of the deceased man equally share 50 per cent, the widow receives 20 per cent, the parents receive 20 per cent and other relatives receive 10 per cent (Mwenda 2006). A 1996 amendment to the Act provides that the widow's 20 per cent share may be divided equally with any other woman who can prove a marital relationship with the deceased man, thus granting inheritance rights to other wives (Machina 2002).

In practice, 'property-grabbing' by the relatives of the deceased man is widespread, particularly in the jurisdictional areas of local courts, which account for 94% of the territory of Zambia. These courts often use the Local Courts Act to override the provisions of the Intestate Succession Act. The fines mandated by the latter for property-grabbing are low and as a result widows receive little or nothing from the estate. This view is supported by the fact that when the Zambian Constitution was reviewed in 1996, the Bill of Rights was not expanded to include the rights of women and children (Riutta 2007).

Regulation of traditional courts was consolidated in the Native Courts Ordinance of 1936. The formalization of the status of these courts was motivated, in part, by the establishment of native courts, beginning in the 1920s and 1930s, in urban areas populated by individuals of diverse ethnicity from various parts of Zambia. Increasing urbanization provided a boost to the application of customary law that had originated in homogenous village communities. Local customary courts were formally established after independence under the Local Courts Act of 1966 (Hoover et al 1970). The introduction of the local courts was also intended to increase the standing of the customary courts to a national level. According to chapter 29, section 12 of the Local Courts Act, customary law should be implemented in the local courts, unless it is against the written law.

The local courts were intended to separate chiefs from the administration of justice. This objective failed to take into consideration that chiefs are the custodians of the customary justice system and were instrumental in the development of the local courts. Hoover et al (1970) point out that only Zambia and Malawi had not integrated their dual court systems to overcome the colonial past. While there has been structural unification of the judiciary through the Constitution and the Local Courts Act, the substance of the law applied by the local courts remains separate from the law applied in the Supreme Court, the High Court, and the subordinate courts.

Gender-based discrimination occurs because the local court system is based on traditional practices and norms which do not favour women, especially where a crime is committed by a male. Forced early marriages are considered normal. Defilement is not always treated as a crime in the customary justice system. A 13-year-old girl may be forced into an early marriage, a situation that will be accepted by customary law. Because local practices are valued in what is customary in specific situations, such a case, if taken to the chief's court, will not be heard because the practice is still considered acceptable (Zambia Law Development Commission 2004).

The reach of customary law is estimated to be well over ninety percent. For example, in the four years between 2016 and 2019, Zambian courts recorded 61,000 divorces. Sixty thousand marriages were dissolved in Zambia's customary courts, while 1,000 marriages were dissolved in the High Court of Zambia and its subordinate courts. These statistics do not show the full extent to which marriages were contracted by custom because many marriages in rural Zambia are unrecorded, particularly those including minors. In reality, an even higher share of marriages falls under customary law (Munshya 2021).

Customary Land covers 94% of the country and the Customary Land Law affects the great majority of Zambian women. Allan (1965) provides a synopsis of land tenure

arrangements prevailing in customary areas in Zambia. His explanation draws on the findings of Gluckman (1941, 1943) on the customary land-holding systems of Central and Southern Africa. Gluckman explains that chiefs do not allot the land directly to their subjects who use it. Rather, land is allocated to sub-chiefs who in turn allot shares to village headmen. At the village level, the headman allot land to heads of sub-sections or heads of families and they distribute land to their dependants. This hierarchical system is at odds with property rights under formal law.

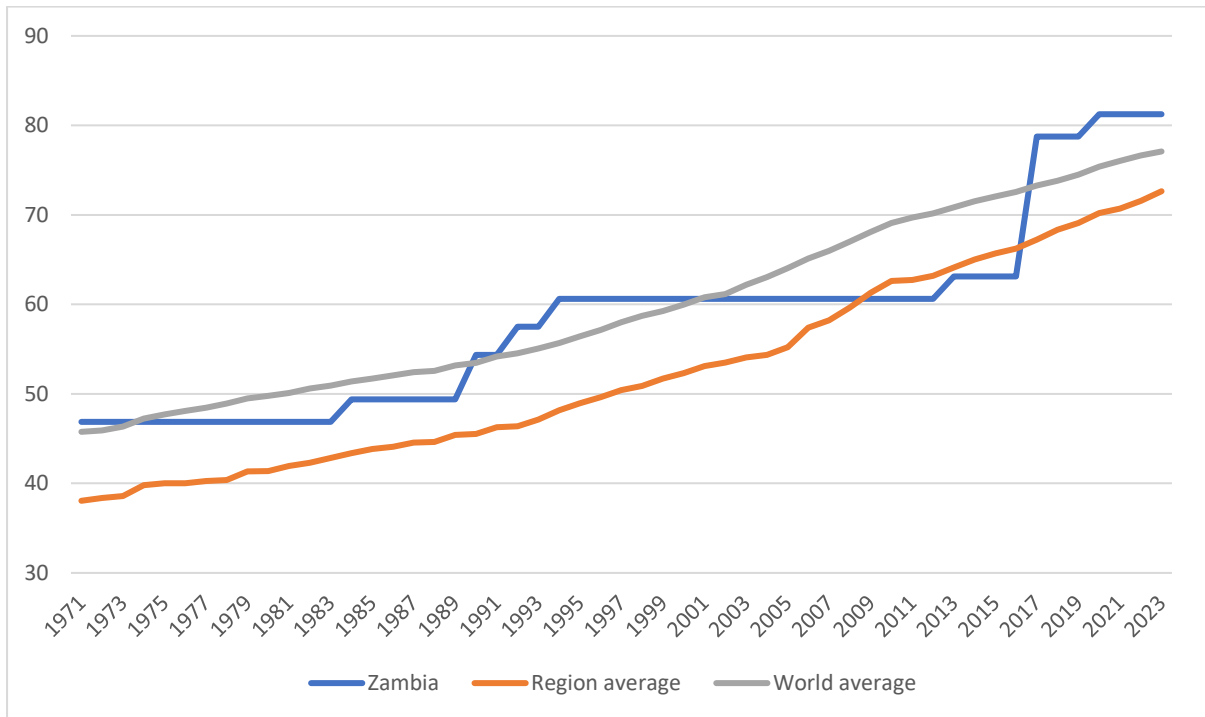
3. Gender law reform in Zambia

The *Women Business and the Law* (WBL) index, described in Hyland et al (2020, 2021), measures the extent of gender equality in the laws of 191 countries from 1971 to the present. The index covers the following aspects of economic and social life: mobility, workplace, pay, marriage, parenthood, entrepreneurship, assets and pension. Figure 1 shows the trend in the WBL index from 1971 to 2023 for Zambia, Africa's average and the global average. Over a period longer than half century, the data show that Zambia started with formal law providing more legal protection of women than either the continental or global average. Zambia ended in 2023 having stronger legal rights for women than the average African country or the average country in the world, though its relative position on the African continent went down from 6th to 17th on the WBL index.

In 1971, Zambia ranked sixth in Sub-Saharan Africa in the WBL index, behind the Seychelles, Eritrea, Ethiopia, Nigeria and Uganda. It was not for another dozen years in 1983 that some progress on the legal rights of women was made with the enactment of the Employment (Amendment) Act. This legislation was intended to eliminate discriminatory practices against women workers on pregnancy-related grounds. In the early 1990s, following Zambia's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985, additional measures relating to inheritance, work

restrictions and hiring were implemented. Despite initial above-average performance, the subsequent twenty-year period of stagnation in domestic legal reform left Zambia behind the pace of world and regional advancements of women’s legal rights.

Figure 1: Progress in Gendered Legal Reform, 1971-2023



Note: The figure follows the evolution of the WBL index. Source: World Bank’s WBL dataset, accessed March 27, 2023.

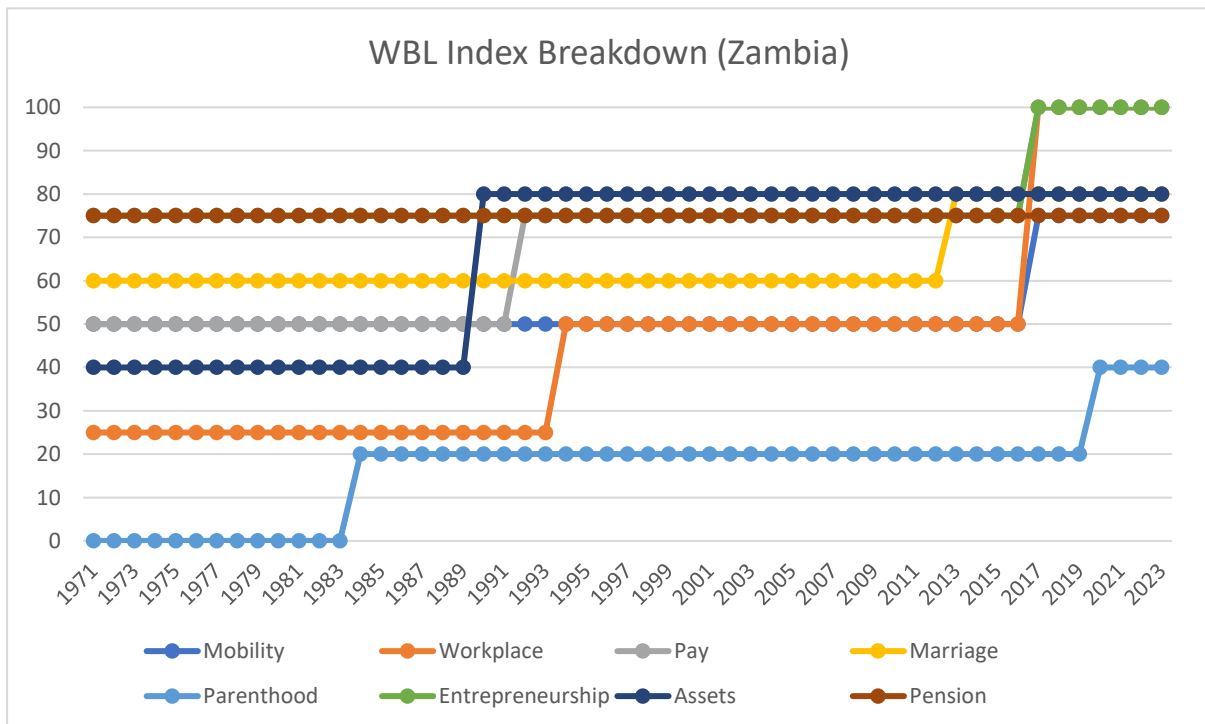
Although various global agreements were ratified and parliamentary bills were introduced during the next two dozen years, no significant progress was made until the 2010s, first with the adoption of the Anti-Gender-Based Violence Act, 2010 (Act 1 of 2011). The establishment of the Ministry of Gender in 2012, coupled with the revision of the National Gender Policy in 2014, paved the way for the introduction of the Gender Equity and Equality Act in 2015 and led to Zambia’s restoration to an above-average global position in the WBL Index (Parliament of Zambia 2015).

It is helpful to look at the breakdown of the WBL index (Figure 2) to understand the specifics of the changes in law. The parenthood sub-index stands out as an outlier. Despite

improvements as early as 1983 due to the ban on firing pregnant workers, it was only 35 years later that the increase in maternity leave has contributed to a further increase in this sub-index. However, even in 2023, the parenthood sub-index is below the regional average of 45 and the world average of 55.6 (World Bank, 2023). This is because maternity pay, parental leave and paternity leave are poorly covered under existing laws.

Legal reforms in Zambia occurred mainly in 2 time clusters, namely around 1990 following the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985; and the enactment of the Gender Equity and Equality Act in 2015, following the ratification of the African Women’s Rights Protocol (2006). In the 1990s, the Zambian government introduced several acts to align the Zambian Constitution with CEDAW, resulting in improvements in legal protections for women in the areas of assets, pay and the workplace.

Figure 2: Breakdown of WBL Index into eight sub-areas in Zambia from 1971 to 2023



Note: The figure follows the evolution of the eight WBLsub-indices from 1971 to 2023. Source: World Bank’s WBL dataset, accessed March 27, 2023.

The 2015 enactment of the Gender Equity and Equality Act led to improvements in the legal rights of women in the pay, entrepreneurship, workplace and mobility areas. As a result, most of these sub-indices exceed the world average in 2023, with the exception of the mobility area. In the interim period between these two waves of reforms, a legal reform targeting gender-based violence was adopted in 2011 and contributed to an improvement in the marriage WBL sub-index. It, too, can be traced to the CEDAW ratification twenty-five years earlier. The lessons are two-fold. First, unlike in Rwanda where the motivation for legal reform was home-grown, legal change in Zambia was motivated by the ratification of international conventions. Second, perhaps because of this external motivation, it took a long time, sometimes decades, for domestic law to fall in conformity with ratified conventions.

In 2023, Zambia ranked 17th among African countries on the WBL index, a notable decline over a half century. The practice of law is worse still, as the vast majority of land is under customary law and customary courts still preside over family issues in over ninety percent of Zambia's territory.

3.1 Reforms following the ratification of CEDAW

The first United Nations World Conference on Women, held in 1975, proclaimed the next decade as the Decade for Women. The Women's League was formed as a member of the Central Committee of the United National Independent Party (UNIP), which was in power in Zambia at the time. Betty Kaunda, President Kaunda's wife, chaired the Women's League. As the only organisation dealing exclusively with women's affairs, the League put forward several legal reform proposals, such as an equal representation in Parliament and a draft law addressing discrimination in the workplace. These proposals were rejected by Parliament (Geisler 1987). Critics alleged that the League was represented by urban women like Betty Kaunda and hence

did not truly address the needs of the majority of Zambian women (Longwe 1985; Tripp et al 2008).

In 1984, a non-political organization called the Zambia Association for Research and Development (ZARD) was formed by women to conduct research and raise awareness of gender-related legal topics. A year later, in 1985, ZARD successfully lobbied the government to ratify CEDAW (Geisler, 1987; Japan International Cooperation Agency, 1998). The Women's NGO Coordinating Committee (NGOCC) was established in 1985 following the ratification of CEDAW to promote gender equality. Working together, ZARD and NGOCC advocated for the ratification of the post-CEDAW implementation law in 1989, the Intestate Succession Act (Tripp et al 2008). This law granted daughters and widows the same rights as sons and husbands as regards inheriting property. In other words, CEDAW's ratification paved the way for the first wave of legal changes to Zambia's protections of women's rights. It is important to note that customary laws remain exempt from the provisions of the Intestate Succession Act, meaning that women were unlikely to inherit the land if it was owned under customary law.

Following the implementation of the first law prescribed in the CEDAW, Zambia continued to make legislative changes aimed at promoting gender equality. In a working paper published by the ZARD in 1985, examples of other discriminatory laws were highlighted, for example the Employment of Women, Young Persons, and Children Act, which prohibited women from engaging in underground and night-time work (Parliament of Zambia 1933; Longwe, 1985). This law ostensibly protected women but in reality undermined their financial independence. In response to ZARD's lobbying in parliament, in 1991 Zambia eliminated the term "women" from the title of the Act and repealed the section that restricted women's employment opportunities. Even after this legal change, women still faced practical constraints when seeking employment in the mining industry, such as the need for a high-school degree

and state authorization, documents which are not required for male workers (Musonda, 2020; Klaveren et al., 2009).

In 1993, Parliament enacted the Industrial and Labour Relations Act, which included Article 108 that explicitly prohibited gender discrimination in the workplace. This legislation also granted workers the right to take legal action and seek compensation or reinstatement if they were subjected to discrimination. This legal change aligns with Article 11 of the CEDAW. It took nearly a decade after the ratification of the international convention for the various implementation laws to be approved by the Zambian legislators.

3.2 The Anti-Gender-Based Violence Act

Following the legal progress made after the ratification of the CEDAW, Zambia made further international commitments towards legal gender equality, including by signing the African Women's Rights Protocol (2006) (Avocats Sans Frontières, 2017; Japan International Cooperation Agency, 1998). This ratification had the effect of galvanizing a second wave of domestic support for legal rights for women.

In 2006, the Zambian Penal Code was amended to explicitly prohibit gender-based violence (Oxfam GB, 2008). This legal change paved the way for the Anti-Gender-Based Violence Act of 2011. The Act legislates the establishment of local committees to prevent the occurrence of gender-based violence and to provide support to victims of violence (Japan International Cooperation Agency, 2016). The Act addresses disadvantageous provisions in the law, with four legal changes recognised in the WBL Index of that year (2011).

One of the amendments was to explicitly prohibit marital rape. Implementation has been disappointing, however. Data collected by ZARD shows that since 2015, when the amendment came into force, reported cases of gender-based violence increased from 18,088 to 25,121 in 2019 (Ministry of Gender, 2021). Even considering the improved capacity to collect

data and record cases under the new law, the increase in reported cases shows lack of implementation.

As a second important contribution, the Anti-Gender-Based Violence Act specifies the requirement for equal pay for work of equal value. Third, to ensure equal access to financial services between women and men the Act prohibits gender discrimination in the signing of contracts and access to credit. As a result, the sub-indexes for both the workplace and entrepreneurship went up to the full score of 100.

In order to ensure equal rights in life decisions, the Act finally provides a legal basis for women's freedom to choose their place of residence, travel outside the home and choose their occupation in the same way as men. Women were also legally allowed to become heads of household. Practice again lags the law. The proportion of female heads of household only increased from 26.6% to 26.8% between 2012 and 2020 (Ministry of Gender 2021).

3.3 Parenthood

In 2019, the Ministry of Gender successfully pushed through parliament an amendment to the Employment Act to bring paid maternity leave above the 14-week threshold proposed by CEDAW nearly 35 years earlier. Despite criticism by some members of parliament that paid maternity leave may disadvantage women in recruitment, this law is essential to protect pregnant workers in keeping their jobs during the first months after birth. Section 15B of the Employment Act prohibits the dismissal of pregnant workers with stricter language on administrative penalties for non-compliance. In addition to this, the Act updated section 15A to legislate that female workers are entitled to a minimum of 14 weeks maternity leave with full pay, provided they have worked for at least two years.

4. Conclusions

Over the past half century Zambia has implemented two waves of legal changes to improve the rights of women. These legal changes are linked to the ratification of international treaties, suggesting that external motivation played an important role in gender legal reforms in the country.

In Zambia, legal reform often differs from established practice. The country's pluralistic legal system has hindered the practical improvement in women's legal rights, as customary law is exempted from the prohibition of discrimination in statutory law (Byrne, 1994; CEDAW 1991, 1999, 2010; Oxfam GB, 2008; Japan International Cooperation Agency, 2016). For example, customary law allows for child marriage and customarily owned land is inherited by men. Gender inequality will continue to exist as long as the gap between customary and statutory law persists. Although various women's organisations have been advocating for the alignment of customary law with statutory provisions on the rights of women, this change has yet to happen. This may be the only way to see parallel development of outcomes in practice with efforts at legal reform to improve women's rights.

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