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Structure, Constitutional Roles and Historical Trajectory of Judicial Independence in Nigeria

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Abstract:

The constitution delineates the functions and organizational framework of its organs. This study investigates Nigeria's judicial independence, scrutinizing its structure, constitutional mandates, and historical evolution. It finds that the Nigerian judiciary has both legal and administrative structures, with the legal structure concerned with the dispensation of justice. In contrast, the administrative structure is concerned with the appointment, removal, discipline, remuneration and qualifications of the judicial officers. The constitutional power of the Judiciary enables it to perform duties as expected, and its primary function is that of adjudication. The judiciary's responsibilities extend to interpreting laws and applying the constitution to legal queries, encompassing jurisdiction over various legal domains. This paper delves into the judiciary's independence, contextualized within historical perspectives. The judicial system, prior to the colonial rule, functioned traditionally as a religiously based social control and peace-keeping mechanism. Judicial independence assures unbiased decision-making, immune to external influences, and upholds the principles of justice. Unfortunately, there is still the judiciary's susceptibility to political influence in Nigeria up till now.

Keywords: Judiciary, functions, structure, history, independence

1. Introduction

Beyond its constitutional roots and historical development, today's Nigerian judiciary fulfils a variety of functions. Adjudication, which involves resolving disagreements by established legal procedures, is still fundamental. In order to verify that legislative and executive actions comply with constitutional obligations, the judiciary performs judicial review, serving as a check on possible abuses of power by the government. Central to the judiciary's efficacy is its commitment to judicial independence. This independence guarantees impartial decision-making that is unaffected by outside factors and preserves the values of justice. The interpretation of laws and the application of the constitution to legal questions further characterize the judiciary's responsibilities, exercising jurisdiction over diverse legal matters. The paper aims to study the structure, constitutional roles and historical trajectory of judicial independence in Nigeria. The methodology employed is essentially doctrinal with the use of primary and secondary materials. Historical surveys and data were collected and evaluated in light of the objective of this study. These materials are scattered in both age-long and recent articles on the subject concerned. The primary materials include historical surveys with age-long and recent articles on the subject matter. Relevant textbooks, journal articles, newspaper and magazine reports, and seminar and workshop papers from relevant organizations were used as secondary materials.

2. Definition of Terms

- Court: A body of people presided over by judges or magistrates and acting as a tribunal in civil and criminal cases.¹
- Legal structure: The legal structure encompasses a hierarchical arrangement of courts, each with distinct jurisdictions.
- Jurisdiction: Jurisdiction is the pivotal authority of a court to adjudicate cases presented to it, which is crucial in all legal proceedings, dictating the initiation, conduct, and resolution of trials. It is delineated by either the Constitution or relevant statutes, establishing the scope of a court's jurisdictional purview.²

¹ August Stevenson, *Oxford Dictionary of English* (Oxford University Press 2010) 400.

- History: History encompasses all facets of human society and is the study of change in judicial independence throughout time.
- Colonial Rule: It happened when the British conquered Nigeria, subjugated its people, and took advantage of them frequently while imposing its own language apply the law in a way that best represented both local and international viewpoints, all while making decisions free from external pressure. It also describes the judiciary's ability to run its internal affairs, finances, and organization without interference from other arms of government. It is the incapacity of magistrates and judges to carry out their responsibilities without being influenced or controlled by outside elements, either public or private.³

3. Historical Trajectory of Court Establishment in Nigeria

In Southern Nigeria, the British founded the first Court of Equity in 1854, and from that point until 1914, a network of courts grew. An English-system-compatible standard for court administration was instituted. Established in 1863 by Ordinance No. 11, the Supreme Court of Lagos held jurisdiction over civil and criminal matters and introduced a pioneering Native Court system across the region. The Native Courts were presided over by an Alkali, and the higher grade called Judicial Council was presided over by an Emir. The year 1914 marked a comprehensive overhaul of the nation's judicial framework following the amalgamation of the Northern and Southern Protectorates. This restructuring encompassed the establishment of three distinct court categories—the Provincial Court, the Native Court, and the Supreme Court—alongside the harmonization of laws governing court administration. Additionally, it entailed the appointment of a central Chief Justice and Attorney General to oversee judicial affairs at the national level.⁴

The Supreme Court, akin to its counterparts in the North and South by 1900, applied English common law, equity principles, and statutes in force as of January 1, 1900. Endowed with both civil and criminal jurisdiction, it entertained appeals from provincial courts in civil matters, whereas decisions in criminal cases were not subject to appeal. Provincial courts exercised jurisdiction over both civil and criminal matters within their respective domains.⁵ The provincial courts faced significant criticism for lacking provisions for legal representation and being staffed by administrative rather than judicial personnel, which compromised their ability to effectively administer justice.⁶ Although the government stated that it was done to help litigants obtain justice at a low cost, most people felt that this was unnecessary if justice could not be obtained, particularly since criminal cases did not allow for the appeal of provincial court decisions.⁷

In 1933, in response to widespread criticism of the legal system, the Protectorate Courts Ordinance established a High Court and Magistrates' courts for the protectorate. The Supreme Court and High Court possessed almost identical jurisdiction, though the former retained exclusive authority over admiralty, marriage, divorce, probate, and specific ordinance-related cases. The West African Court of Appeals had jurisdiction to review decisions from both courts. Furthermore, the jurisdiction of native courts was expanded during this period.⁸

Throughout these instances, the judiciary exhibited independence, with minimal external influences on court decisions beyond adherence to the doctrine of stare decisis, which underscores the principle of the rule of law. According to the English doctrine of judicial precedent, a decision made by a judge on a legal issue binds both that judge and subsequent judges in lower courts to render similar decisions on the same issue.⁹ Nonetheless, the authoritative aspect of any court judgment lies solely in its ratio decidendi, which constitutes the principle deemed to be the genuine foundation of the decision. Obiter dicta, on the other hand, lack binding force and their influence fluctuates based on the judicial stature of the pronouncing judge.

These principles stipulate that rulings by the House of Lords, the ultimate appellate court for civil and criminal cases from all courts in England, Wales, Scotland, and Northern Ireland, hold sway over all lower courts, including the Court of Appeal and the Court of Criminal Appeal.¹⁰ In the colonial context, the doctrine of judicial precedent establishes that rulings by the Judicial Committee of the Privy Council hold sway over all colonial courts, including the West African Court of Appeal, East African Court of Appeal, and Court of Appeal for Rhodesia and Nyasaland. Furthermore, decisions from colonial Supreme or High Courts are binding on Magistrates' Courts, which, in turn, dictate outcomes between higher and lower tiers. Additionally, decisions by Magistrates' Courts are authoritative for Customary or Native Courts, with appellate grades influencing lower ones within a structured hierarchy.¹¹

The Nigerian judiciary was changed by the country's 1960 independence when High Courts replaced the Provincial Courts. Native Courts continued to be the lowest level court, while the number of magistrate courts rose. With

²Judicial power means: "The authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the Law when controversies arise over what has been done or not done under it." See *Anozia v Attorney-General of Lagos State* (2010) 15 NWLR pt 207 at 237.

³Duru Onyekachi and Wisdom Ceazar, 'The role and Historical Development of The Judiciary in Nigeria'

<https://www.academia.edu/5185440/theroleandhistoricaldevelopmentofthejudiciary>>accessed 12 January 2024.

⁴Adewoye O. *Historical Overview Judicial System in Southern Nigeria, 1854-1954-Law and Justice in A Dependency*. Humanities Press, Inc. 17 First Avenue, Atlantic Highlands, NJ07716, United States, 1978

⁵Perry Keller, 'Justice and Ethnicity' (1996) 59 *The Morden Law Review* 903, 904; Raymond Ogunade, 'African Religion in Democracy' in Adam Karap Chepkwony, Peter M J Hess and Adelumo P Dopemu (eds), *Human Views on God: Variety not Monotony: Essay in Honour of Ade P Dopemu*; (Moi University Press, 2010) 63

⁶Ibid

⁷Akinwale Olusegun Obilade, *the Nigerian Legal System* (Spectrum Book Ltd, 2009) 17.

⁸Learn Nigerian Law, *History of the Nigerian Legal System*, <https://www.learnnigerianlaw.com>

⁹Hanbury, *English Courts of Law* 1949, 24; Adiele Eberechukwu Afigbo, 'Local Government in Nigeria in the Era of Indirect Rule: 1900-1950' in Toyin Falola (ed), *Nigerian History, Politics and Affairs: The Collected Essays of Adiele Afigbo* (Africa World Press, 2005) 271.

¹⁰Appellate Jurisdiction Act, 1876, and the Criminal Appeal Act, 1907.

¹¹Ibid

the merger, the Supreme Court assumed appellate jurisdiction over all High Courts and became Nigeria's highest court. Until 1954, appeals from the Supreme Court were directed to the West African Court of Appeal (WACA) and subsequently redirected to the Judicial Committee of the Privy Council (JCPC).¹²

Upon its establishment, the Federal Supreme Court appointed a Chief Justice to preside alongside other justices. The Chief Justices of the three Regional High Courts that made up Nigeria's North, West, and East each presided over a High Court. After the 1960, 1963, 1975 and 1979 civil political interventions and various Military Governments that interjected at various times, each introduced her own innovations into the judicial system of Nigeria. The enactment of the 1999 Constitution of the Federal Republic of Nigeria, in collaboration with the National Assembly, brought about significant transformations in the judicial systems, shaping them into their current form.¹³

4. Structure of the Judiciary in Nigeria

The same constitution precisely outlines the functions and structures of every organ it established. It is easier to understand the Nigerian judiciary's organizational structure in terms of its legal and administrative frameworks. The administration of justice is the primary function of the legal system.¹⁴ Hence, the network of the various activities of the coordinate, subordinate, inferior and superior courts becomes relevant. Furthermore, each of these courts' jurisdiction and topics that fall under or under its purview are pertinent. The appointment, dismissal, punishment, compensation, and qualifications of judicial officers are under the purview of the administrative system. As previously mentioned, the several tiers of courts and their respective jurisdictions are part of the legal structure.

The authority of a court to hear a case is primarily determined by the legislation establishing it. Jurisdiction is a pivotal matter, open to challenge by any party or raised by the court itself if there are adequate grounds indicating a lack of jurisdiction. In such instances, the court may request the parties to present arguments on the issue of jurisdiction.¹⁵ The issue of jurisdiction can be raised at any stage of the trial, including during appeals to the Supreme Court. In the case of *Obeta v. Okpe*,¹⁶ the court emphasized that addressing jurisdictional challenges promptly is essential. Failure to do so may render the adjudication futile. A trial lacking jurisdiction is deemed null and void, underscoring the critical importance of jurisdictional determinations in legal proceedings.¹⁷ A court without jurisdiction is incapable of issuing any judgment or ruling regarding the matter at hand. Any decision made by a court lacking jurisdiction, whether in civil or criminal matters, is deemed null and void. The right of a party to challenge jurisdiction remains unaffected by estoppel or time limitations, as a jurisdictionally deficient decision is inherently invalid and devoid of legal effect.¹⁸

A court's jurisdiction is defined by the Constitution or the act that established the court. Consequently, a court's jurisdiction is determined by the law.¹⁹ To establish jurisdiction over a case, the primary claim must fall within the court's jurisdiction. Ancillary claims cannot be within a court's jurisdiction if the court lacks jurisdiction over the main action.²⁰ In the case of *Madukolu v. Nkemdilim*,²¹ the Supreme Court established criteria for a court's competence to adjudicate a case:

- Proper constitution concerning the number and qualification of its members;
- Subject matter falling within its jurisdiction;
- Initiation of the action via due legal process; and
- Fulfilment of any prerequisite conditions for the court's jurisdictional exercise.

In essence, there are three categories of court jurisdiction: subject matter, territorial, and monetary. The Magistrate court is mostly affected by monetary jurisdiction. For example, the Magistrate court in Lagos has a 10 million Naira monetary limit. This implies that the Magistrate court loses jurisdiction over cases involving the recovery of premises when the property's rental value is greater than 10 million Naira. Territorial jurisdiction pertains to jurisdiction exercised within a defined territory and over specific subject matter. Actions are filed based on the location of performance and the residence of the parties involved. Subject matter jurisdiction refers to authority over the legal questions forming the basis of the proceedings.

Judicial jurisdiction can also be classified based on court hierarchy or subject matter, such as original, appellate, and concurrent and exclusive jurisdictions. Original jurisdiction entails a court's authority as the first instance over a subject matter or party. Each court possesses matters falling under its original jurisdiction. For instance, only the Supreme Court may have original jurisdiction in certain cases, while magistrate courts may have original jurisdiction in others. Appellate jurisdiction involves the review of lower court judgments by higher courts, typically reserved for appellate courts. Concurrent jurisdiction occurs when two courts share similar authority over a subject matter or party without one being able to overrule the other in the same matter.

¹² Ibid

¹³ Halima Abiola, The Historical Evolution of Court System in Nigeria from 1800 to 2023. The Loyal Nigerian Lawyer -<https://loyalnigerianlawyer.com> accessed 12th January, 2024.

¹⁴ Femi Ogunlade, 'Rethinking the Judiciary for Good Governance and Sustainable Democracy in Nigeria' (2006) 1 University of Ado Ekiti Law Society Journal 92

¹⁵ *Oloba v. Akereja* (1988) 7 SCNJ (pt 1) 56 at 63

¹⁶ (1996) 7 SCNJ 249

¹⁷ Maduekwe Vincent Chucks, Ojukwu Uche Grace and Agbata F Ifeanyi, 'Judiciary and the Theory of Separation of Powers in Achieving Sustainable Democracy in Nigeria, the Fourth Republic' (2016) 4 British Journal of Education 84, 88.

¹⁸ *Ngere v. Okuruko* (2014) All WLR (pt 742) p. 1766 at 785.

¹⁹ Cedric Ryngaert, *Jurisdiction in International Law* (Oxford University Press, 2015) 63.

Henry Campbell, *Black's Law Dictionary* (6th ed, Centennial Edition 1891-1991) 1194

²⁰ *Ali v. Central Bank of Nigeria* (1997) 4 NWLR 498 @192

²¹ (1962) 2 SCNLR 341 @ 404.

4.1. Superior Courts

Superior courts of record, explicitly established by section 6(5)(a)-(k) of the 1999 Constitution (as amended), encompass the following:

- The Supreme Court of Nigeria²²
- The Court of Appeal²³
- The Federal High Court²⁴
- The National Industrial Court²⁵
- The High Court of the Federal Capital Territory, Abuja²⁶
- The High Court of a State²⁷;
- The Sharia Court of Appeal of the Federal Capital Territory, Abuja²⁸
- A Sharia Court of Appeal of a State²⁹
- The Customary Court of Appeal of the Federal Capital Territory, Abuja³⁰
- A Customary Court of Appeal of a State³¹
- Other courts authorized by law to exercise jurisdiction on matters within the legislative purview of the National Assembly.

4.2. Inferior Courts

Inferior courts, distinct from superior courts of record, are established by Act of the National Assembly or State House of Assembly. They exercise jurisdiction initially or on appeal over matters within legislative competence. Typically, High Courts of States or the Federal Capital Territory have supervisory or appellate roles over them. Examples of inferior courts encompass

- Magistrates courts,
- Customary courts,
- Area courts,
- Shari'ah Courts,
- Special Offence Courts or Tribunals, and
- Rent Tribunals

The administrative structure of Nigeria's judiciary includes the National Judicial Council (NJC), Federal Judicial Service Commission, and State Judicial Service Commission.³² These bodies, constitutionally acknowledged, include the National Judicial Council (NJC), serving as the apex authority. As outlined in Section 153 of the 1999 Constitution of Nigeria, the NJC, along with the Federal Judicial Service Commission and State Judicial Service Commission, form part of the federal executive bodies.³³ The creation of the National Judicial Council (NJC) serves the crucial purpose of safeguarding the Judiciary from undue influence, ensuring its independence, an indispensable element of democratic governance. Enshrined in Paragraph 20 of Part One of the Third Schedule to the Nigerian Constitution, the NJC comprises several members, each playing a vital role in its functions:

- The Chief Justice of Nigeria, serving as Chairman
- The next most senior Justice of the Supreme Court as Deputy Chairman, form the leadership
- The President of the Court of Appeal holds a significant position within the council
- Five retired Justices, selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal, bring valuable experience to the council
- The Chief Judge of the Federal High Court
- The President of the National Industrial Court
- Additionally, five Chief Judges of States, appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and the High Court of the Federal Territory, Abuja, rotate every two years
- A Grand Kadi, chosen by the Chief Justice of Nigeria from among the Grand Kadis of the Sharia Courts of Appeal, serves on a rotational basis for two years
- Similarly, a President of the Customary Court of Appeal, selected by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal, rotates every two years
- Five members of the Nigerian Bar Association, with at least one Senior Advocate of Nigeria among them, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association, serve for two years, focusing on appointments to superior courts of record

²² see section 230-233 of the Constitution.

²³ see section 239, 240, 246 of the Constitution.

²⁴ see section 249-253 of the Constitution.

²⁵ see section 254 of the Constitution.

²⁶ see section 255-257 of the Constitution.

²⁷ see section 270-274 of the Constitution.

²⁸ see section 277 of the Constitution.

²⁹ see section 277 of the Constitution.

³⁰ see section 280 of the Constitution.

³¹ see section 280 of the Constitution.

³² National Judicial Council, Guiding Principles and Procedural Rules, <https://njc.gov.ng/procedural-rules> accessed on 25th November, 2023.

³³ Ibid

- Finally, two individuals of unquestionable integrity, not Legal Practitioners, are appointed by the Chief Justice of Nigeria
- Furthermore, the functions and duties of the NJC are delineated in Paragraph 21 of Part One of the Third Schedule to the Nigerian Constitution, which stipulates:
- Appointment Recommendations: The NJC recommends that individuals be appointed to various judicial offices, including the Chief Justice of Nigeria, Justices of the Supreme Court, and other key positions in federal and state judiciaries. It also suggests nominees for the Federal Capital Territory judiciary.
- Removal Recommendations: The council recommends the removal of judicial officers listed in subparagraph (a) and exercises disciplinary control over them.
- State Judicial Appointments: It recommends candidates for appointment as Chief Judges and Judges of State High Courts and officials for Sharia Courts of Appeal and Customary Courts of Appeal in states.
- State Judicial Removal: Similarly, the NJC suggests the removal of judicial officers mentioned in subparagraph (c) and oversees disciplinary actions against them.
- Financial Oversight: The council is responsible for managing and allocating funds, both capital and recurrent, for the judiciary's operations.
- Advisory Role: It advises the President and Governors on matters concerning the judiciary, when referred by them.
- Personnel Management: The NJC appoints, dismisses, and oversees disciplinary actions for its members and staff.
- Financial Management: It controls the disbursement of funds for council operations and handles other administrative and policy-related matters.
- Secretary Appointment: The Secretary of the Council is appointed by the NJC based on the recommendation of the Federal Judicial Service Commission, with the requirement of being a Legal Practitioner.

5. Constitutional Roles of the Judiciary in Nigeria

As the third arm of government, the Judiciary executes constitutionally assigned functions. This encompasses debates on its authority and its alignment with state aspirations and goals, evaluating how effectively it fulfils its constitutional duties and influences state ideology. The constitutional power of the Judiciary enables it to perform duties as expected.³⁴ The judiciary's core function is adjudication, wherein courts determine guilt and administer punishments for law violations.³⁵ In this manner, judges or panels adjudicate disputes based on established guidelines set forth by relevant governmental authorities. Notably, adjudication is a role carried out by all judicial systems; the manner in which this duty is applied depends on the political climate in which the court functions.

Another role of the judiciary is the authority of judicial review, ensuring adherence to the law and constitution by other branches of government and administration. This power enables courts to declare legislative or executive acts unconstitutional or in accordance with the Constitution, either rendering them invalid or validating their legality. For instance, in the United States, a statute violating specific constitutional clauses can be deemed unconstitutional. Judicial review serves as a check against potential overreach by the legislature or executive, safeguarding the principles of legality and constitutionalism within governmental actions.

However, the efficacy of such safeguards relies on the judiciary's true independence and responsiveness to societal needs. Without the executive's willingness to comply, even robust constitutional provisions can prove hollow, as evidenced in numerous Latin American and African nations. In Nigeria, during the 1999-2007 Obasanjo Administration, many court rulings were disregarded by the Federal executive, notably regarding the Supreme Court's directive for the Federal Government to remit Lagos State's withheld revenue allocation. Only after intervention by Yoruba Elders did President Obasanjo reluctantly release part of the withheld allocation to Lagos State much later.³⁶

The Nigerian courts also tried to live above board at this time by continuing to be independent and sensitive to the demands of the people. In a notable instance, during the 2007 Edo State Electoral Tribunal session in Benin City, Justice Olabanji Orilonishe addressed preliminary objections raised by Governor Osunbor's counsel. The counsel urged the tribunal to dismiss the petition by initially defeating Governorship Candidate Adams Oshiomhole due to alleged irregularities. Justice Orilonishe declared:

"Justice by technicalities, akin to injustice, is obsolete. Judicial reliance now prioritizes substantive justice, impartially serving all parties involved in a case. Technicality-driven justice in Nigeria is defunct, as contemporary practice emphasizes merit-based substantial justice."

The case mentioned above serves as an example of how Nigerian courts have attempted to be both independent of the executive and sensitive to the demands of the public.

6. Historical Trajectory of Judicial Independence in Nigeria

An analysis of Nigeria's historical development is necessary while investigating judicial independence in that country.³⁷ The establishment of the Nigerian judicial system found its roots in the colonial era when the indigenous system, rooted in religious principles, transitioned to a structured legal framework under British rule.³⁸ The integration of

³⁴ section 6 of the Constitution

³⁵ The Constitution of the Federal Republic of Nigeria 1999 Section 6(1) and (2) Hakeem Olasunkanmi Ijaiya, *Judicial Approach to Interpretation: A Study of Nigeria, Australia, Canada and India* (Malthouse Press, 2017) 100.

³⁶ IAARR 2014: www.afrrevjo.net; Indexed AJOL: www.ajol.info

³⁷ Chales M Fombad, *Separation of Powers in African Constitutionalism* (Oxford University Press, 2016) 255.

³⁸ Chukwudifu A Oputa, *The Law and Twin Pillars of Justice* (Government Printers, 1981) 75.

English legal ideas was made possible by the growth of courts up until 1914, starting with the establishment of the Court of Equity in Southern Nigeria in 1854.³⁹

The separation of powers principle found in Nigeria's constitution is the cornerstone of the country's commitment to judicial independence.⁴⁰ The 1999 Constitution carefully outlines the functions and authority of the judiciary, highlighting its duty to interpret the law, resolve cases, and uphold the Constitution. The purposeful allocation of authority among the three arms of government aims to prevent excessive influence and guarantee the independence of the judiciary.⁴¹

The constitutional framework recognizes the need for judicial autonomy in addition to enshrining the division of powers. This independence protects judges from outside influences in the areas of appointment, remuneration, and dismissal. Additionally, financial autonomy is emphasized to prevent the judiciary from being subservient, fostering an environment free from undue external pressures. Further, understanding the contemporary judiciary requires a delineation of its structural components. The legal structure encompasses a hierarchical arrangement of courts, each with distinct jurisdictions. Magistrate and Customary Courts are lesser courts that cohabit with superior courts like the Supreme Court and Court of Appeal. Jurisdictional considerations, including monetary, territorial, and subject-matter dimensions, define the authority of these courts.

Beyond its constitutional roots and historical development, today's Nigerian judiciary fulfils a variety of functions. Adjudication remains a cornerstone, involving the resolution of disputes through established legal procedures. In order to guarantee that legislative and executive actions comply with constitutional obligations, the judiciary performs judicial review, serving as a check on possible government abuses.⁴²

7. Conclusion and Recommendations

Nigerian judiciary has both legal and administrative structures with constitutional powers to interpret laws and adjudicate on different categories of legal matters. Historically, Nigerian judiciary system functioned traditionally as a religiously based social control and peace keeping mechanism before colonization. Over time, it has evolved with specific constitutional roles. However, it is not yet enjoying independence as the legislative and executive arms of government still have a high influence on it. It is, therefore, recommended that deliberate efforts be put in place to make the judiciary independent and able to carry out its constitutional roles without interference from other arms of government.

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