

***MONEY LAUNDERING:{PRIVATE }***  
***A VIEW FROM A DEVELOPING COUNTRY***

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***{PRIVATE }Introduction{tc \l 1 "Introduction"}***

In recent years, there has been a rising interest in the study of money laundering.<sup>1</sup> Unfortunately, most of the literature has focused on money laundering from the perspective of developed countries. International opinion and policies aimed at combating money laundering have also been designed based mainly on the needs of the developed countries.<sup>2</sup> Why the reasons for this may be obvious, it is an unhealthy development. This is because money laundering is truly an international phenomenon. Money launderers are always looking for ways of disguising the true source of their wealth. Some developing countries have characteristics that money launderers find attractive. Understanding the social, political and economic environment of these developing countries is therefore a vital ingredient in the war against money laundering. This paper will attempt to raise awareness of the importance of developing countries in the fight against money laundering. It will use Nigeria, which promulgated a money laundering law in 1995, as a case study.

In general, the paper examines the whole problem of money laundering from the perspective of developing countries and indeed their financial institutions. It argues that the

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<sup>1</sup> Money Laundering has been defined as the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity (Drage, 1992, p.418).

<sup>2</sup> See Uche, 1998, pp.225-226.

greatest danger to the success of international efforts to tackle money laundering is the ever increasing disparity in the structure of the financial systems of both developed and developing countries. The greatest threat to the business of laundering is documentation. Even after the launderers have beaten the system, their success may well be temporary. They leave a documentation trail. The story in countries with underdeveloped payments system is different. Most of the economy is underground and cash transactions are the rule rather than the exception. Very little, if any, documentation trail is left.

Furthermore, the paper argues that the current economic crisis in many of the underdeveloped countries is also a cog on the wheel of the fight against money laundering. Under pressure from the IMF and the World Bank, many of these countries have launched Structural Adjustment Programs (SAPs). Because of SAP, Governments of many of these developing countries have inadvertently encouraged large flows of foreign capital into the country, with very little scrutiny as to its source, all in the name of deregulation. In addition, economic liberalisation brought about increased competition among financial institutions in developing countries. This in itself may be an incentive for some financial institutions in such countries to pay lip service to money laundering rules.

### **{PRIVATE }Origins of Money Laundering Regulations{tc \l 1 "Origins of Money Laundering Regulations"}**

Money laundering is by no means a new activity. It has existed as long as criminals needed to disguise the illicit origins of their funds.<sup>3</sup> The recent burst of regulations on this subject is however linked with the rise in drug trafficking in the industrialised parts of the world, mainly the USA and Western Europe. For instance, it is estimated that the sale of cocaine, heroine and cannabis amount to approximately US\$ 122 billion per year in the USA and Europe. 50-70% of this amount or as much as US\$85 billion a year could be available for laundering and investment.<sup>4</sup>

There are two main reasons for the increasing concern in drug trafficking. First is the negative social and political impact of the drug problem. In a 1989 report, the Commonwealth Heads of Government:

recalled their long-standing concern at the incidence of drug abuse and illicit trafficking, activities which had now grown to the extent that they posed an actual threat to the Governance of some countries. They recognised that the drug problem was escalating at an alarming rate so as to represent both a serious obstacle to the processes of social and economic domestic development and a threat to the international community, to which small states are especially vulnerable.<sup>5</sup>

The second reason is the increasing recognition of the negative impact which enormous flows of illicit money can have on the financial sector. It is in this connection that the Basle Committee on Banking Regulation and Supervisory Practices asserted that:

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<sup>3</sup> Verwoerd, 1995, p.v.

<sup>4</sup> Financial Task Force, 1990, Section A.

<sup>5</sup> Commonwealth Heads of Government Meeting (1989, para 56).

Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers have been undermined, through association with criminals.<sup>6</sup>

In tackling the above problems, the affected countries can do little on their own. This is so mainly because of the international nature of money laundering. For instance, it has been noted that:

The laundering of the proceeds of crime is truly an international phenomenon. No longer are operations limited to the country in which the illicit money is generated. On the contrary, the transborder movement of money is now a prominent feature of laundering operations.<sup>7</sup>

Evidence from around the world supports this view. It is, for instance, estimated that Rodriquez Gacha laundered US\$ 130 million of Medellin Cartel proceeds using 82 company and other accounts in 16 countries. Also, in the "Polar Cap" case, it is believed that US \$1.2 billion of cocaine proceeds was laundered for the Medellin Cartel through a complicated system of false gold and jewellery businesses in the United States. Funds were banked in the United States, then transferred to Panama and thence to accounts in Europe and South America.<sup>8</sup> Furthermore a recent analysis of the Canadian money laundering police files revealed that over 80% had an international dimension.<sup>9</sup> The obvious way out, therefore, was through international co-operation. Multilateral agreements on money laundering have been in existence, at least since the beginning of the twentieth century. Between 1912 and 1972, no less than 12 multilateral drug control treaties were concluded. Efforts were then mainly directed at the regulation of the supply and movement of drugs with a view to limiting their manufacture and import to the quantities required for legitimate medical and scientific purposes.<sup>10</sup> In 1988, with the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), there was a fundamental change in approach. This agreement places great emphasis on tracking down the illicit wealth of the money launderers. Such an approach is usually defended on the following grounds: (1) insofar as criminals act as they do for the money, the best deterrent and punishment is to confiscate their incentive; (2) while the higher level and more powerful criminals rarely come into contact with the illicit goods, such as drugs, from which they derive their profits, they do come into contact with the proceeds from the sale of those goods. That contact often provides a "paper trail" or other evidence, which constitutes the only connection with a violation of the law and; (3) confiscating the proceeds of criminal

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<sup>6</sup> Committee on Banking Regulations and Supervisory Practices (1988, p.2).

<sup>7</sup> Quoted in Gilmore, 1992, p.x.

<sup>8</sup> Sherman, 1993, p.14.

<sup>9</sup> Gilmore, 1993, p.2.

<sup>10</sup> United Nations, 1987, para 6.

activities is a good way to make law enforcement pay for itself.<sup>11</sup> Article 3 of the Vienna Convention require countries to, among others things, establish as criminal offences under its domestic law, activities such as the production, manufacture, distribution or sale of illicit drugs and the organisation, management or financing of illicit trafficking, when committed intentionally; the conversion or transfer of property knowing that such property is derived from any of the above offence(s); the concealment or disguise of the true nature, source, location, disposition, movements, rights with respect to, or ownership of property, knowing that such property is derived from any of the above offence(s). Article 5(2) of the Vienna Convention further provides that each party must enact domestic laws to enable it to identify, trace, seize, freeze, and forfeit all manner of profit derived from or used in money laundering offences. It further requires each party to assist other parties upon request to identify, trace, freeze, seize or forfeit proceeds, property, instrumentality or any other thing within its territory that was used or intended to be used in money laundering offences (article 5(4b)). Another important provision of the Vienna Convention is contained in article 5(3) which requires each party to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to help track drug offenders. A party cannot decline to comply with this provision on the ground of bank secrecy.

There have also been other initiatives. In the main, these agreements have reinforced the principles of the Vienna Convention. In 1990, for instance, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was adopted. A notable difference between this and the 1988 Vienna Convention is the fact that its definition of money laundering goes far beyond drug related revenues. This approach has been defended on the grounds that:

The international community, through the adoption of the 1988 Convention, has expressed its universal abhorrence of drug-related money laundering. However... there would seem to be little policy justification for the proscription of money laundering arising from some profit-generating criminal activities and not others. Double standards, particularly in criminal law, are not conducive to the maintenance of the rule of law or to international co-operation, and there may be difficulties in proving that particular proceeds are attributable to particular predicate offences. In any event, drug trafficking may not remain-or for that matter-still be the most profitable form of transborder criminal activity.<sup>12</sup>

The Financial Action Task Force (FATF)<sup>13</sup> 1990 report on money laundering, which

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<sup>11</sup> Nadelmann (1986, p.34).

<sup>12</sup> Quoted in Gilmore (1993, p.5).

<sup>13</sup> Established in 1989 by the Heads of State or Government of seven major industrial nations and the President of the Commission of the European Communities. Its functions include to assess the results of the Cupertino already undertaken to prevent the utilisation of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the statutory and regulatory systems to enhance multilateral legal assistance.

placed great emphasis on the role of the financial system,<sup>14</sup> also recommended the following three measures as being central to the plan against money laundering: (1) each country should, without further delay, take steps to fully implement the Vienna convention and proceed to ratify it; (2) financial institutions secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group and; (3) an effective money laundering enforcement programme should include increased multilateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extraditions in money laundering cases where possible.<sup>15</sup> It is in the fulfillment of the requirement for National legislation that the Nigerian Government promulgated the 1995 Money Laundering Decree. {PRIVATE }

{tc \l 1 " "}{PRIVATE }The Nigerian Money Laundering Decree{tc \l 1 "The Nigerian Money Laundering Decree"}

A landmark development in the fight against drug trafficking and other types of fraud in Nigeria was the promulgation, in 1995, of the Money Laundering Decree. Though this is an integral part of an international effort, which started mainly to curtail drug trafficking, its adoption in Nigeria is particularly notable given the reputation of the country for fraud, corruption and drug trafficking.<sup>16</sup> Perhaps because of its origins, it is not surprising that the Nigerian Money Laundering Decree meets most of the recommendations of the above international initiatives, exceeding then in a number of cases. The objectives of the Money Laundering Decree include, among others, to ensure that a documentary trail is left in all money laundering transactions through banks and to forge a closer link between banks and the National Drug Law enforcement Agency (NDLEA) all with the aim of preventing and tracking down money launderers. The decree, for instance, limits the amount of cash transactions, in the country, to N500,000.00 in the case of an individual and N2,000,000.00 in the case of a corporate body.<sup>17</sup> Transactions above these limits shall be disclosed to the NDLEA, in writing, within 7 days.<sup>18</sup> Also, the NDLEA may, in order to identify and locate narcotic drugs and psychotropic substances, proceeds, property, objects or other things related to the commission of a money laundering offence: (a) place any bank account and account comparable to a bank account under surveillance; (b) place under surveillance or tap any telephone line; (c) have access to any computer system; and (d) obtain communication or any authentic instrument or private contract, together with all bank, financial and commercial record, when the account, telephone line, or computer system is used or may be used by any person suspected of performing or taking part in a transaction

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<sup>14</sup> Recommendations 9-29 of the report, which treat the subject of enhancement of the role of the financial system, are regarded as being of central importance. Thus the Head of the Financial Affairs division of the OECD once remarked: "The common thread underlying these recommendations is the view that financial institutions are the key element in the detection of illicit transactions given their unique function in a country's payment system and in the collection and transfer of financial assets. This is reflected in the heavy emphasis put on the identification of customers and beneficial owners, the availability of adequate record keeping systems, the necessary diligence of financial institutions in respect of unusual transactions and the development of inhouse anti-money laundering programmes (Quoted in Gilmore, 1993, p.7).

<sup>15</sup> FATF, 1990, section iii (a).

<sup>16</sup> Uche, 1998, p.220.

<sup>17</sup> Section 1.

<sup>18</sup> Section 10.

involving the proceeds, property or things or when the instrument, contract or record concern or may concern the transaction.<sup>19</sup> Additionally, any transfer, to or from a foreign country, of funds or securities of a sum greater than \$10,000 or its equivalent shall be reported to the Central Bank of Nigeria (CBN).<sup>20</sup> Even casinos are now required to verify the identities of all gamblers who buy, bring into or exchange chips or tokens, by requiring gamblers to present authentic documents bearing their names and addresses. Also, casinos are required to record all the above transactions in chronological orders indicating the nature and amount involved in each transaction and each gambler's name and address.<sup>21</sup> Other provisions of the decree include a mechanism for registering and regulating businesses that carry out over the counter exchange transactions;<sup>22</sup> a requirement for financial institutions to verify its customers identity before opening up an account for, issuing a passport to, entering into a fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer;<sup>23</sup> a requirement that all records created in complying with the decree are to be preserved for a period of at least ten years;<sup>24</sup> procedures for arousing money laundering awareness among the employees of financial institutions.<sup>25</sup> Finally, banking secrecy cannot be invoked as an objection to any of the above measures.<sup>26</sup> Military style tribunals established under the Special Tribunal (Miscellaneous Offence) Decree 1984, as amended try offences under this decree. Also penalties for offences under the decree are severe and wide ranging including long jail sentences, heavy fines and forfeiture of assets.

Despite stringent regulations, it will be erroneous to expect the volume of the money laundering in the country to take a dive just because a decree has been promulgated. Whatever good intentions the Government may have, the fight against laundering, in a developing country like Nigeria, will be a difficult one for several reasons, both structural and otherwise.

### **{PRIVATE }Problems of combating money laundering{tc \l 1 "Problems of combating money laundering"}**

The poor banking habit among Nigerians<sup>27</sup> remains the greatest asset to money launderers and thus a predicament to an effective money laundering policy in the country. Though the Money Laundering Decree prohibits cash transactions above N500,000 and N2,000,000 for individuals and companies respectively and requires the reporting of banking transactions above these limits to the NDLEA, the practicality of

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<sup>19</sup> Section 12

<sup>20</sup> Section 2. Note that the decree is not specific as to which party is supposed to make the report to CBN.

<sup>21</sup> Section 4.

<sup>22</sup> Section 3.

<sup>23</sup> Section 5.

<sup>24</sup> Section 7.

<sup>25</sup> Section 9.

<sup>26</sup> Section 12.

<sup>27</sup> "The phrase 'banking habit' is an omnibus one, covering not only economic psychology with respect to banks but also the objective economic facts and practices of people with regard to the use of banking facilities and their asset-holding patterns. Whatever meaning is attached to the 'banking habit', Nigeria is a country which is only beginning to acquire the banking habit to any marked extent (Teriba, 1986, p.69).

such regulations are doubtful especially in the cash and carry economy prevalent in many developing countries including Nigeria. Such regulations no doubt can be effective in countries with advanced financial systems where large cash transactions are unnecessary and thus naturally raise suspicion. The same cannot be said of Nigeria where large cash transactions though unsafe, are not uncommon. Several factors have contributed to the above situation. The vast size of the country has slowed the development of a banking habit. This is especially so given the underdeveloped nature of the country's infrastructure especially the communication system. Given the limited number of bank branches and the total absence of banking facilities in many places, banking contact is impossible for a large section of the population and a great number of financial transactions are still carried on outside the banking system.<sup>28</sup> A second reason for the extensive cash and carry nature of the Nigerian economy is the widespread distrust, by the populace, in the banking system. Such distrust dates back to the pre-independence days. For instance, between 1953 and 1954, 17 of the 21 indigenous banks, then in existence, collapsed. With no deposit insurance scheme in place and no rescue operation attempted by the colonial monetary authorities, many indigenes had their savings wiped out.<sup>29</sup> There is currently, also, a banking crisis going on in Nigeria. In 1998, for instance, 26 banks had their licences revoked. Though there is a deposit insurance scheme in place, it pays only a maximum of N50,000 per depositor. Even at that depositors usually have a hard time getting their money. This is in part due to NDIC bureaucracy. A third reason for the total lack of trust in the banking system is the high incidence of fraud in the entire Nigeria system including banks.<sup>30</sup> Unfortunately, despite the good intentions of the Government, it has been difficult to check this fraud mainly because of the inefficient system of crime investigation and law enforcement in the country.<sup>31</sup> Rather than fight for justice with the legal machinery prescribed by law, many people rightly choose to do cash and carry business thus reducing the chances of misunderstanding. There is a widespread belief that the ever-growing sophistication of financial markets and institutions will continue to create avenues for money launderers to prosper.<sup>32</sup> True: but that is not the main danger. The ever-increasing disparity

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<sup>28</sup> Ibid, p.73.

<sup>29</sup> See Uche (1997) for a detailed exposition of the events that led to the mass failure of indigenous banks.

<sup>30</sup> See, for instance, Uche (1996, p.438).

<sup>31</sup> Summarising the Federal Government commissioned report on the ways of reforming and reorganising the Central Bank of Nigeria, the committee chairman, Pius Okigbo, claimed that the committee was "frightened by the countless number of "419" cases around the [Central] bank and often involving the name of the bank and amounting to scores of billions of dollars. These cases are fully documented and reported to the police. The fault, we are constrained to say, is not so much with the bank as with the system of crime investigation and law enforcement in which the bank finds itself" (Newswatch (October 24 1994, p.32). The full report is yet to be released by the Government.

<sup>32</sup> "The sophistication of money laundering methods increasingly matches the sophistication of modern financial markets, so it is sensible to assume (as is shown in an increasing number of cases of money laundering) that non-bank financial institutions can be used as much...[as] banks, that sophisticated products are becoming as attractive as cash to the money laundered, and that second and third tier markets which are

in the structure of the financial systems of both developed and developing countries will continue to be a valuable asset to money launderers. The greatest threat to the business of laundering is documentation. Even after the launderers have beaten the system, their success may well be temporary. They live a documentation trail. The story in countries with underdeveloped payments system is different. Most of the economy is underground and cash transactions are the rule rather than the exception. Very little if any documentation trail is left.

The current economic crisis in Nigeria is also a cog on the wheel of the fight against money laundering. Faced with declining oil fortunes, and after several years of import control regulations and import licensing, the Babangida Administration, under pressure from the International Monetary Fund and the World Bank, launched the Structural Adjustment Programme (SAP) in July 1986. It was designed to achieve balance of payment viability by altering and restructuring the production and consumption patterns of the economy, eliminating price distortions, reducing the heavy dependence on consumer goods imports and crude oil exports, enhancing the non oil export base, rationalise the role of the public sector, accelerate the growth potential of the private sector and achieve sustainable growth.<sup>33</sup> To achieve the above objectives, the main strategies of the programme were the adoption of a market determined exchange rate for the Naira, reductions in price and administrative controls, more reliance on market forces as a major determinant of economic activity and the deregulation of external trade and payments arrangements. In the bid to achieve the above policy objectives and boost its foreign exchange income, Government inadvertently encouraged large flows of foreign capital into the country with very little scrutiny as to its source all in the name of deregulation.

Furthermore, Government delay in introducing regulation has no doubt made the task of ridding the economy of money laundering more daunting. Government indecision on how to deal with local fraudsters has, in the past, encouraged fraud. Take for instance the infamous advance fee fraud scam. The ingenious design of the scam no doubt led to initial Government reluctance to tackle the problem head-on. In the design of this scam, fraudsters capitalise on the reputation of the country as the most corrupt country in the world, where anything is possible, to dupe foreigners. Most of the Nigerian fraud letters, which have turned up in 51 countries all have the same theme: 'Dear Sir or Madam, I am a thief who has stolen a lot of money from the Government and I would like your help to get it out of Nigeria.'<sup>34</sup> Such monies are usually non-existent. The reward for would be victims are usually a mouth-watering percentage of the stolen money. Those who fall for this bait are then duped in various ways ranging from request for advance payments to help bribe officials in Lagos to clearing their bank

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currently in early stages of development are as useful to money launderers as the more traditional financial markets. If derivatives and hedge funds are not late twentieth century equivalents of the eighteenth century South Sea Bubble, law enforcement officers and prosecutors will need specialists in these fields to help guide them through the money movement (Hill, 1995, p.13).

<sup>33</sup> CBN, 1995, p.4.

<sup>34</sup> The Times, 19/1/96.

accounts with signed letter headed paper of the company/person deceitfully obtained by the scamstars. The fact that most victims of the "419" scam are themselves accomplices to fraud make it difficult for them to report their experiences to the police. Both the authorities and the general populace were, at least at the beginning, unsympathetic to their woes. As the Economist noted:

Nigerians have little sympathy for victims of the scam.... Some reckon greedy and gullible foreigners are fair game. More persuasively, a recent paper by a deputy governor of the central bank argued that victims should be prosecuted: they, after all, are would-be scamstars themselves, who hoped to join in fraud on the public purse.<sup>35</sup>

Such official assertions, no doubt, encouraged fraudstars some of who began to see themselves as the black man's Robin Hood getting repayment from whitemen for slavery and colonialism.<sup>36</sup>

Both the Government and the populace completely misconceived the point. There are also domestic problems when homegrown criminals are not explicitly discouraged. There is no doubt that the initial victims of the Nigerian criminal scams were foreigners. With massive international education and publicity on the ways and means of these Nigerian fraudstars, however, most foreigners are now wiser. The attention of these fraudstars is increasingly being turned to the home front with disastrous consequences for both business and social relationships. Furthermore, as recently noted by Lamberto Dini, money Laundering leads to the consolidation of the economic power of the power of criminal organisations enabling them to penetrate the legitimate economy.<sup>37</sup> This could have disastrous consequences for the economy especially when one considers the fact that money launderers generally do not look for the highest rate of return on the money they launder but for the place or the investment that most easily allows the recycling of the criminally or illegally obtained money even when this requires accepting a lower rate of return.<sup>38</sup>

Take for instance a drug baron who decides to launder his ill-gotten wealth by importing goods into Nigeria. His eagerness to get back his money may lead to his undercutting the legitimate dealers in his chosen area of trade by perhaps selling below the cost price. This will, no doubt, have undesirable consequences on the legitimate dealers in that area of trade. Furthermore, funds from such illegal activities could be used to destabilise the State. It has thus been noted that:

illicit traffic generates large financial profits and wealth enabling transnational

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<sup>35</sup> The Economist, 7th January 1995, p.48.

<sup>36</sup> Ibid.

<sup>37</sup> Quoted in Gilmore, 1995, p.25.

<sup>38</sup> Tanzi, 1996, p.6.

criminal organisations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.<sup>39</sup>

Perhaps the Government change of tactics may have been influenced, to some extent, by the above possibilities.

### **Conclusion**

Despite the efforts by the Nigerian Government to combat money laundering, it is clear that they can only achieve limited success. The current economic conditions have made it difficult for the Government to effectively police money laundering. Economic downturn, withdrawal of subsidies and externally influenced economic liberalization policies, encourage the Government of developing countries to embrace laundered money or at least turn a blind eye on it. Another negative consequence of the economic downturn is corruption. The prevailing harsh economic environment have greatly reduced the resistance of the law enforcement agents to corrupt practices. The underdeveloped nature of the infrastructure and financial system in these developing countries also does not help matters. All these limit the ability of law enforcement agencies to combat money laundering. We must not see this as a problem for the developing countries. Indeed it is more of a problem for the developed countries. For one thing, most of the laundered money originates from developed countries.<sup>40</sup> The increasing disparity in the financial systems and law enforcement infrastructure between developing and developed countries will continue to encourage the diversion of laundered money to developing countries. Addressing this structural imbalance is therefore essential in the fight against money laundering. This, in my opinion, is the main challenge for all involved in combating money laundering.

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<sup>39</sup> United Nations (1988, p.1).

<sup>40</sup> The main source of laundered money in developing countries-stolen national wealth- is outside the jurisdiction of the Vienna convention.

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