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Decentralization in Morocco: Promising Legal Reforms with Uncertain Impact

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In the wake of the Arab Spring, Morocco witnessed street protests demanding, among other things, for the “King to reign but not to rule”. Adopted by referendum on 1 July 2011, the latest Moroccan Constitution was prepared through a year-long participatory process led by a consultative commission. Although it did not fundamentally change the balance of powers at the highest levels of the State, it gave a new impulse to the decentralization process. Article 1 of the new Constitution states “the territorial organization of the Kingdom is decentralized”. It also enshrines the two principles of “free administration” of Local Governments (LGs) and subsidiarity and aims at reinforcing transparency, citizen participation, and governance. The new Constitution has also introduced the principle of “advanced regionalization” to make regions, in addition to municipalities, key levels of LGs in Morocco. In 2015, three Organic Laws (OLs) were issued to specify and operationalize the spirit of the Constitution at the municipal, regional, and prefectural levels.¹

The decentralization process has quite a long history in Morocco. It has consistently been put at the core of the policy agenda for several decades and represented an important research topic for many observers of the political scene. Three different analytical perspectives have been put forward (in conjunction with contextual factors) to explain why and with what consequences decentralization has been put at the core of the policy agenda. The first points to the authoritarian management of LGs, based on the alliance built after independence between the monarchy and rural elites to counter the influence of urban and partisan elites.² Using sophisticated tools (including postponing elections, successively reorganizing electoral maps, increasing the role of deconcentrated authorities), this approach led to the creation of domesticated local elites. Behind the decentralization reforms initiated through municipal charters of 1960 and 1976, researchers have pointed at the centralized and often brutal management of the Moroccan territory and of cities in particular in a context of rapid urban growth.³ A second analytical perspective highlights how decentralization has been presented and used since the 1990s by the Moroccan government as a tool to implement “democratization reforms”. The relative opening up of the political field in the late 1990s and early 2000s led to the emergence of new elites in different fields (entrepreneurship,⁴ real estate,⁵ partisan field,⁶ civil society,⁷ etc.), who have used their local base to claim rights and/or a political role at the local or national level.



Arab Reform Initiative

The third analytical perspective links decentralization to (“good”) governance reforms that focus more on the rationalization of resources, effective investment and the respect of management rules to promote local development rather than on representative democracy.⁸

By 2011, Moroccan municipalities were already entrusted with a wide range of mandates pertaining to the creation and management of a wide range of key services.⁹ Studies have shown how municipalities lack the financial and technical means to implement their missions and remain subject to the strong control of central and deconcentrated authorities.¹⁰ Yet other research has also highlighted the impact of these reforms on local notabilities and mobilization. The development of Hirak al-Rif, a protest movement born in Northern Morocco in 2016 and focused on demands for local and regional development, shows that the issue of local policies and decentralization remain at the core of the political agenda in a post-Arab Spring era.

This article closely examines the recent legal reforms (2011 Constitution and Organic Laws) and looks at the technical and normative arrangements that have been developed in the wake of the Arab Spring to promote decentralization both at the municipal and regional levels. This approach has hardly been used, yet these often-neglected technical arrangements are the fruit of a bargaining process and have a direct political effect. I will show below that beyond the reforms brought by the Constitution and OLs to encourage local democracy and ensure more autonomy for LGs, important uncertainties remain as to their effective implementation on the ground. In addition to the lack of financial resources, the lack of a clear framework and implementing provisions explain that these legal changes remain largely theoretical (despite the fact that about 40 decrees and circulars that have been produced by the Directorate General for Local Governments (DGCL) at the Ministry of Interior to allow for the effective enforcement of the reforms). Contrary to many studies which consider deconcentration (i.e. administrative decentralization)¹¹ as a way to neutralize decentralization reforms,¹² I will also argue that the deconcentration reforms simultaneously initiated with the “régionalisation avancée” (advanced regionalization) could enhance the scope and impact of the decentralization reforms in Morocco.



Enhancing the role of municipalities: remaining uncertainties in implementing the legal changes

A focus on the promotion of local democracy

The 113-14 OL on municipalities of July 2015 provides for a series of innovative measures promoting local democracy. Although the powers of the municipal council have hardly been modified, their institutional functioning includes new and transformative arrangements. For example, public vote has become the rule for all decisions of the municipal council (Article 6), including for the election of the President of the municipal council (mayor) and for that of the Vice-Presidents, who were previously elected through secret ballot. Also, the role of political parties has been further acknowledged to encourage collective action rather than scattered initiatives. For example, to run for mayor,¹³ one needs to have been head of his/her electoral list and to be endorsed by the party (on the condition that the party has ranked among the first five positions in terms of the total number of seats obtained in the municipal council) (article 11).

Transparency and citizen participation have also been enshrined in the new Constitution as key principles of good governance (Article 1). Article 269 of the OL on municipalities states ambitious principles of good governance such as equal access of citizens to public services among others. Furthermore, municipal councils are requested to set up participatory arrangements to enhance dialogue and consultations with citizens and NGOs (Chapter V of Title III of the OL), especially for strategic and investment planning (e.g. the definition, implementation and assessment of the 6-year Municipal Action Plan, Article 119). In particular, the OL also calls for the creation of an Institutional body of Equity, Equal Opportunities and the Gender Approach (*Instance de l'équité, de l'égalité des chances et de l'approche genre*) in every municipality. However, the fact that the operating rules and composition of these Instances aimed at representing civil society are to be defined within the rules of procedure of each municipal council



(Article 120) has not allowed for coherent and harmonized practices. The recent development of a procedures manual in collaboration with UN Women could be an important step towards this objective.

On a more practical basis, the 113-14 OL provides for a series of original provisions aimed at ensuring sound and efficient management of municipal affairs. For example, Articles 273 and 275 demand, respectively, that the mayor makes public the deliberations of the municipal council as well as the budgetary and accounting documents. In addition, the final accounts and financial statements of the municipality need to be published on the LG Official Gazette (Article 277). The possibility to submit municipal management and its bodies to audits is given through Article 274. However, the above-mentioned provisions have hardly, if at all, been implemented so far: municipalities still do not communicate on their budgetary and financial information. As for the LG Official Gazette – created in 1997 – it is currently being updated (which had not happened since 2009). Yet, several initiatives are currently being led by DGCL at the MoI, including through the creation of financial incentives (in the form of investment grants) to encourage decision-makers within municipalities to abide by these legal provisions.

Persistence of a strong administrative control despite the end of the “*tutelle*”

In line with the principle of “administrative freedom” of LGs set out in Article 136 of the new Constitution, the concept of “*tutelle*” (“guardianship”) ensured by the administrative authorities of the Ministry of Interior has disappeared.¹⁴ Despite this new vocabulary, which reflects an important transformation in the understanding of the relations between decentralized institutions and central/deconcentrated authorities, the changes remain limited in practice. The key deliberations of the municipal council which had previously to be “approved” either by the governor¹⁵ or the DGCL¹⁶ to become enforceable have now “only” to receive a visa (*ta’chira* in Arabic) as part of the a legality control and most of them are considered enforceable after a 20-day deadline (Article 118 of the 113-14 OL). However, in practice, governors can refuse to issue visas (or provide a late visa) and municipalities remain very reluctant to enact key decisions without formal



approval by the governor/Ministry of Interior. Whereas municipalities endorse increased legal responsibilities, the ex-ante control of the central government and its representative is far from having disappeared on the ground.

According to the principle of deconcentration, the governor is more than ever the main interlocutor of municipalities. He/she exerts a control of legality over the decisions (*arrêtés*) of the mayor and the deliberations of the municipal council, but the Administrative Court has been empowered to examine any dispute raised by both parties (Article 115 of the 113-14 OL). The Judge is considered competent to determine the revocation of members of the Municipal Council or to dissolve the council. This reinforcement of his/her role, however, does not mean that he/she will intervene much more frequently, as experience has shown that potential issues are still most often resolved through the governor and not through the Court.

The redefinition of municipal mandates: uncertainties remain

The new Constitution and the OL on municipalities have been presented as reforms that increase the mandates of LGs and promote their autonomy. While this clearly applies to regions, this is less true for municipalities, which were already entrusted through the previous reforms with important responsibilities.

The 2011 Constitution has distinguished in its article 140 between the “own competences” (*compétences propres*) of LGs; the competences “transferrable” to them (*compétences transférables*) and the ones “shared” (*partagées*) between LGs and the central government. Title 2 of the 113-14 OL details municipal mandates through the same breakdown (except that it identifies “transferred” competences out of the “transferrable” competencies in the Constitution).

However, the extensions pertaining to the mandates of municipalities are very scarce and not very significant for them. For example, municipalities are now responsible for the “adressage” (i.e. the setting up and updating of a coherent and comprehensive addressing system allowing for better tax collection, etc. – when most of the local taxes are collected by the central government) (Article 85). Also,



Arab Reform Initiative

municipalities are now in charge of implementing the Development Plan and the Rural Development Plan on the opening of new urbanization zones, although the opening and definition of these zones are not defined by municipalities.

The 113-4 OL defines two areas of transferred competences: (i) the protection and upgrading of historical and cultural building heritage like the preservation of natural sites; (ii) the development and maintenance of small and medium-size hydraulic works and equipment (Article 90). These missions are not insignificant, but there is no clarity to date as to how and when these transfers will actually become efficient as the OL *itself* needs to be modified to confirm the existence of new “own competences”. As stated by Article 91 of the OL, “transferred competences are transformed into own competencies of the relevant municipality or municipalities following a modification of this OL”. This means that the so-called “transferred” mandates remain in fact “transferrable”.

The concept of shared mandates introduced by Article 140 of the Constitution has also been included in the 113-14 OL (Chapter 3 of title II). The text specifies that shared mandates are to be implemented jointly with the central Government on a contractual basis, either through the initiative of the central Government or upon demand of the municipality (Articles 88 and 89). These mandates thus do not fall under the sole authority of municipalities. Article 87 of the 113-14 OL details the missions under the competences shared between the central government and municipalities. This important list is derived from three main fields of competence: local economic development and employment promotion; the preservation and development of local cultural heritage and the implementation of the necessary measures to encourage private investment.

Interestingly, many of the missions listed as “shared” competencies in the 113-14 OL represented own competencies of municipalities in the revised Charter of 2009 (which could previously be launched and implemented under the sole responsibility of municipalities). This is the case with the building of socio-cultural, sport and entertainment facilities such as youth or women centres, childcare facilities.¹⁷ As another example, whereas the building and maintenance of primary schools and dispensaries were defined as transferred competences by Article 43 of the 2009 Charter, they are considered to fall under shared mandates by the 113-14 OL. There is no clarity on which objective criteria the shared funding will be



decided upon, nor the type of contracts to be established (contract templates per type of municipality and/or per type of investment, etc.).

In turn, this may hinder municipal initiatives and the definition of local policies. Moreover, the need for setting up transparent institutional channels for the implementation of these shared mandates appears as a key challenge – not only at the municipal level, but also at the regional level. The impact on the ground of the changes introduced will thus depend on the ability of the MoI to further clarify the new “rules of the game” both in terms of autonomy and responsibility of municipalities. Another governance issue at stake pertains to the increasing role of regions, both as LGs and as deconcentrated levels of decision-making.

Advanced regionalization: the need for a joint process of decentralization and deconcentration

The region: a new level of Local Government with key mandates

The principle of “advanced regionalization” was presented as a key constitutional reform in 2011 and has guided important decentralization reforms. Morocco now has 12 regions (as opposed to 16 regions before the reform) with the status of independent legal bodies governed by public law. Their executive assemblies are now elected through direct universal suffrage (Article 135 of the Constitution; Article 9 of 111-14 OL pertaining to regions), thus enhancing the legitimacy of their representatives, and improving accountability before citizens through the same inclusive and monitoring processes used at the municipal level. Whereas the Wali, the highest representative of the central government at the regional level, used to have executive power over the decisions of the council, this mandate has been transferred to the President of the regional council.

Regions have been entrusted with new and large own mandates, including own mandates in two strategic areas: (i) regional economic development (for example,



Arab Reform Initiative

through the creation of economic zones); (ii) regional land use planning (through the creation of the regional territorial development plans (SRAT, schémas régionaux d'aménagement du territoire) and regional development programs (PDR, programmes de développement régionaux). They are also theoretically in charge of vocational training and of inter-urban transportation.

Like municipalities, regions have also been entrusted with ambitious mandates shared with the central government. Most of these mandates remain vaguely defined (e.g. “sustainable development”; “employment”; “encouraging social housing”; “upgrading medinas”). On the basis of the subsidiarity principle, the 111-14 OL also defines the areas of “transferrable” competencies from the central government to the region, which include – besides regional infrastructure and facility – industry, health, business, culture, sport, education, energy, water and environment (Article 94). These potentially massive transfers can only become effective (i.e. transformed into own mandates) through a review of the OL as it now largely hinders the scope of the “transferred competences”.

In contrast to municipalities, regions have also been provided with significant sources of funding to fulfill their new missions.¹⁸ They benefit from new fiscal transfers as they are allocated 5% of the personal and corporate income taxes, and 20% of the Insurance Tax, with a projected increase in over five years, which should allow them to receive MAD 10 billion by 2021 (approx.. USD 10m). Despite the adoption of these significant reforms, important delays have been registered in their operationalization. For example, the adoption of the 12 Regional Development Plans was finalized only at the end of 2018 and there is still an important lack of information as to the details of these final plans). Delays have also been experienced in terms of human resources deployment, especially for regional agencies for project implementation (AREPs, Agences regionales d'exécution des projets) supposed to be the “executive arm” of the regional council. Although the directors of the agencies have all been appointed, very few staff have been recruited so far. Given the ambitious nature of the reforms at stake, their operationalization may take time, especially that it is to be combined with an equally ambitious deconcentration process. Beyond this decentralization process, regions have been confirmed as key levels of decision-making for the central state.

“Advanced regionalization”: the main aspects of the deconcentration reform

Since 2011, the deconcentration process¹⁹ has been labelled by King Mohamed VI as a national priority and presented at the highest political level as a priority inherently linked to “advanced regionalization” and decentralization. According to Article 145 of the Constitution, Walis (at the level of regions) and Governors (at the level of provinces and prefectures) represent the Central Government and are entrusted with a power to coordinate the activities of public deconcentrated services. Walis and governors ensure law enforcement as well as the implementation of governmental decisions on behalf of the central Government and exercise administrative control. They also provide support to the presidents of LGs in the implementation of their development plans and programmes.

In his speech to Parliament on 13 October 2017, the King stressed that he had “called for the elaboration and adoption of a Charter on advanced administrative deconcentration (...) more than once before” and “urged [the government] to set a timeframe for the implementation of this charter”. A decree pertaining to the National Administrative Deconcentration Charter has eventually been adopted by the Government in early 2019. The reluctance of the certain central departments to devolve significant powers and financial resources to Walis and Governors may explain the delays taken to formulate the reform as -- prior to these reforms -- Moroccan administrative deconcentration systems and mechanisms for sharing state budgets were not yet well developed.

Although the current legislation already allows central departments to devolve the management of ministerial resources to deconcentrated authorities, Walis and Governors have had only a limited influence on the use of deconcentrated funds, except for the inter-departmental funds attached to the Prime Minister.²⁰ This is likely to change with the implementation of the new deconcentration Charter, which aims at ensuring the reorganization of the administrative services at the regional and prefectural levels through empowering the deconcentrated services and setting rules to define their devolved missions, including in terms of human and financial resources. To that purpose, each ministry is to develop a three-year deconcentrated master plan (schémas directeurs de déconcentration



Arab Reform Initiative

administrative), which would define (i) the mandates to be transferred to the deconcentrated services; (ii) the human and financial resources necessary to allow for the deconcentrated services to exercise their devolved mandates; (iii) the objectives to be achieved by the deconcentrated services and the indicators for measuring their performance in achieving these objectives; and (iv) the timetable pertaining to the implementation of the Master Plans (Article 20 of the draft decree).²¹

Article 5 of the Charter sets two organizational principles : (i) the region is defined as “the appropriate territorial space” for implementing national policies pertaining to administrative deconcentration, given its prominent role in the administrative organization of the Kingdom; (ii) the “pivotal” role of the Wali as representative of the Central Government in the coordination of the activities of the deconcentrated services and in the implementation of the administrative deconcentration policy at the regional level. The reform agenda provided for in the Charter is to be operationalized within three years from the entry into force of the decree.

The deconcentrated administrative services are in charge of implementing programmes and projects included in public policies, according to defined objectives, measures and deadlines, and under the supervision of the Wali or Governor. These programmes and projects are the subject of agreements or contracts between the concerned parties, which specify their mutual engagements, and need to be submitted for the Regional or Prefectural Coordination Committee (article 23).

The Walis and Governors are in charge of coordinating, under the supervision of the concerned governmental authority, the deconcentrated public services. In doing so, the Wali is assisted by a Regional Coordination Committee that supports his/her mission of coordination and oversight over the functionality of the activities of the deconcentrated services (Article 30).²² For that purpose, they can take all the necessary measures for the deconcentrated services to implement their obligations and to ensure the preparation and implementation of the projects and programmes decided by the public authorities, including through concluding agreements (Article 26). In order to improve the performance of the administrative deconcentrated services, Walis and Governors are also entitled to propose to the concerned governmental authorities any legal, financial,



administrative, technical or environmental measures falling under their mandate (Article 28).

The Charter also insists on the need for the deconcentrated administrative services to provide all types of support to decentralized LGs and to lay the foundations for efficient partnerships in diverse fields through the conclusion of agreements/contracts on behalf of the State on the basis of a specific devolution. Deconcentrated services are also to contribute to developing the capacities of LGs. They are asked to support and ensure coordination work with the Regional Investment Centres (CRIs) (Article 36). Thus, deconcentrated authorities have a considerable mandate and role to supervise and assist in the work of decentralized LGs.

Conclusion: Leveraging decentralization reforms through “advanced” deconcentration?

Although Morocco’s reforms such as the OL on municipalities and constitutional principles on advanced regionalization should lead to a structural redefinition of the balance of powers between the central and local levels of decision-, they have not fundamentally changed the mandates and capacities of municipalities. Important elements of the analysis seem to suggest that the changes at stake are not exactly in favour of local municipal autonomy, but the main challenge at this stage remains the actual implementation of the reforms pertaining to regions and municipalities. The operationalization of these decentralization measures appears deeply linked to the deconcentration reform.

The progressive devolution of powers to the territorial representations of the different ministries, the prominent role of the Walis in the coordination of the different representations of the central state and the organization of new collaborative processes between these representations at the regional/local level could be key elements of change and important factors for the “territorialization” of public policies. Indeed, such measures should encourage the development of integrated policies taking into consideration regional and local specificities



through the conclusion of agreements between the different types and levels of public stakeholders (between regions and municipalities, or between regions, municipalities and the central government). This contractualization process would encourage local stakeholders to develop, defend and bring their projects into line with each other. So far, the implementing regulation has remained very discreet on this point and establishing a clear framework for this contractualization appears as a key challenge for the future of decentralization and deconcentration in Morocco. The OL on municipalities has not addressed the issue of the lack of financing of municipalities. However, potential reforms have been debated in the framework of the latest Conference on taxation (*Assises nationales de la fiscalité*), organized on 2 and 3 May 2019. The evolution of the decentralization reform is closely linked to this key challenge and to the definition of more efficient fiscal arrangements for municipalities in urban areas, as these need to develop their own resources. The earmarking and definition of specific resources to finance the development of inter-municipal arrangements is another key challenge for effective decentralization to take place.



Endnotes

1. Beyond the context of the Arab Spring, the focus on “advanced regionalization” and regional economic development can also be seen as an answer to geopolitical considerations (as well as internal political pressure) pertaining to question of the Sahara.
2. Rémy Leveau, *Le Fellah marocain, défenseur du trône*, Paris, Presses de la FNSP, 1985.
3. Abderrahmane Rachik, *Ville et pouvoirs au Maroc*, Casablanca, Ed. Afrique-Orient, 1995.
4. Myriam Catusse, *Le temps des entrepreneurs ? Politique et transformations du capitalisme au Maroc*, Tunis/Paris, IRMC/Maisonneuve et Larose, 2008.
5. Abelghani Abouhani, *Pouvoirs, villes et notabilités locales. Quand les notables font les villes*, Rabat, INAU/URBAMA, 1999. Aziz El Iraki, *Des notables du Makhzen à l'épreuve de la gouvernance : élites locales, territoires, gestion urbaine et développement au Maroc : cas de trois villes moyennes de la région Nord-Ouest*, Paris, L'Harmattan, 2003.
6. Myriam Catusse and Lamia Zaki, « Gestion communale et clientélisme au Maroc : les politiques du Parti de la Justice et du Développement », *Critique internationale*, 2009/1, n°42.
7. Mounia Bennani-Chraïbi, *Soumis et rebelles, les jeunes au Maroc*, Paris, CNRS Ed, 1994.
8. Myriam Catusse, Raffaele Cattedra, M'Hammed Idrissi Janati, “Decentralization and its paradoxes in Morocco”, in B. Driesken, F. Mermier et H. Wimmen. *Cities of the South*, Saqi Book, 2007.
9. These include the distribution of electricity, water and sanitation, roads, collective urban transport, public lighting, solid waste hygiene; the maintenance of public spaces and parks; mobility and parking; municipal markets; bus stations etc.
10. Myriam Catusse, Raffaele Cattedra, M'Hammed Idrissi Janati, “Decentralization and its paradoxes in Morocco”, in B. Driesken, F. Mermier et H. Wimmen. *Cities of the South*, Saqi Book, 2007.
11. To shift responsibility and resources from national-level central government officials (based within ministries in Rabat) to officials based locally (be it at the regional or prefectural/provincial level).
12. See, for example Myriam Catusse, Raffaele Cattedra, M'Hammed Idrissi Janati, “Decentralization and its paradoxes in Morocco”, in B. Driesken, F. Mermier et H. Wimmen. *Cities of the South*, Saqi Book, 2007.
13. In municipalities where members of the council are elected through party-list system.
14. The power of “*tutelle*” granted to the administrative authority by the 2009 Charter were “intended to ensure the application by the municipal council and its executive power of the laws and regulations in force, as well as to ensure the protection of the general interest and to provide assistance and support from the administration” (article 68).
15. The governor, appointed by the King, is the highest representative of the central government at the prefectural/provincial level.
16. According to Article 69 of the 2009 Charter.
17. It seems that municipalities will not be asked to contribute to the maintenance and management of these facilities, as article 87 of the OL does not mention it (contrary to article 39 of the 2009 Charter, which stated that the municipal council was “to decide or to contribute to the implementation, maintenance and management socio-cultural and sport facilities”).



Arab Reform Initiative

municipal budgets are still far from covering the large and increasing needs linked to the delivery of municipal infrastructure, equipment and services, estimated according to a recent study at MAD 22 billion per year over the 2017-2027 period (« Etude d'évaluation des besoins en investissements des communes urbaines au Maroc » (study developed by the World Bank for DGCL in 2007, updated in 2017).

- 18. It is true that the level of financing of Moroccan LGs is currently higher than in other countries of the region (3.5% of GDP as against 1.9% in Tunisia), largely thanks to the efforts made by the Government through the governmental transfer system. The share of the budget allocated to local authorities has increased from 30% of total expenditures in 2008 to 35% in 2017. Despite such achievements,
- 19. ~~the level of financing of Moroccan LGs is currently higher than in other countries of the region (3.5% of GDP as against 1.9% in Tunisia), largely thanks to the efforts made by the Government through the governmental transfer system. The share of the budget allocated to local authorities has increased from 30% of total expenditures in 2008 to 35% in 2017. Despite such achievements,~~
- 20. «La discordance entre "le temps" de la décentralisation et "le temps" de la déconcentration chez le gouverneur marocain», Hicham Berjaoui, *Village de la Justice*, November 5, 2018. Another key factor to explain the delays taken at governmental level for implementing the reform pertains to party politics, as a majority of regions (7 out of 12) are under the control of the opposition (PAM and Istiqlal) (Tafra, op. cit.).
- 21. The provisions of the decree do not apply to the following sectors: Justice, Islamic Affairs, National Defense Administration, Administration in charge of Interior Safety, and the other sectors which do not have deconcentrated services (article 46)
- 22. It is composed of the governors of the region, of the General Secretary of Regional Affairs, of the Head of the Regional Investment Center (CRI) (article 31).



Arab Reform Initiative

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Lamia Zaki has professional experience in the academic field and as an independent consultant working on urban, governance and decentralization issues in the Middle East and North Africa. She holds a PhD in political science from SciencesPo Paris.

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