

Characteristics and the State of Land Ownership in Informal Settlements in Nairobi, Kenya

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ABSTRACT: Kenya is facing an increasing growth of informal settlements in her urban centers. As rapid urbanization takes its toll, so has the development and growth of informal settlements. The social, economic and environmental challenges which informal urban settlements face today, coupled with the speed of urban expansion, require an urban planning approach that integrates the concept of land information management systems in informal settlements in its blueprint. Based on a study in the capital city, Nairobi, this paper describes the characteristics of settlements and land ownership in informal settlements in Kenya. First, a survey was conducted using a questionnaire to get an insight into the current situation of the informal land development sector in the study area. Structured interviews were used at the settlement level to gain knowledge on the operations of land management. Finally, focus group discussions were conducted with the village elders and headmen at the settlements to gain more insights on land ownership systems. Data for the study was analyzed descriptively. The study established that land information management interventions in these informal settlements are uncoordinated, ad hoc and overlapping. There is also lack of systematic dissemination of land information and updated land information since the stakeholders' interventions in land information management are uncoordinated and therefore undermine efficiency of environmental planning. Besides, there is poor security of land information due to lack of back-up data in these settlements and information on land registration, registration of rights and rights holders is in itself insufficient and does not address environmental planning. There is therefore need for the government and other agencies to create a platform for discussion, monitoring and coordination of the various land data collected to ensure interventions for environmental planning are coordinated and not overlapping.

KEYWORDS: Characteristics, Land Ownership, Informal Settlements, Nairobi, Kenya.

1 INTRODUCTION

Kenya is facing an increasing growth of informal settlements in her urban centers. As rapid urbanization takes its toll, so has the development and growth of informal settlements. More than 34% of Kenya's total population lives in urban areas and, of this, more than 71% is confined in informal settlements [1]. This number will continue to increase unless a serious and concerted action by all relevant stakeholders is undertaken. Kenya's annual informal settlements growth rate of 5% is the highest in the world and it is likely to double in the next 30 years if positive intervention measures are not put in place [2].

According to UN-Habitat [3], the experience in these informal settlements shows a strong link that people living in poverty are trapped in their present [4] situation because they are excluded from the rest of the society. Unfortunately, they are not empowered to allow them to make any significant contribution to community building [5] [6], pushing Nairobi city to the verge of sinking into abyss as the weight of mushrooming informal settlements takes its toll.

These unprecedented rates of urbanization can be linked to massive migratory movements as well as to natural growth but most important is the challenging urban planning component which causes environmental problems with far reaching effects. While the low quality of housing and the general lack of basic infrastructure, especially sanitation, drainage, access to

energy and clean water supply, result in poor social and environmental conditions, high levels of unemployment and low income give rise to conflicts [7] [8] [9]. The situation is not helped by lack of supporting policies for effective urban planning and improvement.

Informal settlements in Nairobi have existed since the city's inception, the government has failed to respond to the flight of informal settlement dwellers accordingly [10], even after being classified as illegal. Life is very difficult to approximately 1.5 million people in Nairobi informal settlements. The residents in these areas live under deplorable conditions with lack of the most basic needs and social amenities, and face multi-dimensional challenges which require multi-dimensional interventions such as clean water supply and improved sanitation, energy, solid waste management, housing, schools, and hospitals [11] [12].

Although the government has recently drafted strategic plan papers and policies recognizing the existence of informal settlements and the need to improve them, it has not addressed dynamics in land information management issues in the informal settlements and therefore fails to have a blueprint that can help with access to the most essential social services during the general city planning. Land tenure information management in urban informal settlements, for instance, has evolved in response to a need for alternative means of access to land and shelter for the urban poor.

1.1 LAND TENURE

FIG [13] and the German International Technical Cooperation Agency (GTZ) [14] define land tenure as the relationship between people and land that is embodied in land rights and restrictions. Payne [15] defines land tenure as the mode by which land is held or owned, or the set of relationships among people concerning land or its product. Rakodi [16] defines tenure in common law terms as a collection of rights, each of which is a relationship between persons and organizations as to land.

These definitions emphasize the person – person and/or person – land relationships that underpin the concept of land tenure, i.e. the character of this relationship that derives from the rights or interests that persons (or organizations) have in land. This paper considers land tenure to be the social contracts by which individuals or groups acquire, hold or transfer rights in land.

1.1.1 LAND TENURE SYSTEMS

Land tenure systems are those legal, contractual or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land. The precise form of tenure is constituted by the rules and procedures which govern the rights and responsibilities of both individuals and groups in the use and control over the basic resource of land. Land tenure systems exist through different norms.

They can exist through customs and traditions or through legal provisions of statutory law. These norms form the basis for land tenure typology. Payne [17] observes that land tenure types are not distinct but overlap to form a continuum ranging from illegal occupation through to full property ownership. Payne [17], however, identifies five major land tenure types:

- Customary tenure - In such systems, land is regarded as sacred and man's role considered being one of stewardship, i.e. to protect the interests of future generations. The allocation, use and transfer of land are determined by the leaders of the community according to its needs, rather than through payment. With urban expansion, this system has become subject to commercial pressures.
- Private tenure - This system is based on individual title to land and permits almost unrestricted use and exchange of land and is intended to ensure its most intense and efficient use. Its primary limitation is the difficulty of access by lower income groups.
- Public tenure - The concept of public land ownership is largely a reaction to the perceived limitations of private ownership in that it seeks to enable all sections of society to obtain access to land under conditions of increasing competition. In socialist countries, all rights were vested in the state, while in capitalist countries, it may be restricted to a narrow range of public requirements such as strategic or communal uses.
- Religious tenure - This system is based on religious norms (e.g. Islamic religious land tenure is the traditional form of tenure in Islamic countries).
- Non-formal tenure - This system includes a wide range of categories with varying degrees of legality or illegality. They include regularized and un-regularized squatting, unauthorized subdivisions on legally owned land and various forms of unofficial rental arrangements.

- Land tenure, viewed as a continuum of all possible man-man-land relationships, is not static but evolves with time. Molen [18] describes land tenure evolution in three time horizons:
 1. Long term - Land tenure changes that are influenced by the history, culture and ideology of a society
 2. Mid to short term - Land tenure changes occurring in response to societal needs.
 3. The drivers of such changes include secure access to land (e.g. for the poor), acquisition of land for public purposes and recognition of indigenous rights creating new forms of land tenure (e.g. native titles in Australia, USA, Canada and New Zealand, and communal titles in SA)
 4. Changes within the existing land tenure framework - These include changes brought about while enforcing land policy and land laws (e.g. transfer of land rights on the market, land use planning interventions, formalization of land rights, integration of different tenure systems and implementation of land reform programmes).

1.1.2 LAND TENURE SECURITY

Secure land tenure refers to an assurance that an occupier of land will continue to occupy the land and benefit from the resources of the land without the threat or risk of involuntary removal, and that they can only be evicted by means of a known and agreed legal procedure which must be objective, equally applicable, contestable and independent. In practice, tenure security can never be absolute. It can never be measured directly because it cannot be defined objectively. To a large extent, security is what people perceive it to be.

Formal registration of property rights (including state guarantee and enforcement) is considered by some as one instrument for improving tenure security. According to Oosterom et al. [19], registration of existing land tenure may impart a given added value to land tenure: the certainty offered to the persons possessing registered rights that those rights will remain in force until such time as they might be revoked in a legal and comprehensible manner. The term legal within this context is to be understood as any system of standards and values that offers transparency, reliability and predictability to the relevant community (including those in non-formal tenure systems).

The doctrine of secure property rights rests on 3 beliefs [20]:

- Economic development - economic development is stimulated when people can easily defend their rights against the claims of others
- Social stability - secure and clear property rights can be easily defended preventing property disputes and resolving others
- Resource management - information about land and holders of property rights allows government agencies to manage land resources better, and to enforce environmental and social regulations more effectively.

The drivers for improving security of land tenure are mainly to be found among the urban and rural poor, and vulnerable groups (indigenous people, women, among others). Because of this, many governments are trying out new forms of land tenure by choosing innovative approaches and inventing simple rights to land that are relatively easy to assign.

1.2 LAND MANAGEMENT AND INFORMAL SETTLEMENTS IN KENYA

1.2.1 NATIONAL LAND POLICY FORMULATION PROCESS

Land issues have been at the centre of Kenya's political scene for a long time. There is widespread dissatisfaction with the land management system. The dissatisfaction is caused by issues such as: irregular allocation of public land; numerous, outdated and complex land laws; corruption and inefficiency in the land administration system; irregular allocation of public land; insecure land tenure and ineffective mechanisms for the resolution of land conflicts; and the management of informal land developments.

The national land policy formulation process represents the latest efforts in the formulation of a national land policy including the harmonization of land laws in Kenya. The need for a comprehensive national land policy to provide a framework for the use, access and conservation of land in Kenya has been influenced by three recent developments [21]:

- Report of the Commission of Inquiry into the Kenya Land Law and Tenure Systems (Njonjo Land Commission) submitted in 2002
- Economic Recovery Strategy for Wealth and Employment Creation Programme 2003-2007

- Draft Constitution submitted by the Constitution of Kenya Review Commission (CKRC) in 2004
- Among the major findings and recommendations of the Njonjo Land Commission were:
- There is a lack of coordinated policy for the development and administration of both rural and urban land.
- There are too many land registration Acts that cause confusion.
- The fees charged for land survey, registration and transactions are too high while some are not authorized.

The Commission recommended major changes in the process of procurement of title to land to improve legitimacy of the process and the sanctity of title:

- Kenyans have lost confidence in the land administration system mainly due to the grabbing of public land, the concentration of power over land matters in the office of the Commissioner of Lands and corruption in the Ministry of Lands and Settlement. The Commission recommended a re-categorization of land and devolution of land administration under a new institutional framework that would be independent from central government.
- Customary land law has a great influence on land management but the current land laws do not sufficiently accommodate it. The Commission recommended that customary land law be codified and applied in formal land management.

The Economic Recovery Strategy for Wealth and Employment Creation Programme 2003-2007 unveiled by the new government in 2003 commits the government to develop an action plan for implementation of the recommendations of the Njonjo Land Commission [21].

The Constitution of Kenya Review Commission (CKRC), set up to draft a new constitution for Kenya, presented a draft constitution which was adopted at a National Constitutional Conference in 2004.

The draft constitution provides a framework on which to build a national land policy. It commits the government to define and keep under constant review a national land policy on the following principles [22]:

- Equitable access to land and associated resources
- Security of land rights for all land holders, users and occupiers
- Sustainable and productive management of land resources transparent and cost effective administration of land
- Sound conservation and protection of ecologically sensitive areas
- The discouragement of customs and practices that discriminate against women's access to land
- Encouragement of communities to settle land disputes through recognized local community initiatives

The National Land Policy (NLP) formulation process was established in 2004. The specific objective of the NLP formulation process is to ensure the maintenance of a land administration and management system that will provide [21]:

- All citizens, particularly the poor, with the opportunity to access and beneficially occupy and use land
- Economic, socially equitable and environmentally sustainable allocation and use of land
- Efficient, effective and economical operation of the land market
- Appropriate regulatory arrangements for the productive and sustainable use and equitable distribution of land

The NLP formulation process observed that the national land policy should address the values that the society seeks to promote in addition to the specific components of the land question. The principles to govern the national land policy are outlined as follows [21]:

- Access to land - equitable access to land and security of land rights; economic and social empowerment of the poor and landless to gain access to land
- Land ownership - define and categorize terms and incidents of land ownership; formulate innovative land rights that reflect progressive social values
- Control of land - controlling authority to regulate land in public interest; protection of individual land rights including fair and prompt compensation for loss of such rights
- Land use - application of integrated land use management system that includes planning and community participation
- Land management - use of a modern land information system that guarantees accountability, transparency, efficiency and cost-effectiveness in land administration; independent, expeditious and just resolution of land disputes
- Land markets - protection of minority group land rights against land market forces through state intervention; promotion of a land market that encourages investment

The NLP formulation process aims to produce the following outputs [21]:

- A framework for the establishment of proper land administration and management systems and a functional land information system
- A framework of harmonized, simple and cost-effective land laws
- Mechanisms for ensuring gender equity in land allocation and ownership, and for resolving land disputes
- A legal and institutional framework for securing land tenure including customary tenure and common property resources
- Mechanisms for the protection and conservation of the environment
- Guidelines for the regularization of the informal land development sector

1.2.2 LAND ADMINISTRATION ORGANIZATIONS

Formal land administration activities in Kenya are largely restricted to government departments in the Ministry of Lands and Settlement (MoLS). Apart from outsourcing arrangements in the preparation of development plans and the conduct of cadastral surveys, all other land administration activities are carried out by the government. The preparation of development plans for subdivision, amalgamation and other land developments is carried out by private physical planners who are registered by the Physical Planners Registration Board. Such development plans are submitted to the local authority and the Director of Physical Planning for approval as per the Physical Planning Act. After approval, development plans may be used for survey. The preparation of local and regional development plans is the responsibility of the Department of Physical Planning.

The Survey Act provides for the conduct of cadastral surveys by licensed surveyors who are duly licensed by the Kenya Land Surveyors Board. Such surveys are carried out under the guidance of the Director of Surveys (who is also chair of the Board). Survey documents must be submitted to the Director of Surveys for approval and authentication before the records can be used for registration.

The establishment, maintenance and expansion of the geodetic control network (both horizontal and vertical) and base mapping are the sole responsibility of the Department of Surveys. The department collaborates with the Department of Adjudication and Settlement and the Department of Lands in the process of land adjudication and consolidation for registration of individual title. Land inspection and valuation (for the purposes of land alienation, lease extension, official transfer, land revenue collection, among others) and land registration are the responsibilities of the Department of Lands.

1.2.3 ADMINISTRATIVE FRAMEWORK

Each of the departments in the Ministry of Lands and Settlement has offices in the provincial and district headquarters. While they are not merged into one organization (e.g. cadastre and land registration are handled separately in the Departments of Surveys and Lands respectively), there is some coordination between them in terms of data sharing. The MoLS departments are funded fully by the government budget. Budget allocations are decided based on the departmental work plans. Revenues collected by way of “appropriation-in-aid” are remitted directly to the Exchequer. No amount may be spent at the point of collection. There is no correspondence between the cost of production (and service delivery) and pricing of products, i.e. no attempt at cost recovery.

Public land management organizations in Kenya have a very poor reputation with regard to public administration and governance. Some of the main complaints about land management in Kenya include:

- Extortion of unofficial fees
- Irregular allocation of public land for speculative purposes
- Incompetence for example, poor land information management systems
- Inefficient and ineffective service delivery

1.3 STATEMENT OF THE PROBLEM

Urban areas throughout the developing world are experiencing a problem in the provision of adequate and serviced land to meet the demands of their rapidly expanding urban populations. As a result, low income groups who are mostly unable to afford land are forced to crowd in already existing congested settlements, creating slum conditions.

These informal settlements are home to increasingly large proportions of the urban population in the city of Nairobi in Kenya. As embraced in Kenya vision 2030 document of October 2007, Kenya needs to strengthen her institutional capacity to collect data on land use, not just for urban and physical planning but also for environmental analysis and policy making. Only three urban centers (50 per cent of Nairobi, Kisumu and Kitale), according to this document, have land use data and the study site is not part of the 50 per cent mentioned in Nairobi.

The capacity to undertake land cover mapping is weak and therefore assessment and monitoring of strategic environmental resources remains a challenge. A general lack of land information and inappropriate land information management are major constraints to the achievement of effective urban land management in both formal and informal areas in Kenya. There are gaps in land-related data and information collected by a wide range of government and non-government agencies and the difficulty in maintaining it and distributing it to stakeholders.

Besides, there is little effort to understand existing informal land ownership systems and their potential role in the environmental planning of these settlements in Kenya. The mandates of the actors in the informal land development sector have not been clarified and they do not use the land information that they collect and maintain to integrate informal settlement in the formal urban planning process.

In Kenya, the ever increasing poor state in informal settlements arises not from the annual population explosion that is exacerbated by high rural-urban migration every year, but majorly from the ineffective handling of land ownership information and information on infrastructural services in such areas. Without effective land information management based on accurate survey in these settlements that are keenly monitored and evaluated by planners on land issues, acceptable conducive living conditions will be so elusive a concept in these settlements in Kenya.

2 MATERIALS AND METHODS

A survey of the current situation of informal settlements in Nairobi was carried out during the fieldwork period. A questionnaire was the main tool used for this survey. The key informants for the purposes of the survey were drawn from the Directorate of City Planning, Ministry of Lands and Housing, NEMA headquarters office, NCC, Shelter Forum – a consortium of civil society organizations involved in land and shelter policy research and advocacy, Amani Housing Trust – a trust set up by the Catholic Archdiocese of Nairobi to implement and operate a slum upgrading programme, Kazi na Jasho Self Help Group – a Community-Based Organization (CBO) working under the provincial administration to offer voluntary services in environmental conservation, security and social advocacy, Pamoja Trust – a Non-Governmental Organization (NGO) working with Community-Based Organizations to find solutions to land tenure and shelter problems for the urban poor, Kibra Land Committee and EMS Associates – private planning land consultants.

The distribution of the questionnaires was done by hand to the respective offices and respondents given two weeks to complete them. From the survey, 15 stakeholder organizations involved in the collection of land information were identified and questionnaires issued. Out of the 15 questionnaires distributed to key informants, 9 were completed and received back from the following individuals.

Interviews were used as the main method of data collection at settlement level. The interviews were used to gain in-depth insights into the operations of the land information management system in the individual settlements. The interview method was effective. It had a high response rate and follow-up questions and verification of unclear issues could be done “on the spot”. The main sources of secondary data were:

1. Official policy documents
2. Government of Kenya (GoK) national reports
3. Informal settlement project reports
4. Prior research work (theses, case studies, journal articles, etc)
5. Legislation

The data collected in this study was mainly of qualitative nature and was therefore analyzed qualitatively using descriptive analysis and presented in tabular and graphical form.

3 RESULTS AND DISCUSSION

3.1 CHARACTERISTICS OF THE STUDY SETTLEMENTS

The characteristics of the case study settlements as found out in the survey were as presented in Table 1 below.

Table 1. Characteristics of Case Study Settlements

Criteria	Mukuru Kwa Njenga	Kibera	Mathare 4A
1. Year of establishment	1958	1918	1963
2. Background and location	Former white settler farm; Invasion of private land; Urban fringe, 8 kms south- Urban fringe, 8 kms south-Peripheral	Former forest reserve; Nubian ex-soldiers settled by colonial administration, 7 kms south west of city centre	Squatting on government land; Inner city, 5 kms from city centre.
3. Physical size; population; population density	32 Ha; 150,000; 4600 persons per Ha	120 Ha; 350,000; 2900 persons per Ha (est.)	17 Ha; 55,000; 3200 persons per Ha
4. Level of consolidation	Demolition of structures in 1996; Notice of eviction from Provincial Administration in 1999	Formal recognition by local/central government, plans for block titling underway	Leasehold granted by government to board of trustees
5. Community mobilization	Numerous CBOs e.g. Kazi na Jasho	Kibra Land Committee	Amani Housing Trust
6. Development stage	No survey; No registration; Minimal infrastructural improvements by donor agencies	On-going community-led development	Upgraded – improved infrastructure, security of tenure

Source: Author

3.2 STATE OF LAND OWNERSHIP IN THE STUDY SETTLEMENTS

In both Mukuru kwa Njenga and Mathare 4A, initial settlement was without the permission of the land owner. In both cases, the residents were squatters on unalienated government land. The land in Mukuru kwa Njenga has since been allocated to private persons.

The residents are, therefore, now squatters on private land. In Kibra, initial settlement was under a “tenancy at will” arrangement by the colonial administration, that is, the Nubians were free to settle on the land so long as the authorities did not need it for other uses. Both the colonial administration and the independence government acquired parts of the original Kibra for development without any compensation.

Different tenure arrangements have evolved as a result of various developments in the three settlements: Islamic religious tenure system in the Kibera, a hybrid informal tenure system in Mukuru kwa Njenga and a quasi-formal rental tenure system in Mathare 4A. These tenure arrangements have, in turn, resulted in different land rights and different modes of land access and delivery in the three settlements.

Under the Islamic tenure system in Kibera, land is considered communal property and is, therefore, owned jointly by the Nubian community. Access to land is by virtue of kinship. The only property rights available to residents of Kibera are: ownership of structure, use of land for residential and/or business purposes and letting part of one's premises. Islamic tenure rules prohibit the sale of communal land or transfer of land outside the community by other means. The rules also provide for the setting aside of sufficient land for religious purposes for example, there is a mosque, madrassa classrooms and a community cemetery within Kibera.

The communal land is entrusted to community elders who have delegated the responsibilities of land administration to the Kibra Land Committee (KLC). In Mukuru kwa Njenga, there are two main tenure types. They are distinguishable by the actors that administer them. One type is administered by the provincial administration. The other tenure type is administered by five self help groups, each with its own areas of operation and officials.

To distinguish these two tenure types, they are referred to here as the Chief's tenure system and Group tenure system respectively. In the Chief's system, the administrative chief is the centre of authority. The chief has appointed eight village headmen (each in charge of one zone) who report to him. The village headmen, in turn, have each appointed several elders reporting to them from the various “areas” in the village. The main features of the Chief's tenure system are:

- Plot allocation is subject to the discretion of the chief
- Plot owners may rent out structures and remit an agreed amount of rent income to the allocating authority (chief)
- Any transfer of rights through sale must be sanctioned by the chief
- Individual property rights may be transmitted by inheritance

In the Group system, the elected group officials (chairman, secretary and treasurer) are the land administrators. The officials are assisted by a selected group of local youth. The main features of the Group system are:

- Plot owners must be shareholding members of the group and remit annual subscription fees to the group kitty
- Shareholding members must inform group officials about their tenants' identities
- Share holding members may sell their shares to third parties but the sale must be sanctioned by the group officials

In Mukuru kwa Njenga, owing to the high population density and the consequent scarcity of available space, access and delivery of land largely depends on availability of land for sale or rent. The procedure for land allocation in the Chief's tenure system is shown in Box 1 below.

Box 1. Land Allocation Process (Mukuru kwa Njenga - Chief's System)

1. Prospective settler reports to chief
2. Chief verifies settler's identity and background and informs village headman
3. Village headman consults area elders for identification of available space
4. Village headman inspects space and advises chief on its availability
5. Chief inspects space and approves it for allocation
6. Settler pays allocation and demarcation fees to chief
7. Demarcation of space by headman and area elders depending on available size
8. Allocated space is assigned the next number in register

Source: Field work findings

In the Group tenure system, the process of land access and delivery is only possible in the event of a sale. This is because the original allottees settle on all the land that the respective groups acquire and/or purchase on initial acquisition.

In Mathare 4A, the regularization process has completely changed the tenure system from a non-formal de facto (squatting on government land) system to a quasi-formal system with one landlord holding a bona fide lease from the government. The tenants have written contracts and legal security of tenure. They, however, have very limited rights (limited to occupation and inheritance only).

The rental system is also not open to the general public but is restricted to the original residents of Mathare 4A only. The programme executing agency, the Catholic Archdiocese of Nairobi (also the lessee) has set up a trust, Amani Housing Trust, under the Trustees (Perpetual Succession) Act to implement and operate the programme. The Trust is the owner of both the new and the old structures in Mathare 4A and, therefore, the landlord.

The Trust has entered a legally binding and enforceable tenancy agreement with all the residents of Mathare 4A. This agreement is documented on a tenancy agreement form. According to the agreement, the Trust agrees to let business and/or residential structures to tenants on a five year periodic tenancy basis at a reviewable monthly rent. Other features of the tenancy agreement include the tenant pays for all services supplied by third parties; the structure/premises may be used for the agreed purposes only; the Trust may relocate the tenant to alternative premises for reasons of further development; the Trust retains the right to evict any tenant who contravenes tenancy provisions; and either party may terminate the tenancy agreement on one months' notice.

4 CONCLUSION AND RECOMMENDATIONS

From the research findings, it was concluded that land information management interventions in these informal settlements are uncoordinated, ad hoc and overlapping. There is also lack of systematic dissemination of land information and updated land information since the stakeholders' interventions in land information management are uncoordinated and therefore undermine efficiency of environmental planning.

Besides, there is poor security of land information due to lack of back-ups in these settlements and information on land registration, registration of rights and rights holders is in itself insufficient and does not address environmental planning.

It is recommended that the government and other agencies should create a platform for discussion, monitoring and coordination of the various land data collected to ensure interventions for environmental planning are coordinated and not overlapping. Nairobi's Informal Settlements Coordinating Committee should be remodeled into a more effective and participatory framework with regard to collection and management of land information for environmental planning in informal settlements.

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