

Human Rights Issue

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Human Rights are Non-Negotiable

Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner

Social justice will be achieved in Australia when all its citizens enjoy their human rights. In this quest it is particularly important to recognise the distinct human rights of Indigenous peoples. This is especially so now in the context of calls for 'equality' and 'sameness' from some sections of the government and the community. It is only very recently that we have begun to see some recognition of the distinct position of Indigenous peoples in Australia, some acknowledgement of our distinct rights. After years of battle it is deeply disturbing that these rights of birth and origin may be overshadowed by a shift in government policy.

On the surface treating everyone the same may seem like justice. It may seem as if sameness of treatment will result in socially just outcomes. And the added bonus is that governments believe that such an approach will keep everybody happy. But this tendency to blur notions of equality with the principle of sameness is a dangerous trend in the delivery of services and funding. We can tax everyone \$20,000 per annum. It's the same, it's equal. But is it just?

We all share an intuitive sense of what human rights and social justice are about. We recognise instinctively that if our human rights are protected and promoted then we are living in a socially just community.

Human rights are non-negotiable. They are not something which can be conferred, they are inherent. No-one 'gives' you your rights. Human rights are your birth rights. Others can certainly abuse or refuse to recognise your rights.

Human rights can be confirmed by legal instruments but the law is not their source. Nor is conventional or popular wisdom. Human rights precede human made law. They precede the shifting tides of what is 'politically correct'. Let us hope they also outlive them!

At the core, the most basic human right is the right to life, encompassing all those rights essential for human survival and human security. These include the fundamental rights to adequate food, shelter, and health care, and freedom from violence or any form of genocide.

Beyond that are the rights essential to human dignity and integrity; the rights to live freely and without fear of persecution or discrimination; the right to participate fully in cultural and political life; the freedom and ability to practice your chosen culture, spirituality or religion; being able to pursue your education and employment in ways which are appropriate to your culture; being free to live with your chosen community or family.¹

These are the minimum standards which are due to all human beings by virtue of the fact that we are human beings. Many of these rights have been set out in human rights treaties to which Australia is a party.

The irony is that people deprived of their rights and oppressed by injustice know in their hearts with undying clarity what these things are about. A human being cannot fail to know when they are deprived of the right to live in dignity and to be respected as a human being.

When you are born as an Indigenous person in this country you get a lifetime of on the job experience studying human rights.

The meaning of social justice is best illustrated by describing some gross violations of human rights which illustrate what social justice is not.

It means having 26 times more likelihood of being taken into police custody than your white counter-parts, facing the fear of being harassed if not bashed in the cells, and being ten times more likely to get a longer and harsher sentence for the same crime.²

It means having a life expectancy twenty years less than all other Australians³ and if you are lucky enough to make it to your forties or fifties it means dying at ten times the rate of the national average.⁴ It means being 50% more likely to commit suicide⁵.

It means having children who are three times more likely to die in infancy⁶ and if you are an Indigenous woman it means being four to five times more likely to die in childbirth.⁷ It means that if your child does live she will almost definitely suffer hearing impediments even before reaching the age of four months⁸ and that she will have less access to decent medical services than any other children. It means that as your children grow older they will have a significantly lower chance than any other group of children in the country of getting through high school⁹, and later, of getting a decent job¹⁰.

Every one of the experiences I describe is happening to Aboriginal and Torres Strait Islander peoples in this country today.

And I haven't even mentioned the atrocities of the past like the children stolen from their families.

'it is absurd to assume we are somehow a privileged people'

There is no doubting the social *injustice* evident in the day to day lives of Indigenous people in Australia. It is absurd to assume that social justice now exists for Indigenous peoples, or that we now fully enjoy our human rights or as some politicians have intimated, we are somehow a privileged people, better off than the rest of the population.

The bleak picture I have painted is the actual experience of too many of our people. This is what is *lived* by too many.

As this country's First Peoples it has been difficult to have our special rights arising from our unique status recognised against a backdrop of such extreme social disadvantage. The current Government is quick to focus on our disadvantage in an attempt to undermine our political claims for rights. The Government's attitude to Indigenous affairs has been to suggest that we abandon our politics and our rights to pursue the practical problems of our social disadvantage. Such an approach is indicative of a Government that has no understanding of the relation between breaches of human rights and social disadvantage, and of the interconnectedness of the factors of social disadvantage.

What is missing, both within Australia and at the international level, is genuine protection of Indigenous rights, as they are understood by our peoples.

Our first and seminal right is the right to self-determination, followed by the right to our lands and to control access to those lands. The *Draft Declaration on the Rights of Indigenous Peoples* elaborates several other rights:

- *the right to full ownership, control and protection of our cultural and Indigenous property (article 29);*
- *the right to restitution of cultural and intellectual property taken without our free and informed consent (article 12);*
- *the right to the protection of vital medicinal plants, animals and minerals (article 24);*
- *the right to own, develop and control traditionally owned or used resources (article 26);*
- *the right to determine and develop priorities for our resources (article 28); and*
- *the right to compensation to mitigate adverse environmental, economic, social, cultural or spiritual impact (article 30).*

'our rights are different but equal'

These are our core rights. To this inventory we would also add the recognition of collective rights. As Aboriginal peoples, we have shared a collective existence, a common history and a common society, developed over tens of thousands of years. As the First Peoples of this land we are unique with distinct communal values. We are *different*, but this difference does not preclude a dichotomous approach to the enjoyment of human rights, both individual and collective.

It should be understood that our rights are *different from but equal to* the rights of non-Indigenous people. This is not a claim for special rights but rather a call for laws which accurately reflect the real nature of the interests sought to be protected.

Self determination is the process which must underpin the *recognition* of all our rights but *land* is the base for our Indigenous identities and the foundation for the enjoyment of our rights.

To fully understand why land rights are so important to Indigenous peoples, you have to move out of the paradigm that sees land as purely a commodity to be exploited. The deep connection which Indigenous peoples have with our land has been totally disregarded by non-Indigenous cultures.

For us, land has a spiritual, cultural, political and economic value. It supports our identity, our spirit, our social relations, our cultural integrity, and our survival. Land is the source of our physical and spiritual sustenance. Removed from our land we are literally removed from ourselves.

Again, we have had to emphasise this right because it has been so grossly violated. In this country, until 1992 there was a total denial that we had any rightful claim over our territories whatsoever. Until *Mabo*, Indigenous peoples were forced into a position where land rights were seen as essentially a matter of welfare, dependant on the generosity of the state - a degrading and humiliating position.

The importance of the High Court Native Title decision lies in the fact that it gave credibility to our assertion that we have rightful claims to land. It allowed us to move from a position of weakness and welfare to a position of strength and legal rights.

The native title decision led to Commonwealth legislation setting up processes whereby the existence of native title could be established. The legislation was far from perfect. Like other Indigenous people I have numerous criticisms of it, the most profound being its assertion that our title can be extinguished by the laws and actions of the coloniser.

Nevertheless, the act has provided the basis for Indigenous people to claim native title in some instances, and to negotiate control over and use of land where they have an interest. What we are seeing now, under the Coalition Government, is a movement towards the decimation of those very minimal rights and procedures. Right now, Indigenous peoples across the country are trying to recover from the shock of what is being proposed in order to negotiate an outcome which will not totally decimate the rights recognised in 1992.

This year the litmus test of the Government's commitment to human rights will be its response to the *Wik* Decision, amendments to the *Native Title Act*, the Inquiry into the Forced Separation of Aboriginal and Torres Strait Islander Children from their Families, the National Summit on Deaths in Custody and the National Reconciliation Convention. The Government's responses to these crucial events will indicate what its commitment really is. The early signs are not good.

Endnotes

1. For a fuller exploration of the meaning of human rights, see Julia Hausermann, *Myths and Realities*, in Davies, P (ed) **Human Rights**, p. 127.
2. For detailed figures on incarceration and judicial bias, see Appendix A.
3. Based on 1991 census figures the average age of death for non-Aboriginal men was 74, for Aboriginal men it was 57. For women, the figures are 80 and 64.5 respectively.
4. Reported in the *Medical Observer*, 16 April 1993.
5. Reported in the *Age*, 23 July 1993.
6. NT Health Department figures reported in the *NT News*, 16 December 1992.
7. National Health and Medical Research Council statistics.
8. These figures apply to Aboriginal children in the Torres Strait Islands and do not apply to all Aboriginal children.
9. Only 80% of indigenous children of compulsory school age are in primary or secondary schools compared with a National participation rate of close to 100%. About 30% of indigenous children aged 16 or 17 years are in formal training compared to a national rate of more than 40%. Only 50% of Aboriginal children have some pre-schooling compared with a national rate of 90%. Figures announced by Robert Tickner in January 1993, (Canberra Times, 18 January 1993.)
10. 1991 census figures indicate that 31% of Aboriginal people are unemployed, and a further 20,000 are working for the dole

We are delighted to inform you of a new national newspaper to be launched on March 14th in Melbourne. *The Republican* offers a refreshingly different perspective on the week's news and also provides features and reviews, opinions and letters, columns on technology, the environment, sport, health, politics, film, legal issues and much more. *The Republican* is independently funded and is not affiliated with any movement or political party. *The Republican* will be independent.

For subscription details please contact Mark Henry on (tel) 03-9686 8443 or (fax) 9686 8449.

Advertisement

Jose Ramos-Horta, winner of the 1996 Nobel Peace Prize, received a standing ovation from a packed Senate Chamber at Old Parliament House when he delivered the second Australia Institute Public Lecture on 4th February.

Jose Ramos-Horta gives Australia Institute Public Lecture

Speaking on the topic of 'Human Rights and East Timor,' Mr Ramos-Horta pointed to several international examples in which countries written off as 'lost causes' had achieved independence from occupying powers - Lithuania, Latvia, the Baltic States. He also pointed to dramatic political breakthroughs in South Korea and Thailand which saw democracy emerge from military dictatorship.

Few people would have thought that the struggle for independence for East Timor would be such a major and persistent international issue 21 years after the Indonesian invasion.

When asked why the Indonesian Government persists in its occupation of East Timor despite massive international pressure and the costs of maintaining an army of occupation, Mr Ramos-Horta said that the key factor was the loss of face, especially for President Suharto, from a withdrawal. But, he noted, Suharto is the only senior Indonesian leader at the time of the invasion who remains in office, and the departure of Suharto will make negotiations towards a settlement much easier.

Pointing to the remarkable results of negotiated solutions in the middle east and South Africa, the Nobel Laureate said that East Timorese leaders are willing to take a flexible and creative approach to negotiating a resolution of the conflict. In his Nobel Prize acceptance speech, Mr Ramos-Horta outlined a flexible staged process of negotiation over several years leading to a popular referendum on independence. He argued that the Nobel Prize Committee had opened up a window of opportunity for the start of a process leading to a permanent solution to the issue.

Mr Ramos-Horta acknowledged that the East Timorese themselves must share some of the blame for the 1975 invasion. 'Collective immaturity' led to civil war which, despite denials up to the last moment, opened up the country for invasion by Indonesia.

Listening to Mr Ramos-Horta's reasoned but passionate speech suggested that the East Timorese resistance has matured enormously since those dark days. The formation and operation of the National Council of Maubere Resistance of East Timor, the non-partisan supreme national body comprising all East Timorese nationalist political forces and resistance groups (of which Mr Ramos-Horta is the Special Representative), reinforces the likelihood that one voice will speak for East Timorese independence.

Mr Ramos-Horta called on the Australian Government to apply itself to persuading the Indonesian Government to withdraw troops from East Timor and end the transmigration program as first steps towards a negotiated settlement. He also said that Radio Australia and Australia International Television were critical sources of independent information for people in East Timor.

Introducing the speaker, Institute Executive Director Clive Hamilton noted that the Public Lecture, and the presence in Australia of Jose Ramos-Horta, appeared to be an embarrassment to the Australian Government, an impression borne out by the reactions of senior ministers and officials to invitations to attend the various events being held in Canberra the same week to honour and listen to Mr Ramos Horta.

In moving a vote of thanks, Dr Hamilton said: 'Those who attended his lecture heard a sustained and passionate defence of the rights of the East Timorese from a Nobel Laureate who stands as a powerful symbol of the universal urge for peace and freedom from oppression.'

Seminar

Redistributing Work

The Jamieson House Working Group is sponsoring a one day seminar to follow up the Institute's publication of the discussion paper "Redistributing Work".

Keynote invited speakers include Bill Kelty, (ACTU) Averill Henry (previously Westpac Bank), Dr Clive Hamilton (TAI) and Dr Belinda Probert (RMIT). A moderated panel session will also include representatives from ACOSS, Australian Youth Action Policy Coalition, NSW Working Women's Centre, an environmental perspective and a business viewpoint.

The seminar aims to generate debate about the potential benefits of rethinking the way in which work is structured in Australia today, particularly the impact on unemployment.

Date: March 24th 1997

Time: 9.00am - 3.30 pm

**Venue: Main Committee Room
Parliament House**

Canberra

Cost: \$40 and \$15 concession

Registration forms are available from The Australia Institute by phoning (06) 281 6566
or faxing (06) 281 6230

In March the Human Rights and Equal Opportunity Commission will be reporting to the Federal Government following its enquiry into the stolen generation of aboriginal children. This is one of a range of human rights issues - the Wik decision is another - that have been hotly debated over the last few months. So how does the Human Rights Commissioner, Chris Sidoti, think Australia is faring in its record on human rights? Marilyn Chalkley spoke to him.

A Slow March Towards Utopia

The view out of the window is of Sydney's harbour - a bit grey on this particular day - and the atmosphere is peaceful. Human Rights Commissioner Chris Sidoti encourages peace in his place of work. Maybe it helps clarity of thought, because human rights issues are often a result of turmoil and strife. And Chris Sidoti is certainly clear about Australia's record on human rights.

Asked to give a "report card" on Australia's record he summarises by saying Australia has come a long way in the last twenty years, but in contrast he sees our record on Aboriginal and Torres Strait Islander people as a disgrace.

"For the 98% of non indigenous Australians no doubt Australia provides one of the best social economic and political systems in the world. Our poor people are certainly poor, and required to live in levels of poverty which cannot be justified in a country such as ours, but nonetheless if poverty is forced upon you, better to be poor in Australia than in most other countries."

The Commissioner can see serious consequences of policies that have been pursued over the last fifteen years and says there is no doubt that there are still large numbers of Australians who are significantly disadvantaged. Part of the blame for this can be attributed to contractions in public spending, both by the former government and this one, which have made life more difficult for many of the poorest Australians; those least equipped to handle what has been imposed on them. "It is always those on the margins of society who are expected to bear an undue proportion of every economic burden we face," he says.

"I also have continuing concerns, particularly under the current climate of racism during the last 12 months, as to whether our community is as open as it can and should be to newcomers. So much of Australia's economic development has been built upon the work of immigrants, both after the second world war, and since then especially in economic terms over the last 15 years.

"We all benefit from the contribution immigrants have made to Australian society and yet in so many ways the level of exclusion and discrimination they face remains a problem. I worry because of that, that our traditionally open approach to the rest of the world is under threat.. The political and public response to boat people is an example of that."

While Sidoti says there are only some 350 boat people a year who arrive in Australia - hardly a threat - he had to take the Immigration department to court last year in a bid to gain access to those confined behind bars often for years. He won, but now with bipartisan support there is a bill going through Federal Parliament which upholds the government's right to bar him from enquiring whether such detainees are having their human rights violated.

On the other hand Sidoti, himself a lawyer, and a former Australian Law Reform Commissioner, thinks the fact that Australia has got through serious racist outbreaks such as those precipitated by Pauline Hansen last year, and some of the nasty incidents surrounding the Gulf War in the early 1990s, is in large part due to our social justice framework and laws like the racial discrimination act.

He says over the last 20 years Australia has developed a very broad and effective network of laws that protect human rights and prohibit discrimination: and people are prepared to use them.

And where do they use them? Not in rarefied and unusual circumstances, but in their everyday lives. It might be at work, where they feel discriminated against, or having the door slammed in their face when looking for a place to live, or in their expectation of how they should be treated by government

"There is a greater willingness by ordinary people to assert their human rights through the legal processes and I have no doubt whatsoever that we have less discrimination than we used to."

But while for many Australians the good life continues, Sidoti is passionate about the very different life experienced by indigenous people.

"For two centuries the indigenous experience of Australian society has been one on a par with some of the worst in the world. They have experienced mass murder, they have experienced the removal of children, with the intention of destroying aboriginal culture and society. There is no doubt about those facts of history.

"They continue to have life experiences that by every single indicator are worse than those of non indigenous Australians. By indicators I mean basic human rights such as good health, good education, levels of employment, recreational and other opportunities and political participation. Their experience of life remains a distinct experience, different from those of other Australians and seriously at fault."

The commissioner predicts that if native title is extinguished, following the Wik decision, reconciliation will be set back a generation.

'extinguishing native title would destroy reconciliation'

"The High Court Mabo decision for the very first time gave indigenous people enforceable rights under Australian law on a matter that was central to their culture and survival as peoples. I have absolutely no doubt that to talk about removing and walking away from that recognition of rights would not just set back the process of reconciliation: it would destroy it for the foreseeable future.

So is it possible to be optimistic about the future? He says he is not a believer in the unbroken march of human triumph towards some utopia. And he believes it is too early to judge the current government, and whether there has in fact been a retreat, as some say, from social justice. He says non government organisations have a vital role to play in keeping the pressure on governments.

"I see constantly in history, including modern history, that development is two steps forward, one step back. So long as we keep it at that rate I am satisfied. I can cope with the one step back so long as there are the two steps forward and we have the net gain of a step. When it starts going the other way and we have one step forward and two steps back, then we have real problems."

Farewell to John Langmore

Former Federal Labor MP John Langmore has resigned from the Institute Board after moving to New York to take up a senior position with the United Nations.

The germ of the idea for the Institute emerged in correspondence between John and Executive Director Clive Hamilton. In addition to his intimate involvement in the formation of the Institute, John played a major role in shaping its structure and research direction. Indeed, he is as much responsible for its current position as anyone else and his commitment, intellectual input and enthusiasm will be sorely missed.

John's appointment to head the Division for Social Policy and Development at the UN Secretariat is a wonderful acknowledgment of his abilities and his unrelenting commitment to social justice. He goes to the UN as the most senior Australian in the Secretariat.

John has been voted a life member of the Institute by the Board, and we wish him well in his new venture.

Institute Notes

New Director - Dr Marian Simms

The Australia Institute is pleased to welcome Dr Marian Simms to the Board. Marian joined the Board in mid 1996 but has been a member of the Institute's Research Committee since the inception of the Institute in 1994.

Marian has been a member (and is currently a Reader) of the Department of Political Science at the Australian National University (ANU) since 1985. Prior to that she taught at the Universities of Canberra and Melbourne. She completed her BA (Hons) at ANU in 1973 and her PhD in political science at La Trobe University in 1979. She has been an international Visiting Scholar including at the Universities of Cambridge and Southern California, the London School of Economic and the Foundation Nationale des Sciences, Paris.

As a distinguished scholar, she is well known for her contribution to analysis of Australia's political institutions and well respected for her contribution to the inclusion of women in the political history of Australia.

Her early publications include *Liberal Nation* (1982), *A Women's Place* (1984, 1993) co-authored with Dr Marian Sawer, *Australian Women in the Political System* (1984), and *Militant Public Servants* (1987). In 1996 she co-edited *The Paradox of Parties: Australian Parties in the 1990s*. Her latest contribution is as co-editor of *Politics of Retribution*, (with Scott Bennett, Chris Bean and John Warhurst) a critique of the 1996 election, to be published by Allen and Unwin in March 1997.

Marian has an abiding interest in Australia's political institutions, the role of the state in the economy and community participation in the process of governance. She also has a strong commitment to making academic research accessible and relevant to the wider community. She believes that academics have a responsibility to contribute their knowledge to public debate rather than remaining confined within academic networks.

She sees The Australia Institute as playing an important role in challenging the dominance of the current economic orthodoxy and as encouraging the sort of healthy public debate she believes is part of the history of Australia but which has been lacking during the 1980s and 1990s.

Marian looks forward to assisting the Institute to contribute to discussions about the governance of Australia, proposals for community participation in the electoral system such as proportional representation and compulsory voting, and to assisting in finding additional research funds to advance the Institute's objectives.

The Institute responds to Peter Reith

The Australia Institute has made a submission in response to the Discussion Paper released recently by Industrial Relations Minister Peter Reith, *Towards a Best Practice Australian Public Service*.

Prepared by a group of Institute members and friends with an interest in the future of the APS, the submission argued that Commonwealth Public Servants have become increasingly 'dispirited, fearful and lacking in self-confidence', and many of the reforms advocated by Mr Reith will only aggravate the problems.

The submission contains sections on a vision for the APS, reform *versus* change, the independence and professionalism of the APS, tenure and contract employment, reward systems, leadership and management, and the impacts of contracting out.

The Institute's submission received widespread media coverage. Copies are available free to Institute members.

Gambling Research Project

The Institute has been successful in achieving a Research Fellowship from the Australian Tax Research Foundation to employ Ms Julie Smith to undertake a study of gambling as a source of revenue by Australian governments. Julie is an economic historian and is the author of *Taxing Popularity*. She is also currently completing her PhD at the Australian National University.

The overall aim of the project is to examine critically the increased reliance by Australian state and territory governments on tax revenue from the growth of gambling over the past ten years and to identify the potential fiscal impacts of this trend in tax policies.

The project will be a major contribution to the growing body of research on the impact of increased gambling. Elizabeth Morgan, Deputy Director, is the contact person if members would like to know more about this project.

Competition Policy and Social Care Markets

Elizabeth Morgan, the Institute's Deputy Director, was recently engaged in a joint consultancy (with two other consultants) for the ACT on service purchasing in community and health services.

The government had moved to implement the purchaser/provider funding model in other areas almost twelve months before. The model derives from competition policy, and its application to community services, (or social care markets as they are now described in the economic and social policy texts), is now the subject of considerable debate.

The consultants were asked to develop a framework, using a consultative approach, for the appropriate implementation of service purchasing and taking account of interstate and overseas experiences.

We concluded that service purchasing did not have to lead to dire consequences for community and health service agencies and that there were some potential important benefits to consumers. However this relied on governments responsibly adapting the model to reflect the nature of the community and health services industries, involving consumers and providers in planning and development, and adopting a very cautious approach to competitive tendering in their funding processes.

The Institute has very recently been advised that the ACT Government has accepted all of the recommendations of the report and endorsed an implementation timeframe.

The Institute will be working with ACOSS over the next few months to develop a series of forums or a seminar on competition policy and community services. The principles and concepts developed from this work for the ACT government will be further explored in this joint venture.

The next newsletter will include a longer article on this topic and information about the joint activities with ACOSS. If you would like to know more about this work please ring Elizabeth at the Institute.

How the Institute Works

Some Common Questions

Who runs the Institute? The Institute is a ‘company limited by guarantee’ and therefore subject to the corporations law. Unlike an Association, the Directors of a company limited by guarantee have personal liability for the financial obligations of the Institute. The Board meets several times a year to discuss the research priorities, finances and various activities of the Institute. Day-to-day operation of the Institute rests with the Executive Director.

Why don't I get to vote? The Institute is a research centre rather than a community-based association so Associate Members do not have a formal role. The Board of Directors is made up of between 7 and 12 people. They are drawn from a variety of backgrounds but all are committed to the Institute's objectives. Vacancies are filled by the Board itself. A number of Associate Members are closely involved in some of the Institute's activities, and others are encouraged to play a role.

Why are Associate Members so called? In the Institute's Articles of Association, the Directors of the Institute are referred to as the ‘Members’ of the company. Legally, therefore, the Associate Members need a different designation, although informally we refer to Associate Members simply as ‘members’.

What is the Institute's tax status? The Australian Tax Office has granted the Institute the status of an Approved Research Institute. This means that donations to the Institute's Research Fund – a special account controlled by the Institute's Research Committee – are tax deductible for the donor. Some Associate Members have claimed their subscription fees (which are paid into the Institute's general account) as a tax deduction on the grounds that membership of the Institute contributes to their professional work. The Institute is exempt from income tax.

Where does the Institute obtain its funds from? The Institute is funded from a range of sources. The principal ones are philanthropic trusts, government agencies and private NGOs who pay the Institute to carry out specific research projects. The only untied funds are from a sustaining grant from the Oikoumene Foundation. In addition, the Institute receives support from membership subscriptions and donations from the public.

MEMBERSHIP

**If you would like to become an Associate Member of the Australia Institute
please contact:**

The Australia Institute

PO Box 131

Deakin West, ACT, 2600.

Tel: (06) 281 6566/Fax 281 6230

Fee: \$75 per annum. Low income fee \$25

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