

CLIMATE CHANGE LEGISLATION IN BANGLADESH

AN EXCERPT FROM

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Michal Nachmany, Sam Fankhauser, Jana Davidová, Nick Kingsmill, Tucker Landesman, Hitomi Roppongi, Philip Schleifer, Joana Setzer, Amelia Sharman, C. Stolle Singleton, Jayaraj Sundaresan and Terry Townshend

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Bangladesh

Legislative Process

The People's Republic of Bangladesh is a parliamentary republic. Criminal and civil law in Bangladesh is still based on English Common Law, which was enacted during the colonial period, though a few aspects of family law derive from customary Islamic rules.

The Parliament, known as the “House of the Nation”, is the sovereign law-making body, vested with the legislative power of the Republic. It has 350 members of which 300 are directly elected for five-year terms in single seat constituencies. The remaining 50 seats are reserved for women, and these positions are selected by either the ruling party, or the ruling coalition. All laws are subject to the limits of the constitution and its provisions, such that any law conflicting with the constitution is void. Statutory law is made by Parliament. Laws are proposed, prepared and processed by the executive, which is the Cabinet. The Prime Minister is the head of state, elected by Parliament. The President occupies a ceremonial post with no authority exercised over the running of the state.

The law-making process is as follows: Cabinet recommends a legislative initiative and arranges for a bill to be drafted. Cabinet then approves the bill and it is presented to Parliament. The bill is then subject to debate and amendment. Following this, Parliament votes for the formal adoption (or rejection) of the bill. If it is accepted by Parliament, it will be handed to the President for assent. In addition, the power to make subordinate legislation (such as rules; regulations; by-laws; etc.) can be delegated to a lower authority in order to carry out the aim of any given Act of Parliament.

The Supreme Court is the highest judicial power. Supreme Court Judges are selected by the President. The Judiciary and the Executive were separated in 2007. The most recent general election was held in 2014 with the next scheduled for 2019.

Approach to Climate Change

Bangladesh is a poster child for the potential impact of climate change. It is a Least Developed Country, recognised by the UNFCCC as one of the most vulnerable countries to climate change impacts. Among other things, cyclones, floods and saltwater inundation already threaten the livelihoods of some of the world's poorest people: some 50 million Bangladeshis live in poverty. Moreover, 79% of Bangladeshis live in rural areas, yet the country has one of the world's highest population densities. Following the Population and Housing Census 2011, the Bangladesh Bureau of Statistics reckons there are now 1,015 people/km² in Bangladesh. This intensifies threats even at a local level. Climate-related hazards occur on a wide scale – for instance flash floods affect some 80% of the land area during the monsoon season. The increased intensity and frequency of these hazards under future climate change scenarios is a major challenge for development, and a significant barrier to its vision of eliminating poverty and becoming a middle income country by 2021.

The key government agency responsible for climate change is the Ministry of Environment and Forests (MoEF). The highest level plans to address the domestic impacts of climate change are The National Adaptation Programme of Action (NAPA) and The Bangladesh Climate Change Strategy and Action Plan (BCCSAP), both published by the MoEF. The NAPA was launched in 2005 to respond to immediate adaptation needs. It identified 15 priority adaptation programmes and activities. Following this, the UNDP received funding from the Global Environment Facility to implement the coastal afforestation project set out in the NAPA. However, numerous stakeholders felt that the NAPA 2005 document was insufficient to tackle the dramatic impacts faced by Bangladesh. This

catalysed first the revision of the NAPA in 2009, and second, the development of the BCCSAP. The revised NAPA contains 45 important adaptation measures under six themes: (1) food security and pro-poor social safety-nets; (2) comprehensive disaster management; (3) climate resilient infrastructure; (4) mainstreaming climate change; (5) capacity and knowledge enhancement; and (6) strategic natural resources management. The NAPA then highlights nine short-term priorities mainly addressing the first four of these thematic areas, along with nine medium-term priorities with a focus on the last two thematic areas.

The BCCSAP is a 10-year programme (2009–2018) designed to build capacity and resilience to meet climate change-derived challenges. This medium- to long-term programme recommends 44 actions in six areas: 1) food security, social protection and health; 2) comprehensive disaster management; 3) infrastructure; 4) research and knowledge management; 5) mitigation and low carbon development; and 6) capacity building and institutional strengthening. While far-reaching, the plan has been criticised for not prioritising activities to help the most vulnerable.

This plan brought mitigation into climate change strategy in addition to adaptation. It allows Bangladesh to address climate change as well as responding to its impacts, and specifically, opened the way for REDD+ activities. This is important given potential synergies from REDD+ implementation such as securing local ecosystem services provision (e.g. clean water; protection against erosion; biodiversity provision) and carbon sequestration and storage. For instance, the mitigation and low carbon development pillar of the BCCSAP includes a plan to replant the mangrove and forest belt that once covered much of the coastline. This should help to protect the coastline at the same time as offering carbon storage and sequestration and fisheries benefits.

Following the release of the BCCSAP, the government established a Climate Change Trust Fund (BCCTF) under the 2009 Climate Change Trust Fund Act. BCCTF was funded at USD100m per year in 2009–2011 and focused on helping adaptation efforts. It is still in operation, receiving funding in the 2014-15 year of approximately USD26m (with total funding to this point of USD400m). As of September 2014, 288 projects have been undertaken, with initiatives made under the fund including pilot projects on waste related to the government's National 3R (Reduce, Reuse and Recycling) Strategy for Waste Management. This strategy aims to eliminate waste disposal on open dumps, rivers and flood plains by 2015 through mandatory segregation of waste at source as well as to create a market for recycled products and provide incentives for waste recycling. In addition, the government made an international appeal for funding for the Bangladesh Climate Change Resilience Fund, to which Denmark, Sweden, the UK, the USA, the EU, Switzerland and Australia responded.

To boost private sector investment, the government is developing a public-private partnership strategy that specifies the environment as an investment sector. The Bangladesh Green Development Plan aims to develop new programmes in environment, energy and climate change that address the climate change adaptation and mitigation needs of the poor. It focuses on demand-side energy management by providing access to low-carbon fuels and energy and it should also create green jobs. Within the plan there is a strong focus on improving the management of the natural environment, biodiversity and ecosystems. The government has expressed interest in using REDD+ as a strategy to fulfil some of these objectives, and the UN has produced a document investigating the readiness of the country to participate.

The Sixth Five Year Plan has a dedicated chapter on environmental management and climate change. Noting the long-term consequences of environmental degradation to the country's ecosystems and human welfare, the government has set a number of goals, objectives and strategies to achieve sustainable development whilst meeting the challenges of climate change. The Plan's objective is to promote new appropriate environment management systems for mitigation and adaptation through active participation of women and the poorest members of society.

There are also 187 statutory laws relating to environmental management. Although most of these were developed before mainstream international political concern about climate change, such legislation could provide a legal basis and enabling environment to facilitate adaptation and mitigation of climate change. These may include (1) the 1965 Factories Act, due to its regulation of industrial emissions; (2) the Forest Act of 1927, which is a key law regulating forest resources and therefore has implications for land use policies (such as the 2002 National Land Use Policy) and particularly mitigation through REDD+; (3) the Water Act (2013), which is relevant to adaptation through integrated management of water resources at the national level; and (4) the Hill District Local Government Parishad Act (1989) which devolves management responsibilities to the Hill District Council, including forestry, which may therefore have implications for REDD+. Similarly, The Bangladesh Water and Power Development Boards Order empowers the Water Board to develop schemes for watershed management. It can direct the owner of any private land to undertake anti-erosion operations including conservation of forests and reforestation. Presidential orders such as the Standing order on Disaster may also facilitate adaptation.

The 1992 Environment Policy of Bangladesh recognised the need for a comprehensive approach to address climate change and the environment. Few elements of this policy have become law, however. The Bangladesh Environment Conservation Act (1) (ECA) of 1995 was passed for conservation and improvement of environmental standards and for controlling and mitigating environmental pollution. The Environment Conservation (Amendment) Act, 2002 gives the law over-riding effect over all other laws, creating the principle of environment primacy. The Environmental Conservation Rules (1997) were developed to promote the objectives of the ECA, though they are not enshrined in law. The ECA was amended in 2010 and in 2011, Bangladesh's constitution was amended to specify that "the state shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wildlife for the present and future citizens".

Numerous policies and plans exist that directly relate to climate change or which refer to related environmental topics and issues. A new Environmental Policy (updating the previous 1992 version) was put out for public consultation in 2013 and has been released in draft form. A National Action Plan for Short Lived Climate Pollutants was published in January 2014. This plan, focusing on black carbon, methane, ozone and some hydrofluorocarbons identifies the Climate Change Trust Fund as a potential funding source for initiatives to reduce these pollutants. Also in 2014, a Climate Fiscal Framework was published by the Ministry of Finance to help identify the supply and demand sides of climate fiscal funds and to ensure that they are sustainable and transparent in the long-term.

Energy supply

Primary energy consumption is dominated by natural gas (56%), followed by traditional biomass and waste (24%), oil (16%), coal (3%) and hydropower and solar (1% combined). While the country is the seventh-largest natural gas producer in Asia, gas production is steadily declining and the country is experiencing severe natural gas supply shortages, which are in turn causing rolling electricity blackouts. Peak demand is in the region of 5,500 MW whereas peak supply is only approximately 4,000 MW. Less than two-thirds of the population has access to electricity.

In addition to the traditional biomass and waste that the four-fifths of Bangladeshis who live in rural areas rely upon as their main energy source, other renewable energy sources are increasingly being developed. A hydropower plant built in the 1960s with installed capacity of 230 MW provides base load generation (although is not running at full capacity) to support the 25 MW capacity of current solar photo-voltaic (PV) systems and 2MW of wind energy. However, under the Ministry of Power, Energy and Mineral Resources' 2008 Renewable Energy Policy (REP) the government plans for 800MW of dependable renewable energy to be achieved by 2015 (with total installed capacity of

1,000-1,200MW). This will largely be derived from the government's 500MW solar power programme and will support solar-powered irrigation, electricity at railway stations and street lighting, as well as in homes and public buildings. The REP also contains the goal of providing electricity to all by 2020, with the target of 10% of total energy production comprising renewable generation by 2020. As yet, there are no laws deriving from the REP.

Solar home systems (SHS) are increasingly widespread and beginning from 2003 with the establishment of the Infrastructure Development Company Ltd (IDCOL) (and with support from the World Bank and GIZ among others), more than 3 million have been installed, with 70,000 SHS being installed every month. Financing of nearly USD80m was approved in 2014 to further scale up the 'Rural Electrification and Renewable Energy Development' project and to provide an additional 480,000 SHS, as well as further biogas plants and solar irrigation pumps.

The Sustainable and Renewable Energy Development Authority Act (2012) aims to increase the production and use of green energy via the establishment of a Sustainable and Renewable Energy Development Authority but its implementation has been slow.

Energy demand

Demand for electricity is growing at an estimated 500MW per annum as a result of population growth, industrialisation, and the increasing availability of and demand for modern household appliances. Load shedding occurs frequently during periods of peak demand. Improving energy efficiency is an objective in the current five year plan; however, the overriding aim is to supply electricity to those who currently have no access.

In 2003, the Bangladesh Energy Regulatory Commission was established to promote the efficient use of energy. In 2013, the Brick-Making and Kiln Establishment (Control) Act was passed to promote energy efficient brick-making; however more details are required in terms of implementing regulations to give effect to the law, such as specifying allowable limits of emissions and measurement processes. A Country Action Plan for Clean Cookstoves was also published in 2013 to support the goal of 100% clean cooking solutions by 2030.

An Action Plan for Energy Efficiency and Conservation was published in 2013 and a draft version of the Energy Efficiency and Conservation Rules were made public in 2012. These rules, once published in the official gazette, will facilitate the smooth functioning and operating of the Sustainable and Renewable Energy Development Authority (SREDA), which was established to serve as a co-ordinating organisation for all government programmes associated with energy efficiency and conservation. Included in the rules are projects to be developed such as the development of a mandatory energy efficiency labelling framework for equipment and appliances, the issuance of National Energy Conservation Building Guidelines, and the development of a National Energy Conservation Master Plan. This master plan is expected to be finalised sometime in 2015.

Carbon pricing

Bangladesh was reportedly examining the possibility of a carbon tax in 2010 (in conjunction with more traditional pollution charges). While the so-called 'green tax' for pollution was enacted as part of the 2014/15 budget, carbon pricing is not yet a reality.

REDD+ and LULUCF

The Constitution notes that the right to life includes the right to a healthy and stable environment and says that "the state shall endeavour to protect and improve the environment and preserve and safeguard natural resources, biodiversity, wetlands, forest and wildlife for the present and future citizens". This latter article could potentially support mitigation activities under REDD+.

In the policy sphere, the BCCSAP opened the door for climate change mitigation activities in addition to adaptation, which allows for REDD+ activities to be implemented. However, the major piece of legislation with regards to forests is the 1927 Forest Act. Nonetheless, all local government laws have provisions either for afforestation or for street planting in urban areas. These are the City Corporation Laws; the Paurashava Law; the Union Parishad Laws; and the Laws on Hill Districts. Furthermore, the Acquisition of Waste Land Act (1950) allows for afforestation of waste land. A potential conflict lies in the fact that afforestation is normally the process of planting trees in any treeless area, whereas reforestation is planting trees in an area previously forested but cleared through human activity. Benefits to ecosystem services provision and biodiversity conservation are more likely to be provided through reforestation and restoration, rather than afforestation of a naturally treeless ecosystem, which may already be providing other essential ecosystem services in addition to carbon sequestration and storage.

The first National Forest Policy in 1979 was adopted to improve protection and conservation of forests, while developing the economy. The current Forest Policy (1994) is particularly important from a pro-poor perspective in that it recognised the role of active participation of communities living near to forest resources in forestry specifically and in sustainable development more broadly. The Forest Policy, in addition to the Forestry Sector Master Plan intends, through social and participatory forestry, to raise the total forest cover to 20% by 2015. This provides a strong background for the 'plus' components of REDD+, in particular reforestation. A National REDD+ Readiness Roadmap was approved in 2012 by the MoEF.

Transportation

Improving energy consumption patterns in the transport sector is identified as a priority within the BCCSAP, particularly considering transport's share of GHG emissions is growing faster than that of any other sector. Actions include promoting public transport, promoting energy efficiency, better transport planning, and substitution of fossil fuels where appropriate.

Adaptation

While not explicitly referred to as such, the government's Vision 2021 document, which sets out to eliminate poverty and make Bangladesh a middle-income country by 2021, is a key adaptation planning document for the country. Vision 2021 has social, economic and environmental dimensions and it declares that all efforts will be made to protect Bangladesh from the adverse effects of climate change.

It aims to reduce air pollution from industry and transportation, and improve waste management; to improve the state of the natural environment by conserving forests and water bodies and preventing river erosion. The plan also envisages regional co-operation, particularly in water management: the government plans to develop a regional water policy with its neighbours India, Nepal and Bhutan. This prioritisation of water resource management at the regional level is mirrored by the recent domestic developments under The Water Act (2013) and the release of documents such as the Coastal Zone Policy and the Integrated Coastal Zone Management Plan (both 2005). A notable large-scale project to be enabled under the Water Act and under the Vision 2021 strategy is the Ganges barrage project to expand irrigation facilities; prevent saltwater intrusion; and to solve the problem of freshwater scarcity in the Sundarban region.

In order to achieve the goals of Vision 2021, the 'Outline Perspective Plan (OPP) of Bangladesh 2010-2021: Making Vision 2021 A Reality' outlines the long-term goals and medium-term objectives to make a more prosperous Bangladesh. The OPP includes a dedicated chapter on the environment where the vulnerabilities, responses and climate change management strategies are analysed. The

plan emphasises climate change adaptation through the active participation of local communities and the private sector, rather than a top-down strategy.

Bangladesh participates in the National Adaptation Plan Global Support Programme, jointly co-ordinated by the United Nations Development and Environment Programmes and financed by the Least Developed Countries Fund. A USD40,000 grant from the Norwegian government has been provided to kick-start a roadmap for the development of a National Adaptation Plan and a national consultative initiative is under way.

In 2010 a National Plan for Disaster Management (2010-2015) was published by the Ministry of Food and Disaster Management. It argues that disaster risk reduction with climate change adaptation offers a 'win-win' opportunity as 75% of all disasters originate from weather-climate extremes. In 2012 the Disaster Management Act was passed by parliament.

Bangladesh: Legislative portfolio

Name of law	Sustainable and Renewable Energy Development Authority Act
Date	10 December 2012
Summary	<p>This act, predicated on the aim of increasing energy security, creates an independent authority, the Sustainable and Renewable Energy Development Authority, to promote the development and use of renewable energy. The act specifies 23 responsibilities of the authority, including to:</p> <ul style="list-style-type: none"> • Encourage the use of power and energy efficient equipment and take necessary steps for standardisation and labelling of power and energy using equipment and appliances • Assist the government in making and implementation of energy efficient building code • Provide technical and financial assistance in research, development, demonstration and training on renewable energy • Encourage commercialisation of renewable energy and energy efficiency activities in private sector through implementation of pilot project

Name of law	Disaster Management Act
Date	19 September 2012
Summary	<p>The objectives of the Act are substantial reduction of the overall risks of disasters to an acceptable level with appropriate risk reduction interventions; effective implementation of post disaster emergency response; rehabilitation and recovery measures; provision of emergency humanitarian assistance to the most vulnerable community people; strengthening of institutional capacity for effective co-ordination of disaster management involving government and non-government organisations, and establishing a disaster management system capable of dealing with all hazards for the country.</p> <p>The Act is intended to help in promoting a comprehensive disaster management programme upholding the all-hazard, all-risk and all-sector approach where risk reduction as a core element of disaster management has equal emphasis with emergency response management with greater focus on equitable and sustainable development.</p>

Name of law	The Climate Change Trust Fund Act
Date	2010
Summary	<p>This is intended as the government's quick-start domestic response to climate change adaptation activities, which are planned through the BCCSAP. As such this Act is closely linked to the BCCSAP. It stipulates allocating an initial budget of USD100m per year for three years between 2009 and 2011. It stipulates that 66% of its budget will be spent on the implementation of projects/programmes prioritised in the BCCSAP. The remaining 34% will be maintained as a deposit for emergencies. Interest accrued on the deposit will be spent on project implementation. Funds from the BCCTF can be used to finance public sector and non-government projects. It is not mandatory to spend the total grant within a given financial year.</p> <p>As of 2014, the Trust Fund is still operational, with US\$26m (approximately) allocated in the 2014/15 fiscal year.</p>

Name of law	The Bangladesh Energy Regulatory Commission (BERC) Act
Date	24 July 2003, most recently amended in 2010
Summary	<p>The Act makes provisions for the establishment of an independent and impartial regulatory commission for the energy sector. The commission is, <i>inter alia</i>, to determine the energy efficiency of institutions regulated under the Act, and to monitor and verify institutions' energy use through energy audits. It is also required to ensure the efficient use of energy at a generation, transmission and distribution level.</p>

Bangladesh: Executive portfolio

Name of policy	Climate Fiscal Framework
Date	June 2014
Summary	<p>The Climate Fiscal Framework (CFF), published by the Ministry of Finance, provides principles and tools for climate fiscal policy-making (CFP), helping to identify the demand and supply sides of climate fiscal funds (expenditures vis-à-vis revenue or finance, respectively), and to ensure that CFP is transparent and sustainable in the longer term.</p> <p>The CFF determines:</p> <ul style="list-style-type: none"> • The equitable division of climate funds and their allocation to relevant sectors • The division of services, identification of the demand for climate fund, and expenditure areas of financial authority for raising revenue, for national and international financing options, and for fiscal tools • A governance framework for climate change funds under national fiscal policy <p>The CFF also recommends a set of climate codes designed to (i) track climate change expenditures for policy analysis and reporting, and (ii) estimate long-term climate finance needs by identifying potential climate-related public expenditures across government ministries.</p>

Name of policy	Action Plan for Energy Efficiency and Conservation
Date	September 2013
Summary	<p>Published by the Ministry of Power, Energy and Mineral Resources, the action plan aims to set a cohesive framework for energy efficiency and conservation activities under the guidance of the Sustainable and Renewable Energy Development Agency (SREDA). It notes that the government has set the following targets to ensure sustainable energy supply:</p> <ul style="list-style-type: none"> • 10% of primary and secondary energy saving by 2015 • 15% by 2021 • 20% by 2030

The plan provides an overview of Bangladesh's energy sector, its legal and institutional framework, how capacity will be managed in the energy sector, and a summary of ongoing energy efficiency activities. These include an energy star labelling programme, an improved cook stove programme, and installation of solar panels.

The ultimate aim is for a Master Plan on Energy Efficient Management to be developed.

Name of policy	National Sustainable Development Strategy (2010-2021)
Date	May 2013
Summary	<p>The NSDS identifies five strategic priority areas and three cross-cutting areas that are critical to achieve sustainability in Bangladesh. The five strategic priority areas are:</p> <ul style="list-style-type: none"> • Sustained economic growth • Development of priority sectors (including agriculture and energy) • Urban environment • Social security and protection • Environment, natural resource and disaster management <p>Climate change is discussed under the environment priority area, with the strategy emphasising the need to scale up investments in disaster risk reduction so that a suitable environment for the economic and social development of the country can be created in the face of climate change. Specific areas include the rehabilitation and climate proofing of coastal polders with especial focus on removing water logging, disaster risk reduction, mainstreaming disaster risk reduction and climate change, coastal char land afforestation, development of climate stress tolerant crop varieties and utilisation of climate change funds.</p>

Name of policy	6th Five Year Plan (FY 2011-FY 2015)
Date	2011
Summary	<p>The current Five Year Plan, produced by the Ministry of Planning, and focusing on 'accelerating growth and reducing poverty' contains numerous policy initiatives that relate to climate change, including the following topics:</p> <p>Energy:</p> <ul style="list-style-type: none"> • A target to increase energy efficiency by 10% • Improve railways and waterways as energy efficient multi-modal transport system to reduce carbon emissions • Optimising domestic production of primary energy resources including renewable energy <p>Environmental sustainability:</p> <ul style="list-style-type: none"> • Increase productive forest coverage by 2 percentage points • 500 metre-wide permanent green belt established and protected along the coast • Environmental, climate change and disaster risk reduction considerations are integrated into project design, budgetary allocations and implementation process

Name of policy	Bangladesh Climate Change Strategy and Action Plan (BCCSAP)
Date	2009
Summary	<p>The BCCSAP, published by the Ministry of Environment and Forests, is a "knowledge strategy" built upon the National Adaptation Programme of Action (2005 and 2009). It sets out 44 programmes to be taken by Bangladesh over the short, medium and long term within six strategic areas:</p> <ul style="list-style-type: none"> • Food security, social protection and health • Comprehensive disaster management • Infrastructure • Research and knowledge management • Mitigation and low carbon development • Capacity building and institutional strengthening

A common theme throughout of all of these strategic areas is the focus on the poor and vulnerable and in particular women and children. All programmes are expected to provide synergies with the government's Vision 2021. Examples of the programmes include:

- Infrastructure: programme T3P8 seeks to restore rivers and khals through dredging and de-siltation works
- Mitigation: programme T5P7 targets re/afforestation

Name of policy	Renewable Energy Policy
Date	18 December 2008
Summary	<p>Published by the Power Division of the Ministry of Power, Energy and Mineral Resources, the Renewable Energy Policy (REP) has numerous objectives to promote renewable energy and includes the target of developing renewable energy resources to meet 5% of the total power demand by 2015 and 10% by 2020.</p> <p>The REP notes that a Sustainable Energy Development Agency (SEDA) will be established under the 1994 Companies Act to act as a focal point for sustainable energy development and promotion. SEDA will 'create market opportunities and start-up business models for sustainable energy technologies, such as energy services companies and rural energy providers' and 'provide financial support in the research and development of renewable energy technology'.</p> <p>The REP further outlines three core provisions:</p> <ul style="list-style-type: none"> • Renewable energy project(s): the sale of electricity from plants requires a power generation licence from The Energy and Mineral Resources Division (BERC) if the capacity is 5 MW or more. • The government and the Sustainable Energy Development Agency (SEDA), in consultation with BERC, will create a regulatory framework encouraging generation of electricity from renewable energy sources. • BERC shall approve the energy tariff in consultation with the government and SEDA as per the provision of the BERC Act 2003 if the capacity of renewable energy project(s) is 5MW or more. Electricity distributors may offer "green energy" tariffs, which provide consumers an opportunity to co-finance through their electricity bills the development of new renewable energy sources.

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