

Report: Human Rights Reporting Working Group

September 2009

Summary

This paper provides the recommendations of the Human Rights Reporting Working Group. The 1st section of the paper outlines the scope of relevant human rights. The 2nd section discusses key human rights-related developments of which the GRI should be aware and why they are relevant. The 3rd section introduces the key elements for good reporting on human rights. The 4th section presents a model with details on what should be disclosed with regards to human rights performance.

The GRI Sustainability Reporting Framework is intended to apply to organizations of all types, including public sector, private sector, and non-governmental organizations. In preparing these recommendations, however, the Working Group noted that the human rights disclosure expected from these different types of organizations by stakeholders would likely not be the same due to key differences in their obligations regarding human rights. Certain aspects of human rights such as freedom of association apply to all organizations, regardless of their sector, and some organizations owned by governments such as state-owned enterprises report in essentially the same manner as a privately-owned business. However, government agencies/regulators have the obligation to protect rights, which would lead to potentially significant differences in concepts of complicity as applied to their reporting and some of the indicators required. Therefore, the Working Group prepared these recommendations primarily with businesses in mind, although they do still have general relevance for organizations of other types.

Section I. Scope of Relevant Human Rights

Human rights is a broad term, but can be understood as a set of rights that have been articulated with the aim of protecting the bodily integrity, basic needs and dignity of the human being. A range of specific rights have been defined through codification in approximately 80 conventions/treaties, as well as in customary international law. These are primarily directed at the obligations of states.

The International Bill of Rights – the Universal Declaration of Human Rights (UDHR) and its two Covenants, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR), can serve as a point of reference for business. The rights embodied in this corpus range from workplace rights such as freedom of association to rights intended to guarantee the ability of the individual to live outside of the workplace in dignity.

There is a growing consensus that it is necessary for business to take a broad view of which human rights could be “relevant” or “material” based on review of human rights as embodied in international conventions and declarations. The range of relevant instruments is not limited to the ILO core conventions and is broader than the set of conventions and declarations referred to in the introduction to both the “Human Rights” and “Labor Practices and Decent Work” categories in the G3

Guidelines¹. The group advised that GRI should remain clear that the basic human rights principles set out or specified or referred to in these authoritative international instruments are universal, indivisible and interdependent and interrelated.

It is impossible to anticipate every situation and every human right which will be relevant given a company's activities. Companies must respect all rights. This is said recognizing that certain instruments contain language that goes beyond the obligation of companies to respect.² The specific rights that are most relevant can vary from one company to another. In addition, notions of rights are dynamic and evolve over time. For example, the rights of people with disabilities were not considered at the time that the UDHR was drafted, but are now codified in an international convention. Similarly, societal changes or other developments with far-reaching implications for people, such as climate change, may become viewed through their impact on human rights. Equally important, new ways to positively and negatively affect the enjoyment of human rights emerge with new industries and new technologies (e.g. the Internet can offer opportunities to expand freedom of expression, but can also facilitate censorship and violations of the freedom of expression).

These points led the Working Group to a discussion of how to communicate this broad and dynamic scope: is it through a list of specific rights that are typically relevant for the majority of companies? Or through an approach that is based on the underlying spirit to respect all internationally recognized human rights as reflected in major international declarations and conventions? The group discussed both approaches, concluding that creating a list of rights for reporting purposes is neither feasible nor effective, nor is there any way to make a truly comprehensive list. The Working Group also concluded that there are many indicators that are related to human rights within the current G3 Guidelines, but are not labeled as such. The International Bill of Rights points to many rights related to the quality and dignity of life, which are often related to indicators in the G3 Guidelines that are labeled as environmental or other social indicators. It is recommended that the G3 highlight the fact that many issues which are currently not labeled as "human rights indicators" can give insight into performance vis a vis human rights.

What reporting organizations need, therefore, is guidance on how to identify which human rights are relevant for reporting, not just what to consider. The G3 should underscore that companies can affect a wide range of rights, and encourage report preparers to look at the full range of human rights enshrined in the International Bill of Rights that they could affect when preparing a report. The International Bill of Rights – the Universal Declaration and its two Covenants (ICCPR and ICESCR) – should

¹ See G3 Guidelines p. 30 and p.32. "Generally recognized human rights are defined by the following conventions and declarations: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights; ILO Declaration on the Fundamental Principles and Rights at Work in 1998 (in particular the 8 core conventions of the ILO); and the Vienna Declaration and Programme of Action."

² For example: Convention 98 of the ILO requires not only "protective" action to be taken by the ratifying governments. Article 2 establishes the total independence of workers' organizations from employers in exercising their activities. The case law developed by the Committee of Experts clearly says that enterprises must refrain from anti-union policies. In the ILO's Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO this statement comes under the heading "Protection against acts of interference". Also, the recommendations to enterprises in the OECD Guidelines for Multinational Enterprises say that enterprises should "contribute" to the effective abolition of child labour and to the elimination of all forms of forced or compulsory labour.

serve as the point of reference to determine what is relevant with regard to the business and its key stakeholders.

Section II. Key Developments in Human Rights

Recent developments within the realm of business and human rights are leading to new perspectives on how human rights relate to businesses, which may carry implications for human rights reporting. This section of the paper outlines some of these developments in order to provide context to the recommendations of the Working Group. It is important that changes to the G3 on human rights reporting take account of these developments in order to keep current with the evolving conceptual framework and practice.

Special Representative on Business and Human Rights:

One of the developments considered particularly relevant by the Working Group has been the appointment of the United Nations Special Representative of the Secretary General (SRSG) on Business and Human Rights, John Ruggie, who reports to the United Nations Human Rights Council.

In 2008, the SRSG put forward a policy framework to address business and human rights challenges, which is based on three principles: the state duty to protect against abuses committed by third parties, including business, the corporate responsibility to respect all human rights, and the need for and greater access by victims to effective remedy, judicial and non-judicial. The Human Rights Council was unanimous in welcoming the framework³, marking the first time the Council or its predecessor had taken a substantive policy position on business and human rights. Ruggie has stressed that while states have the duty to protect human rights, companies can potentially impact all internationally recognized human rights – as demonstrated by his mapping of nearly 400 allegations against companies – and therefore must consider their responsibility to respect with regard to all such rights.⁴ A key implication for reporting standards is that there is no simple list of human rights to translate into a limited set of indicators that will be widely applicable and capable of capturing most situations beyond the workplace.

Ruggie also has found that relatively few companies have systems in place enabling them to demonstrate that they are meeting their responsibility to respect.⁵ He therefore recommends that companies institute an ongoing human rights due diligence process, whereby they become aware of, prevent, and mitigate adverse human rights impacts. The four elements of human rights due diligence were outlined in his 2008 report:

having a human rights policy, assessing human rights impact of company activities, integrating those values and findings into corporate cultures and management

³ See Human Rights Council Resolution 8/7. Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf

⁴ See, for example, Monash University et al, *Human Rights Translated: A Business Reference Guide*, which, through a detailed look at each right in the International Bill of Human Rights, underscores the potential for companies to affect most or all of these rights, whether directly or indirectly.

⁵ John Ruggie, « Protect, Respect & Remedy: a Framework for Business and Human Rights », Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, April 2008, UN Human Rights Council, A/HRC/8/5, p. 9.

systems, and tracking as well as reporting performance. Because the SRSG's work has been based on broad consultation, and his framework has been met with a good deal of support in and beyond the UN Human Rights Council, it is fair to say that the above points represent a broadening shared framework, and for this reason are not his alone. For the same reason, they are relevant for the GRI's work on human rights.

Complicity:

A further development at the international level is the evolution of the discussion around the concept of corporate complicity in relation to human rights abuses. The issue has been the subject of recent high-level studies, most notably a multi-volume report published in 2008 by the International Commission of Jurists.⁶ In addition, a number of pending lawsuits against corporations allege complicity in serious human rights abuses. Situations of contributing to human rights abuses committed by others are an important aspect of how companies can affect human rights; reporting therefore must allow for disclosure of how organizations approach and address such situations. In particular reporting should focus on identifying where companies are at risk⁷ of becoming complicit in human rights abuses and how they are mitigating the possibility of complicity.

The discussion on complicity has also introduced new concepts for considering corporate responsibility. The term "sphere of influence" has been used in the debate around business and human rights to help determine the areas which are relevant to the company in terms of human rights. Sphere of influence can include both positive and negative effects.

The concept of sphere of influence remains relevant for evaluating some aspects of an organization's responsibility, but the concept of complicity has introduced additional dimensions that are also relevant. Important elements in determining (or avoiding) complicity include the following:

- the nature of relationships that a reporting organization has with others, including both state and non-state actors (e.g. Contractual? Joint venture? Direct contact? Direct or indirect support to governments that violate human rights? Use of security forces?);
- how much a reporting organization knew, or should have known, about abuses;
- actions taken to prevent complicity;
- whether or not the company benefited directly or indirectly from the abuses; and
- the degree of contribution to the human rights abuse.

A company could be considered complicit when it knowingly contributes substantially to human rights abuses committed by others.⁸ According to recent literature, silent presence and benefitting from abuses are unlikely to result in legal liability, though

⁶ See « Corporate Complicity & Legal Accountability », particularly vol. I, "Facing the Facts and Charting a Legal Path", Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, Geneva, 2008.

⁷ In this context the notion of risk makes sense only if the underlying assumption is that the company has a clearly expressed culture of compliance with human rights and international standards.

⁸ John Ruggie, « Clarifying the Concepts of 'Sphere of Influence' and 'Complicity' », Report to the UN Human Rights Council, May 15, 2008, p. 21.

there can be exceptions. However, even if there is unlikely to be legal liability in a case of complicity, social expectations are such that there are moral, reputational and other risks associated with perceived complicity.⁹

In considering complicity, it is also important to underscore that companies are not neutral or passive actors. Companies can either indirectly undertake actions that support abuses of rights (which lead to questions of complicity) and also directly establish policies that fail to respect rights (e.g., policies designed to prevent collective bargaining). For purposes of reporting, therefore, it is important to recognize that situations of complicity can be, at least in part, of their own making (e.g. through lobbying, company policies, business relationships with repressive governments or others). Activities that can affect whether an area or environment becomes more or less conducive to abuses of human rights (such as lobbying) may also influence whether or not a company is perceived as being complicit in abuses.

Future Trends in Human Rights Reporting:

Current reporting on labor and human rights tends to focus on performance measures directly related to the rights. However, there is increasing experimentation with disclosure focused on “root causes” (in relation to corporate impact on human rights) as an important element of reporting in the future. “Root causes” refers to aspects of business models or routine practices that may create situations where abuses are more likely to occur. For example, consumer goods companies with very short lead times on orders and frequent fluctuation can create supply chain environments where abuses related to overtime are more likely to occur due to the difficulty for the supplier to manage production. Root causes vary by sector and step in the value chain. However, stakeholders are increasingly interested in reporting guidance that creates transparency about business models or routine practices that may have a causal linkage with human rights abuses.

Points of Reference:

In the course of preparing its recommendations, the Working Group specifically reviewed several other documents including:

- ISO 26000 Draft
- HRCA -Danish Institute for Human Rights
- Various papers by John Ruggie
- UN Global Compact – A Guide for Integrating Human Rights into Business Management
- BLIHR matrix
- OECD Guidelines for Multinationals
- Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

⁹ See, for example, Ibid. pp. 17 and 22, and International Commission of Jurists, “Corporate Complicity & Legal Accountability”, op cit., pp. 14-15.

Section III. Key Elements of Good Reporting

Overview

Good human rights reporting should demonstrate the organization's capacity to respect all human rights as well as its past record in this area. The information reported should be a combination of description of processes and performance indicators that address: the extent of implementation of due diligence processes, incidents related to human rights, and other indicators of performance. Given the difficulty of preparing a uniform list of rights with associated standard performance indicators, reporting should have a strong emphasis on explaining the organization's processes related to human rights due diligence. In the context of these recommendations, "due diligence" refers to the steps that a company undertakes to "become aware of, prevent and address adverse human rights impacts".¹⁰

The Working Group discussed how GRI's reporting guidance should address complicity, and concluded that it is not an independent topic upon which to report; rather, appropriate guidance on how to disclose due diligence processes should also result in the company reporting on how it addresses the various issues related to complicity. Companies should report on the implementation of due diligence processes and, where possible, both on specific situations of complicity and situations with high risk for human rights abuses that are identified in the due diligence process.

Overall, proper disclosure of a reporting organization's due diligence processes should enable a reader to determine the ability of the organization to proactively anticipate, prevent, manage and mitigate risks to stakeholders' human rights and risks posed to the organization by not respecting human rights, as well as its proactive efforts and initiatives to support human rights, including in difficult environments. This information about processes within the company combined with performance indicators would provide a useful approach to human rights reporting.

Questions a Report Should Answer

There are three key questions that a report should enable a reader to understand:

- 1) Material issues - Which human rights are material to the organization and its stakeholders, from the perspective of both risks and opportunities;
- 2) Due diligence processes - the degree to which the organization has the ability to anticipate, prevent, manage and remedy human rights impacts;
- 3) Performance - the degree to which the organization's due diligence processes are proving effective in avoiding incidents of human rights violations and how the organization has contributed positively and/or negatively to and/or affected certain human rights;

The last question would involve using indicators that cover a range of performance, including the extent of implementation of processes across an organization, occurrence of incidents related to human rights, and changes occurring in stakeholders' ability to enjoy or fulfill their human rights.

¹⁰ "Protect, Respect and Remedy", p. 17

Overall, delivering the above information would require the G3 to include different types of disclosures ranging from descriptions of processes to data on various types of results.

Qualitative Aspects of a Good Report

In addition to the specific information that is included in reporting on human rights, the Working Group also noted several general qualities that are important to ensuring good reporting. These apply to other topics as well, but were deemed particularly important in the context of human rights reporting.

Disaggregation of information:

The Working Group noted that non-discrimination is a core concept in human rights. To properly assess whether situations of discrimination may be occurring, it is necessary to disaggregate performance data.

Balance and objectivity:

Reporting should provide a fair view of both positive and negative activities and outcomes. Reporting on impacts across different stakeholder groups should be done in a similar way. The report should pay adequate attention to both narrative and quantitative data.

Dynamic:

Reporting should focus on changes in performance rather than continuously reporting on aspects of the organization's activities that haven't changed year-to-year. Process disclosures are important elements of good reporting, but are unlikely to change significantly from year to year. The organization should, in its first report, provide a clear and comprehensive picture of the processes. In subsequent reports it can simply refer to the process information provided in the first report and limit itself to updates, if necessary. Strong reporting on performance results is essential in every report.

Performance Indicators

Performance indicators have proven one of the most difficult aspects of human rights reporting and the Working Group discussed various approaches in preparing its recommendations. In the context of GRI, "performance indicators" refers to disclosures that will show the results of an organization's actions and will identify specific changes year-to-year that can show trends over time to allow for assessment of whether or not performance is improving or worsening. This is distinct from process disclosures, which typically are reported in the form of narrative text and may or may not change year-to-year.

The Working Group found it difficult to define a specific taxonomy or terminology to develop types of indicators. It discussed three general types of indicators:

1. Indicators of the extent of implementation of processes within an organization – these would be indicators that would demonstrate how widely processes and procedures are applied within an organization.
2. Indicators of incidents
3. Indicators of results or other dimensions of human rights performance

Indicators of the extent of implementation of processes within an organization demonstrate how widely processes and procedures are applied within an

organization. The Working Group noted that the G3 generally has limited coverage of such indicators. However, given the importance of due diligence processes in the area of human rights, the Working Group decided to examine further indicators of this type.

Indicators of incidents focus on reflecting the frequency with which the activities of an organization result in violation or abuse of human rights. These indicators have the benefit of providing a pattern over time. However, the Working Group found it extremely difficult to develop a clear definition of what constitutes an “incident” and how to count incidents. Organizations face “incidents” that range from court decisions to unsubstantiated allegations, and it is very difficult to define a fair and meaningful threshold that can consistently be applied. In addition, some stakeholders consider the reaction to incidents to be more important than the actual number of incidents.

The Working Group recognized that additional types of indicators exist beyond the two types listed above, but could not agree on a clear label or definition. These other indicators generally relate to changes in the quality of enjoyment of rights of stakeholder groups which can be measured in terms of outputs (e.g., number of children receiving schooling) or outcomes (e.g., diversity of senior management/board members).

As a general point, all quantitative indicators have minimal meaning as isolated pieces of information. Numbers can indicate how often events have occurred, but will provide little or no insight into quality (e.g., 100 hours of training does not reflect whether it was effective or ineffective; 1 million Euros of revenue does not describe sources of the revenue or their relative importance to overall strategy). Therefore, all quantitative indicators must be read in the context of other information and the relative value of quantitative indicators must be judged in terms of how well it contributes to understanding in combination with the other required disclosures.

Section IV. Reporting Model

This section presents a reporting model that reflects the key elements listed in Section III with explanation on how to handle each element. The key elements in the reporting model are the following:

- Disclosure on due diligence processes covering:
 - Assessment
 - Policy
 - Goals
 - Organizational responsibilities
 - Training, awareness, and roll-out
 - Monitoring
 - Follow-up and remediation
- Disclosure of performance indicators covering:
 - Extent of process implementation
 - Other indicators

Disclosure on Due Diligence

The organization should disclose its approach to implementing due diligence processes. The report should explain the scope of countries and business activities addressed, and the extent to which human rights due diligence is an ongoing process. The disclosures outlined in this section are intended to help summarize the organization's approach to:

- Policies
- Approach to impact assessment
- Integration into the organization
- Tracking performance

These four headings above are the current basis for John Ruggie's framework for due diligence. However, Ruggie's work is likely to undergo further evolution over the remaining months of his mandate.

Organizational Risk Assessment

- Describe any standard risk-assessment procedures that integrate human rights, including use of industry guidance/practices
- Identify other processes for analyzing and understanding human rights issues relevant for the organization and its stakeholders and the frequency with which they are undertaken
- Identify any specific, organizational-level or sector level risks/opportunity identified related to human rights
- Approach to assessment of internal drivers or practices that could undermine or promote efforts to uphold human rights (purchasing practices, incentives such as promotion and pay, lobbying activities).

Policy

The organization should disclose its policies that relate to human rights including explaining the following:

- Rights identified as priorities within policy(ies)
- Application of the policies in terms of country operating units and business partners
- Any references to international human rights conventions and declarations and other relevant authoritative international instruments

The relevant policy(ies) for this disclosure may be a free-standing human rights policy or it may require disclosing criteria that are integrated into a combination of policies. The organization should indicate which policies are relevant for this disclosure.

Bullet Point (see above)	Explanation
Rights identified as priorities	Does the policy acknowledge the reporting organization's responsibility to respect all human rights at all times? Does the policy indicate how to identify the rights that are the most material or compelling in particular situations for the reporting organization?
Application of the policies in terms of country operating units and business partners	Do the policies apply to all of the organization's subsidiaries? Do they apply to joint ventures? How do they relate to other business partners such as suppliers?
Use of International human rights conventions and declarations	Does the policy make explicit reference to human rights instruments, such as the International Bill of Rights (UDHR, ICCPR, ICESCR) and/or the ILO core conventions? Not all policies will make the same references, but clear reference to authoritative internationally accepted instruments is required.

Goals and Targets

The organization should disclose its goals and targets for performance on human rights for the reporting period. Identify key business functions (e.g., procurement, human resources, marketing/sales) that have performance targets specifically related to human rights.

Integration

Assessments of Impacts of Operations

The organization should describe the processes and procedures for assessing or periodically reviewing and tracking human rights impacts at the level of individual operations or specific business decisions, including assessment of projects, operational sites, or other activities within specific business lines (e.g., sourcing strategies). This is distinct from organizational risk assessment which assesses the organization as a whole. The organization should describe:

- a) Degree to which stakeholder engagement is included in a process (including both internal and external consultation);
- b) Whether and how the company assesses its relationships with other actors to evaluate the potential the company will be associated with and/or considered complicit in human rights abuses;
- c) Which parameters are used to implement the assessment (e.g., country of operation, relevant human rights law, company human rights policies and commitments, etc.);
- d) How and when the results of impact evaluation feed into processes to investigate alternatives and/or develop mitigation strategies.

The term "actors" in point b refers to third parties such as suppliers, business partners, governments, security providers, etc.



Governance/Organization

The organization should disclose the distribution of responsibilities for implementation of human rights policies and practices within the organization, including any involvement of the Board of Directors (or highest governance body) and the inclusion of human rights criteria into performance assessments. The organization should disclose any international framework agreement that it has signed with trade unions.

Training & Awareness

The organization should disclose strategies for embedding awareness of human rights in the organization, including training, inclusion of criteria into contracts, and its engagements with other partners (e.g., suppliers). Describe the departments that are the focus of internal training and methods/resources used for training.

Rollout & Reach

Strategies for extending and embedding human rights policies, goals, and processes across the organization and extending applicable policies and procedures to external partners such as suppliers, joint ventures, other business partners, etc. Specifically, the organization should explain its strategy for using human rights criteria or clauses in contracts, including the types of clauses used and the types of contracts/agreements in which these are commonly applied (e.g., purchasing contracts, joint ventures, etc).

Tracking Performance

Monitoring

Describe monitoring and accountability measures to ensure policy implementation, exercising of organizational responsibilities, and follow-up to assessments of impacts on human rights.

The report should describe processes for monitoring internal and external parties (e.g., use of internal audit, third-party monitoring, prioritizing high risk locations). In addition, the organization should describe the role of and accessibility of grievance mechanisms and local community engagement in monitoring performance.

Follow-up and Remediation

The organization should describe how it applies the results of monitoring and its procedures to determine remedies for negative human rights impacts. This should include remediation processes associated with grievance procedures and complaints from local community and other stakeholders.

Performance indicators

The organization should report performance information that helps a reader understand the extent of implementation of processes, incidents that occurred, and changes occurring in stakeholders' ability to enjoy or fulfill their human rights. The performance information that appears in a sustainability report will be a combination of data selected by the organization as well as GRI indicators. The G3 Guidelines should be revised to include the indicators listed below and recommendations for amending existing indicators are also listed. These recommendations are provided based on the assumption that sector supplements will cover human rights indicators related to issues specific to a sector. The Working Group strongly encourages that all sector supplement Working Groups carefully assess human rights.

Assessment	<ol style="list-style-type: none"> 1. Percentage and total number of sites in high-risk countries or areas (e.g. conflict zones) and percentage and total number of those sites/operations that have undertaken impact assessments or have been reviewed in relation to human rights issues. 2. Percentage of impact assessments/reviews of human rights that have engaged external stakeholders in the assessment process.
Organization/Governance	<ol style="list-style-type: none"> 3. Identify the human rights issues that have been raised/presented at board or senior executive level during the year.
Follow-up/Remediation	<ol style="list-style-type: none"> 4. Number of grievances related to human rights filed through formal internal grievance procedures broken down by internal and external stakeholders

Recommendations for Existing Human Rights Indicators:

Indicator	Recommendation	Rationale
HR1	Amend to read: “Percentage and total number of significant investment agreements and/or contracts with business partners and contractors that include clauses that incorporate human rights concerns or that have undergone human rights screening.”	The wording is slightly broader than investment agreements and also helps highlight the relevance of contractors to reporting on the indicator.
HR2	Amend to read: “Percentage of significant suppliers, contractor, and other business partners that have undergone assessments on human rights throughout the year.”	The original wording only referred to screen at the outset of the relationship. “Assessments” includes both the step of screening new suppliers and ongoing auditing.
HR3	Make HR3 a core indicator and revise to read: “Percentage of employees who participated in training <u>and/or induction</u> programs with content on human rights and the company’s human rights policy”	The original indicator is not feasible to measure because human rights content is typically embedded in other training modules. Therefore, it is not practical to measure hours specifically devoted to human rights. The revised version is measurable and reflects a key step in due diligence/integration and therefore merits inclusion as a core indicator.
HR5- HR7	Amend the wording to read: Operations or supply chain relationships identified as having significant risk for incidents of child labor, and measures taken to	The indicator should point to reporting on supply chains at risk as well as operations.

	contribute to the elimination of child labor.	
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