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From the right to food to the right to nutritional care

Del derecho a la alimentación al derecho al cuidado nutricional

Do direito à alimentação ao direito ao cuidado nutricional

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Summary

Malnutrition is a public health problem in the world. Malnutrition associated with socioeconomic factors falls within the scope of the right to adequate food. The approach to this type of malnutrition is achieved through the two aspects of this right: the right to be protected against hunger and the right to adequate food, wich implies the need to constitute an economic, political and social environment that allows people to achieve food security by their own means. However, disease-related malnutririon cannot be defined within the scope of the right to food. In this context, a human right to nutritional care should be considered where the person at risk or in a state of malnutrition can receive nutritional care including nutritional therapy in an optimal and timely manner. This new emerging human right must be studied and defined from the human rights approach to be recognized before international and national human rights institutions.

Keywords: Malnutrition; Public health; Right to nutritional care.

Resumen

La desnutrición es un problema de salud pública en el mundo. La desnutrición asociada a factores socioeconómicos es competencia del ámbito del derecho a la alimentación adecuada. El abordaje de este tipo de desnutrición se logra a través de las dos vertientes de este derecho: el derecho a estar protegido contra el hambre y el derecho a una alimentación adecuada que implica la necesidad de constituir un entorno económico, político y social que permita a las personas alcanzar la seguridad alimentaria por sus propios medios. Sin embargo, la desnutrición asociada a la enfermedad no puede definirse dentro del alcance del derecho a la alimentación. En este contexto, debe considerarse como un derecho humano al cuidado nutricional donde la persona en riesgo o en estado de desnutrición pueda recibir cuidado nutricional incluyendo la terapia nutricional de manera óptima y oportuna. Este nuevo derecho humano emergente debe ser estudiado y definido desde el enfoque de los derechos humanos para que sea reconocido ante las instituciones de derechos humanos internacionales y nacionales.

Palabras clave: desnutrición, salud pública, derecho al cuidado nutricional.

Resumo

A desnutrição é um problema de saúde pública no mundo. A desnutrição associada a factores socioeconómicos encontra-se no domínio do direito à alimentação adequada. A abordagem para esse tipo de desnutrição é alcançada através dos dois aspectos desse direito: o direito a ser protegido contra a fome e o direito a alimentação adequada, o que implica a necessidade de constituir um ambiente económico, político e social que permita as pessoas alcançarem a segurança alimentar por seus próprios meios. No entanto, a desnutrição associada à doença não pode ser definida no âmbito do direito à alimentação. Nesse contexto, um direito humano aos cuidados nutricionais deve ser considerado onde a pessoa em risco ou em estado de desnutrição pode receber cuidados nutricionais, incluindo terapia nutricional, de maneira ótima e oportuna. Esse novo direito humano emergente, deve ser estudado e definido a partir da abordagem de direitos humanos para ser reconhecida perante instituições nacionais e internacionais de direitos humanos.

Palavras-chave: desnutrição, saúde pública, direito ao cuidado nutricional.

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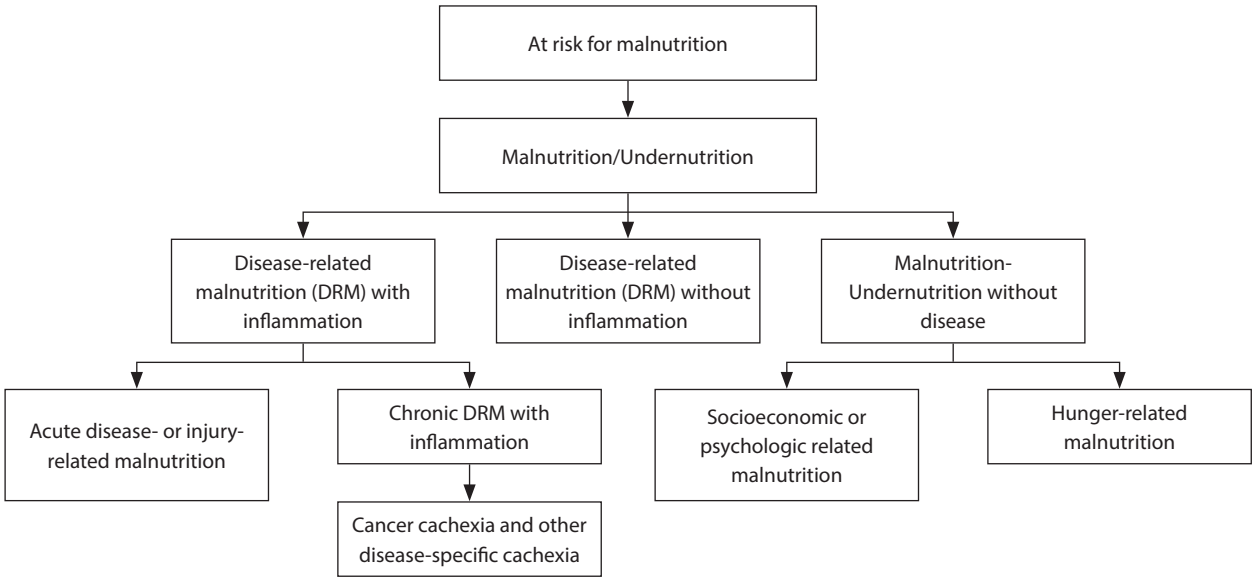
INTRODUCTION

Malnutrition is a public health problem in the world due to the high impact on morbidity, mortality and costs to health systems. According to the World Health Organization (WHO) malnutrition can be of three types: overweight/obesity, malnutrition (undernutrition) and micronutrient disorders. Figure 1 shows the classification of nutritional disorders[1]. Malnutrition in the International Classification of Diseases 11 (ICD-11) is found within code 5 "endocrine diseases" and as part of "nutritional disorders". Malnutrition is defined there as "a disorder in which the body's requirements are not met due to insufficient nutrient intake or poor absorption or utilization". It may be due to lack of access to food or disease. Malnutrition is generally understood as a deficit in energy consumption, but can also refer to a lack of specific nutrients. It may be acute or chronic[2].

In this definition we can identify two main types of malnutrition due to deficit. The first is malnutrition associated with socioeconomic factors and hunger, where the starting point is inadequate access to food (Figure 2). Figures from the Food and Agriculture Organization of the United Nations (FAO) show that, in 2017, 821 million people were suffering from hunger, that is, 1 in 9 people in the world. The approach to address this problem is based on public nutrition policies and the eradication of poverty and hunger[3]. The



Phenotypic criteria	Etiologic criteria
1. Weight loss >5% within past 6 months, or >10% beyond 6 months	1. Reduced food intake or assimilation 50% of ER > 1 week, or any reduction for >2 weeks, or any chronic GI condition that adversely impacts food assimilation or absorption
2. Low body mass index (kg/m^2) <20 if < 70 years, or <22 if >70 years Asia: <18.5 if < 70 years, or <20 if >70 years	2. Inflammation Acute disease/injury or chronic disease-related
3. Reduced muscle mass Reduced by validated body composition measuring technique	

Figure 1. Diagnoses tree of malnutrition; from at risk for malnutrition, basic definition of malnutrition to etiology-based diagnoses. ESPEN, 2017[1]. Phenotypic and etiologic criteria for the diagnosis of malnutrition according to The GLobal Leadership on Malnutrition (GLIM). For ESPEN, undernutrition is synonimous of malnutrition.

human rights approach for several decades, through the right to adequate food, has allowed States to take responsibility and act to protect populations against hunger and malnutrition.

Second, disease-related malnutrition where the starting point is the varying degrees of acute or chronic inflammation associated with the disease or trauma, and consequent metabolic adaptations, reduced food intake, or decreased assimilation[1] (Figure 3). This leads to altered body composition, loss of lean mass, loss of adipose tissue and decreased biological function[1]. To address disease-related malnutrition, nutritional care has proven to be an effective and cost-efficient process[4,5]. However, despite this and the fact that it is now technically possible to administer nutritional therapy to any sick person, the prevalence of malnutrition associated with the sick person at hospital admission remains high, between 40 % and 60 % according to different studies[6]. Public policies and legislation to address this issue are scarce and the human rights approach has never been studied.

Faced with this problem, we ask ourselves: why is the right to food not respected in the clinical field? Surprising as it may seem, in the hospital, a privileged place for the care of the person seeking health and the highest level of well-being of people, this right is too often disrespected. Our hypothesis is that disease-related malnutrition does not fall within the scope of the concept or normative content of the right to food. In this article we will show that in the clinical context and at any level of health care, the right to food cannot be guaranteed because its normative content does not apply. Therefore, it is necessary to recognize a new emerging human right: the right to nutritional care.

THE RIGHT TO FOOD

The right to adequate food as a fundamental human right was recognized for the first time, within the framework of the right to an adequate standard of living, in the Universal Declaration of Human Rights of 1948 (Article 25):

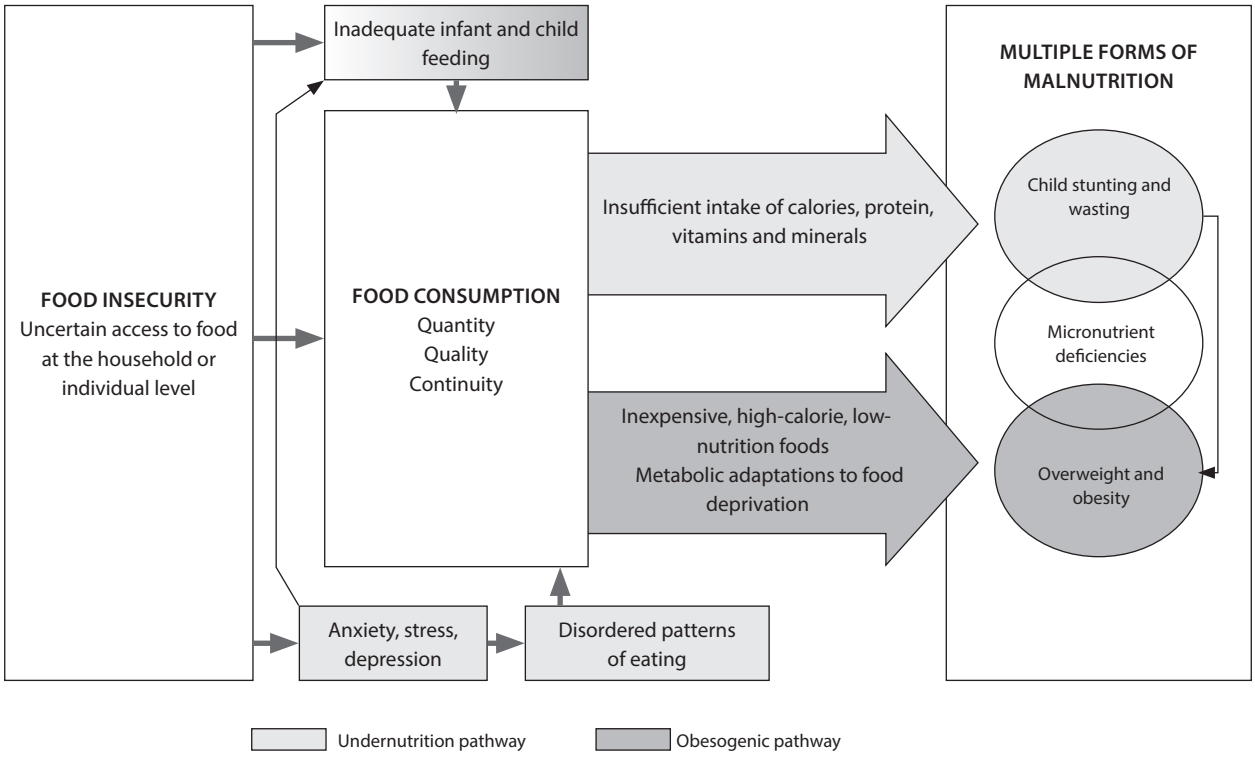


Figure 2. Pathways from inadequate food access to multiple forms of malnutrition, FAO, 2018[8].

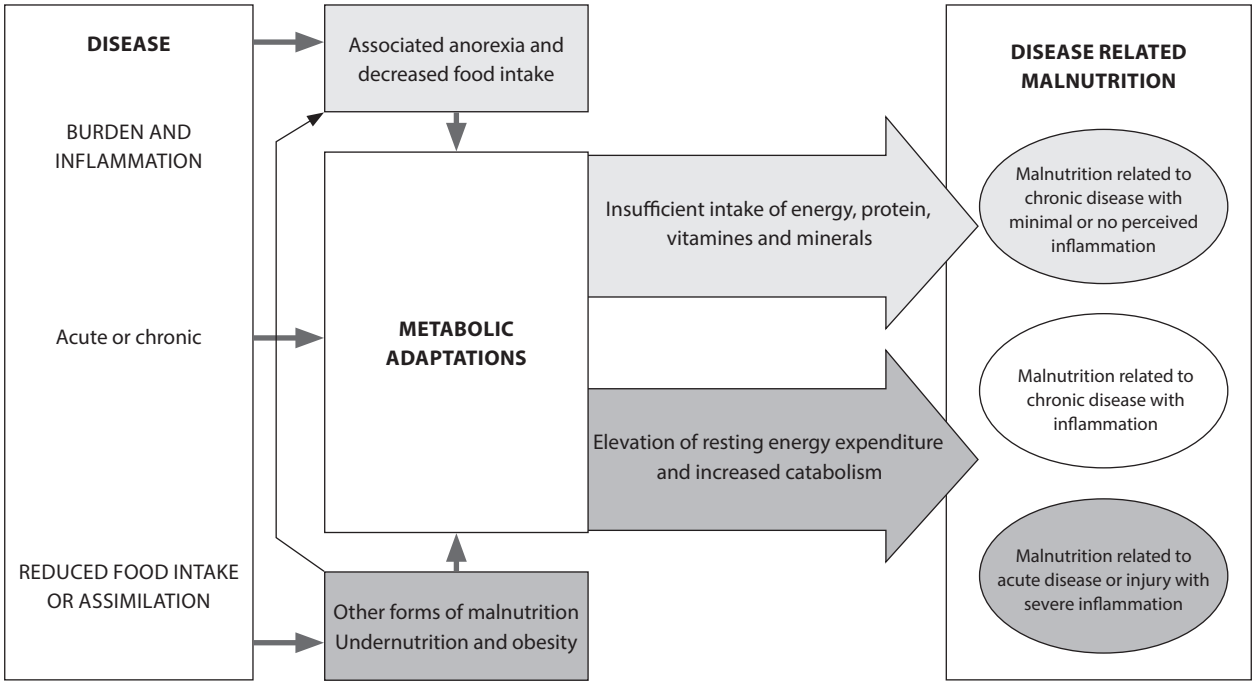


Figure 3. Pathways from disease to malnutrition. Base on the definition and classification of disease-related malnutrition[1].

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food..."[7]. This right became legally binding when the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force in 1976. Since then, other international agreements have reiterated the right to food, including the Convention on the Elimination of All Forms of Discrimination against Women (1979), the International Convention on the Rights of the Child (1989), the Convention Relating to the Status of Refugees (1951), the Convention on the Rights of Persons with Disabilities (2006) and various regional human rights instruments. To date, 160 States have ratified the ICESCR and are therefore legally bound to implement its provisions. Article 11 of the ICESCR stipulates that States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food" and affirms the existence of the right of everyone to be free from "hunger and malnutrition"[8].

To live a life without hunger is considered as the minimum that must be guaranteed by each State independent of the level of development[14]. However, the right to food is not limited to this aspect. The Committee on Economic, Social and Cultural Rights has defined the right to food in its general comment No. 12 as:

> "The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement."[9]

In addition, the Committee stresses that the right to adequate food "should not be interpreted restrictively or strictly as the right to a minimum ration of calories, protein or other specific nutrients". Other elements such as food practices, hygiene education, nutrition training, health care provision and breastfeeding should also be taken into account. This implies that every person must have access to food not only to be free from hunger but also to have a good state of health and well-being. Therefore, this right encompasses two distinct norms: the first is the right to "adequate food",

the second is that "everyone is protected from hunger and malnutrition"[8].

This approach to the right to food, which has evolved since the 1990s, aims to go beyond the food security approach that has been defended until then. It is no longer just about defending and promoting agricultural production and ensuring the availability of food; it is now about a right to food that protects people from hunger and malnutrition in order to achieve good health. In other words, it seeks to protect the right to satisfy one's own food needs, either by producing or by buying the products. It is considered a radical change of perspective: the citizen who benefits from the right to food is no longer a defenseless, passive recipient, an object of charity, and who must be "fed", but a person who has the right to benefit from an environment that allows him to feed himself and, failing that, to receive assistance not only with dignity but also with quality[10].

In conclusion, malnutrition associated with socioeconomic factors falls within the scope of the right to adequate food. Addressing this type of malnutrition is achieved through the two strands of this right. On the one hand, the right to be protected from hunger, considered as an absolute norm, and as the minimum level that must be guaranteed to all people regardless of the level of development achieved by the State. On the other hand, the right to adequate food encompasses much more, as it entails the need to create an economic, political and social environment that enables people to achieve food security by their own means.

Does disease related malnutrition have a place in the human right to food? How should the right to food be understood in the clinical context? In other words, the fundamental question is: should people be granted the right to "feed themselves" or to be "fed"?

THE RIGHT TO NUTRITIONAL CARE: AN EMERGING HUMAN RIGHT

Let us recall that in the field of public health and in the political context, the beneficiary or holder of the right to food is considered to be a person with an active role to which the State must provide an enabling environment that allows him or her to "feed himself" and, failing that, to receive assistance with dignity. In the clinical context, should individuals be granted the right to "feed themselves" or to be "fed"?

In the clinical context, the sick person is more likely to have altered nutritional status simply because he or she is sick. Therefore, every sick person in contact with a health institution should be able to receive nutritional care. That is, nutritional screening should be carried out to identify nutritional risk, an accurate diagnosis of malnutrition leading to a nutritional plan that includes feeding and nutritional therapy, its surveillance and monitoring (Figure 4). For the patient to benefit from nutritional care, a clinical nutrition professional is required to ensure a complete and adequate nutritional care process. The sick person cannot decide for themselves the type of nutrition or food they need. It is the professional who issues a recommendation and a therapeutic indication. Of course, it is the patient, who has the freedom to decide whether or not to accept the health professional's proposal.

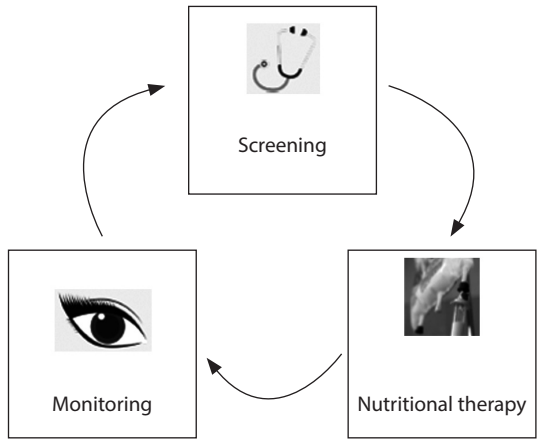


Figure 4. The stages of the nutritional care.

Therefore, the sick person has the right to receive a nutritional therapy i.e. "to be fed" and this must be guaranteed by the State and the caregivers. The normative content of the right to food as conceived in international human rights instruments cannot be applied in the same way in the clinical context. Thus, it is possible to recognize that patients have the right to receive optimal and timely nutritional care, and consequently, it is possible to recognize an emerging human right: the right to nutritional care (Figure 5).

Recognizing the existence of a right to nutritional care would have implications for the beneficiaries of the right (patients who are malnourished or at risk of malnutrition), and for duty bearers such as the State and legislators. For patients, this right would imply that they can claim from the state a complete nutritional care that prevents or at least limits nutritional alterations and modulates metabolic adaptations to have a positive impact on the evolution of the disease and outcomes.

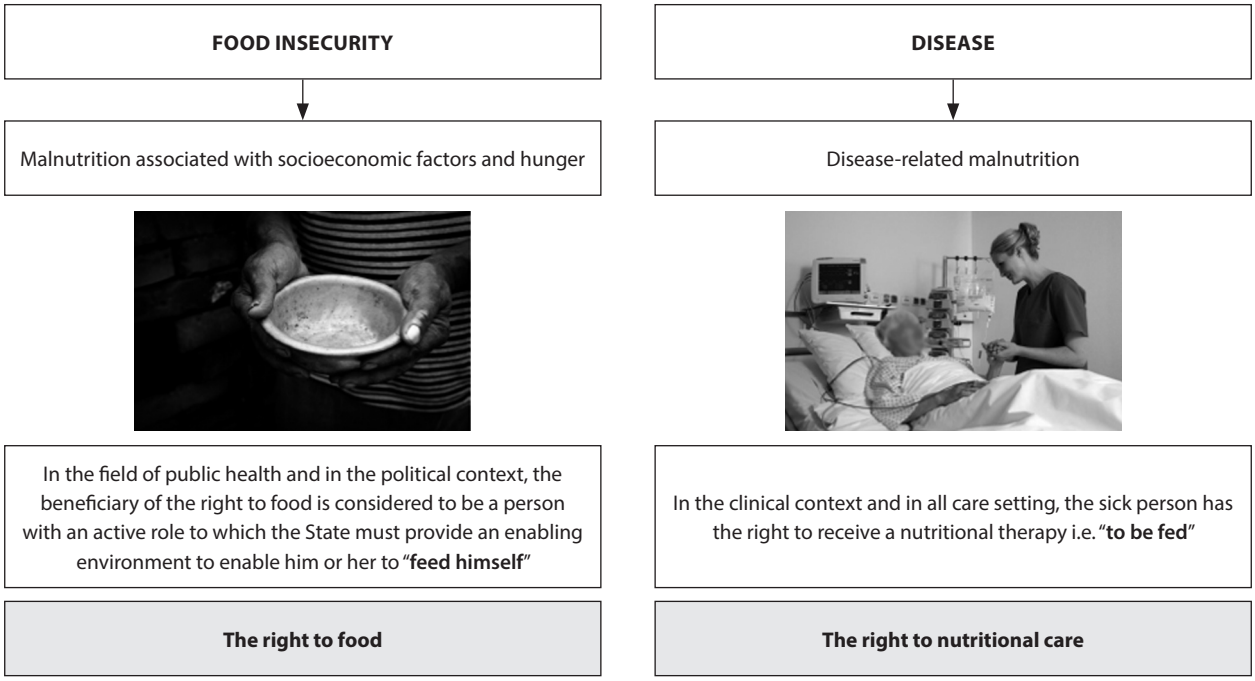


Figure 5. The right to food versus the right to nutritional care.

For States, this right would imply guaranteeing at least access, acceptability, availability and quality of food and nutritional therapy in the hospital (Figure 5).

For health professionals, the right to nutritional care should guide their actions. It is about defending the right of each sick person to receive all stages of nutritional care that lead to the patient being "fed" in conditions of dignity. More specifically, the right to benefit from nutritional care and to receive nutritional requirements through timely, optimal and quality nutritional therapy, in a context that supports the emotional, symbolic and social dimension of food. Emphasis should be placed on the fact that feeding the sick person should not be considered an act of charity, as when feeding the ill patients in hospital during the Middle Ages. On the contrary, it should be considered as a medical therapy that is integrated into the general care of patients. Nutritional therapy is a medical intervention, which requires an indication for achieving a treatment goal and the informed consent of the competent patient. Consequently, physicians, nutritionists, nurses and other health professionals must protect, respect and guarantee the right to nutritional care through the realization of all stages of nutritional care including timely and optimal nutritional therapy.

CONCLUSION

Disease-related malnutrition cannot be defined within the scope of the right to food. The right to food as considered in international human rights instruments, such as the right to "eat", cannot be guaranteed in the same way in the clinical setting. In this context, a human right to nutritional care should be considered, where the person at risk or already malnourished receives nutritional care including nutritional therapy in an optimal and timely manner. This new emerging human right must be studied and defined from a human rights perspective so that it can be recognized before national and international human rights institutions.

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Conflict of interests

The authors have no conflict of interest.

Author's contributions

DC designed the article. The authors declare that they reviewed the article and validated its final version.

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