

Protecting the Wages of Migrant Construction Workers: Part One

Jill Wells, Engineers Against Poverty



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PART ONE: UNDERSTANDING THE PROBLEM

Abstract:

Late payment of wages is a major risk facing migrant construction workers. The problem is traced to the payment system in the construction industry which has failed to adjust to significant changes in the way in which workers are employed and migrant workers incorporated into construction labour markets. In the search for greater 'flexibility',



employment relationships have been redefined in recent decades as labour is externalised by the use of subcontractors, labour contractors and temporary employment agencies. Principal contractors are increasingly distanced from construction workers, sometimes by long subcontracting chains. The main employers of the workforce are now small and marginalised firms with limited financial capacity to pay workers' wages until they have received payment for the work already completed and expenses incurred.

This paper is the first output of a research project that addresses the issue of late or non-payment of wages to migrant construction workers, with a specific focus on the member countries of the Gulf Cooperation Council (GCC) where the construction workforce is almost entirely composed of temporary migrants from low wage economies in Asia. The aim of the project is to suggest ways of protecting these workers against exploitation and ensuring they are paid on time and in full for the work they have done.

The purpose of the current paper is to raise awareness of the extent of the problem of late or non-payment of wages in the construction industry and to increase understanding of its causes. Subsequent papers will explore policies and measures that can be adopted by governments, clients and contractors to address the issue, as well as ways of strengthening the incentives for such action.

1. Introduction

The International Convention on the Rights of all Migrant Workers and their Families defines a migrant worker as “A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national”.¹ The International Labour Organisation (ILO) adopts this definition but recognises that there are also “internal” migrant workers who are recruited and work within a country (ILO 2015). A broader definition that would therefore seem more appropriate for current purposes is that put forward by Buckley et.al. (2016, p.7):

Migrant labour generally refers to labour occurring away from one’s usual place of residence, often requiring residence in another locale where the worker may not intend – or be permitted – to settle permanently. As a result, migrant workers often have a connection to work in one place and an on-going set of connections to an economy, household, family or community located in one or more locales elsewhere.

There are many facets of migration for work in the construction industry. It may be temporary, circular or leading to permanent settlement. The distance travelled will also vary, from rural hinterlands to the nearest city to journeys across continents. While international migration for work in construction has been the focus of attention of scholars and activists in recent years, internal migrants are a major component of the construction workforce in many countries, including two of the industry’s fastest growing markets, India and China (CDPR 2014a, b, c). Whether the migration is inter- or intra-national, *implicit within the term is the notion that workers are leaving home and crossing political, administrative or institutional borders of some kind in order to engage in work*” (Buckley et.al.p7).

Migrant workers are subject to varying degrees of legality when crossing national frontiers, but also when moving from the countryside to town. A worker may have the right of residence but not the right to work in the destination location, the right to work but without full rights of residence or s/he may have neither, as is the case in China where 90% of construction workers are migrants from the rural areas with no formal right to reside or work in the cities (Swider 2015).The status of workers is particularly important as it will affect their vulnerability to the actions of employers and/or the state. Migrant workers in China without the right of residence in the city are hired informally without written contracts or legal standing to challenge employers (*ibid*).

Research by Buckley et.al. (2016) has highlighted some of the risks that migrants face when crossing international borders, many of which are also present when migrating internally. Risks are divided into two categories: *trans-border risks* which are those associated with the migration process itself and *destination risks* which arise from being in a new place which does not always afford the rights and entitlements to migrant workers that are enjoyed by locals.

Trans border risks: One of the most notable risks associated with migrating for work is the payment of fees to recruitment agents for the chance of a job and the associated costs of transport, visas and other expenses. The sums extracted can be high and workers are often forced into debt. The interest on debt (especially on informal debt) is also high and generally requires repayment on a monthly basis. The risks of migrating are further enhanced by

¹ Article 2(1). Other definitions used in ILO Conventions are very similar

inadequate information on the job market in the destination country and uncertainty about their likely legal status.

Destination country risks: Once the worker arrives in the destination country s/he is at risk of ill treatment by the employer, by other workers and by the agents of the state. While the situation differs widely between continents and countries and is very much affected by legal status, common financial risks facing migrant construction workers include the risk of being laid off when no longer required, pay and benefits being less than expected, illegitimate deductions from wages by immediate employers, late payment of wages and not being paid at all. Non-financial risks include poor and insanitary housing, isolation from others in the host community and, for undocumented migrants, the constant fear of deportation.

This paper will focus on the risk of late or non-payment of wages. Research in Qatar in 2013 found this to be one of the most serious problems facing migrant workers (Wells 2014). While workers frequently complained about the level of remuneration the main complaint from workers who sought help from the National Human Rights Committee (NHRC) in Qatar was about late payment². At the same time, 93% of the complaints handled by the Ministry of Labour in 2010 were about delayed wages and two thirds of the complainants were construction workers.³ Of respondents to a survey of low income migrant workers in Qatar in 2012, 21% claimed to have received their salaries on time 'only sometimes, rarely or never' (Gardner et.al. 2013).

Similar problems have been reported in other countries of the Gulf Cooperation Council (GCC)⁴. The Ministry of Manpower in Oman reports that employee wage complaints have increased from 10% to 20% yearly and most are from vulnerable groups of blue-collar labourers.⁵ Some private sector owners have failed to pay salaries to their employees for three to six months. In the UAE the Gulf Labor Coalition (2015) reports that underpayment is far and away the primary concern of workers on Saadiyat Island: the authors note that *the security of getting paid fairly and on time is a minimum condition for a dignified life for migrants (ibid, p.21)*. In February 2016 a slump in the construction industry left thousands of workers unpaid in Saudi Arabia – a country which is rarely the focus of attention of activists despite it being host to some 10 million migrant workers in low wages sectors such as construction.⁶

Late payment of wages is a particularly serious problem for migrant workers in the countries of the GCC where, under the *kafala* system, workers cannot easily change their employer even if they are not being paid. It is also critical for workers everywhere who have paid recruitment fees and/or other costs associated with migration and arrive in the destination country in debt. Failure to receive their wages on time means that the workers cannot

² Interview by the author with the NHRC 09/06/13

³ Interview with the manager of the HR department in the Ministry of Interior, 10/06/13.

⁴ The Cooperation Council for the Arab States of the Gulf is a regional organisation, with six members: The Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman, the State of Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates. Set up in 1981, its objectives are to enhance coordination, integration and inter-connection among its members.
https://eeas.europa.eu/diplomatic-network/gulf-cooperation-council-gcc/338/gulf-cooperation-council-gcc-and-the-eu_en

⁵ https://publicadministration.un.org/unpsa/Public_NominationProfilev2014.aspx?id=3270

⁶ www.reuters.com/article/saudi-construction-slump-idUSL8N15N2LU

transfer wages back to their home country to meet the debt repayment schedule and interest mounts up, causing serious stress for workers. While few would argue with the objective of trying to eliminate recruitment fees so that workers arrive at the destination free of debt, the obstacles encountered in trying to achieve this objective reinforces the importance of ensuring that workers receive their wages on time.

The problem of late or non-payment of wages in the construction industry extends far beyond the countries of the Gulf and affects internal as well as international migrants. Human Rights Watch (2013) reported many instances of late payment of wages to migrant workers on Olympic and other construction sites in Sochi during preparations for the winter Olympic Games. Abuses ranged from non-payment of promised wages for months at a time to an apparently routine practice of withholding workers' first months' wages as a guarantee that the workers would not leave the job before the employer decided they were no longer needed. Withholding wages in order to ensure that workers don't abscond is common practice in many other parts of the world, including in India where workers are commonly not paid until the end of the project and even then are often not paid in full (CDPR 2014a). The situation is even worse in China where 25% of respondents to a recent survey reported receiving their wages at the end of the construction project but more than half (53%) had to wait until the end of the year (CDPR 2014c). Withholding payment until the completion of a year-long contract limits mobility by tying workers to one employer and creates a high risk of working for a year without pay. Non-payment is rampant in the Chinese construction industry (Swider 2015).

Withholding wages and other benefits owed to migrant construction workers also occurs in the European Union where freedom of movement of labour among member countries, as well as the freedom to provide services across national boundaries, has led to very significant and increasing cross border flows of construction workers. Two examples have been documented of Norwegian trade unions fighting successfully for the rights of Polish and Latvian workers in the courts; on both occasions the claims were for unpaid wages, overtime pay and holiday money (Skjaervo 2016). Workers sent by their employer to work in another EU country are known as 'posted' workers and the Posting of Workers Directive 1996/71/EU aims to protect their rights. A press release from the European Commission in 2014 sought to explain in the following words why the Directive was needed: "*There is evidence that posted workers have been exploited and left without wages or part of the wages they were entitled to. There have also been situations where posted workers were unable to enforce their wage claims against their employer because the company had disappeared or never really existed*"⁷

Recent research into employment practices in the residential construction sector in Massachusetts (USA) documents how workers - the majority of them undocumented immigrants - are routinely cheated out of their wages by contractors who pay late, do not compensate for overtime, and sometimes do not pay for work at all (Juravich et.al. 2015). This is the latest in a number of studies documenting how minimal protections for workers established under the Fair Labor Standards Act are routinely violated under the general concept of "wage theft" (Bobo 2008, Bernhardt et.al. 2009).

⁷Available at <http://europa.eu/rapid/press-release_MEMO-14-344en.html>

While delayed payment of wages may sometimes be a deliberate strategy on the part of unscrupulous employers to cheat migrant workers or to prevent them from absconding, it will not be without consequences. Consistent late payment of wages, which can transform into non-payment, is a major cause of industrial unrest. Strikes and work stoppages hamper progress of the work and are of serious concern to clients and governments. This is apparent even in parts of the world where workers have no protection from local trade unions. In the absence of trade union support, migrant workers from Ukraine and Moldova working in Russian construction engage in informal bargaining on an individual or group basis with line managers on site. Disputes over wage arrears are common and workers refuse to work when wages have not been paid wages (Morrison et.al. 2014). Late payment of wages led to strikes in Qatar in 2006, in UAE in 2014⁸ and in Saudi Arabia in February 2016.⁹ In June 2016 Chinese workers were reported to be protesting about unpaid wages outside their embassy in Kuwait.¹⁰ In July 2016 over 2000 labourers marched towards the Labour and Social Development Ministry in Bahrain in protest at not having been paid their salaries for the past two and a half months.¹¹

When workers are consistently paid late or not paid at all the wages that are due to them, the threat of industrial action suggests that factors other than the greed of employers are probably at work. One such is the likelihood that the employer does not have the funds to pay, because he has not himself received payment for the work that has been done and the expenses incurred and he has insufficient reserves to bridge the gap. This was found to be the case in Qatar in 2013 (Wells 2014) and in Saudi Arabia in 2016 and is likely to continue to be so in the context of low oil prices. Delayed payment may also be due to red tape and inefficient bureaucracy rather than financial difficulties and has in fact been a feature of the construction industry in Saudi Arabia and the Gulf for years, as well as in many other countries around the world.

In order to gain a better understanding of the issue of late payment of wages in the construction industry and the reasons why migrant workers are most likely to be affected, it is necessary to explore the role that migrant workers play in construction labour markets, as well as the dramatic changes that have taken place in recent decades in employment relationships . The rest of Part One of this paper is presented as follows:

Section 2 explains why migrant labour is important in the construction industry and provides a brief overview of the growing incorporation of migrants into the construction workforce in various parts of the world.

This is followed in **Section 3** by a review of the major changes that have taken place in employment relationships. In the search for greater 'flexibility' in the recruitment of labour, employment relationships have been significantly redefined, with direct employment between the worker and the contractor increasingly replaced by employment through intermediaries - labour contractors and temporary employment agencies.

⁸ <http://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html>

⁹ <http://meconstructionnews.com/10728/saudi-strike-1000-workers-protest-over-unpaid-wages>

¹⁰ <http://news.kuwaittimes.net/website/chinese-workers-protest-unpaid-wages>

¹¹ <http://www.constructionweekonline.com/article-40118-labourers-protest-over-unpaid-wages-in-bahrain/>

Section 4 explains how the 'externalisation' of labour has been taken even further through the subcontracting of whole packages of work and subcontractors in turn externalising their labour supply. The development of long subcontracting chains has facilitated the integration of migrant workers into the workforce, while increasing the social distance between the workers and the Principal Contractor.

Section 5 reviews the traditional payment system in the industry which relies on payment being channelled from the client to the Principal Contractor and onward down through the subcontracting chain to eventually reach the workers. It is concluded that the payment system has generally failed to keep pace with the significant changes in employment practice, with serious consequences for migrant workers in the form of late or non-payment of wages.

Section 6 summarises the main arguments of the paper and hints at incentives for change that are explored in Part Two.

2. Migrant labour in the construction industry

There are many reasons why migrant labour is important in the construction industry:

- Construction is a highly labour intensive activity, particularly in low wages economies. In countries with high labour costs the process has been mechanised to some extent, with the production of many components transferred from the site to the factory where they are produced using much less labour, but there are limits to the process. When local labour markets cannot meet the demand, labour has to be drawn in from wider afield.
- In all countries the level of construction activity is subject to swings in the economy, with peaks in labour demand brought about by a booming economy - or preparations for big sporting events - leading to a demand for labour that cannot always be accommodated by local labour markets. An additional advantage of drawing in migrant labour in this context is that it can be easily dismissed and sent home when no longer required. In this way migrant labour is used as a cushion against fluctuations in construction activity and labour demand
- The construction industry is highly competitive on price and the search for cheap sources of labour is often a major factor in the use of migrant workers. The fact that construction is project-based and every project is location specific – literally 'tied to the ground' - means that, unlike in other industries, production cannot move to sources of labour. While in recent years much labour-intensive manufacturing has been relocated to countries with abundant and cheap labour with construction this cannot happen, the labour has to come to the construction site.
- A further factor that is relevant in high income countries is that construction work is outdoors, difficult, dirty and often dangerous. The image of the industry offering only low quality 'three-D' jobs is a strong deterrent to many workers, unless compensated by higher wages than other industries. In countries where there are alternative sources of employment that are better remunerated, many choose not to work in construction. Choices in employment exist mainly in the richer countries, leaving the door open to migrant workers from lower wage economies (Wells 1996).

While migration for work in the construction industry has a long history, there is evidence that it has increased in the past few decades in some parts of the world. Construction activity has been shown to escalate during the processes of industrialisation and urbanisation, generating a significant increase in the need for construction labour (Wells 1985). Historically the demand has been met by migration from the countryside but once this source is expended and labour shortages appear, employers begin to look beyond national borders. Research by the author for the ILO (1995) documented the process in the 1990s in a number of countries in Asia that had recently passed through a period of rapid industrial growth – including Japan, Korea, Singapore, Hong Kong, Taiwan and Malaysia. Transnational migrant workers have played a key role in the construction industry in all of these countries. In other rapidly industrialising Asian countries, China and India, the supply of local labour is not yet exhausted and the demand is still largely met by workers from the rural areas moving to the towns and industrial sites.

Since the 1970s other regions have seen rapid economic development due to the discovery of oil and gas or other minerals, generating demand for construction labour. The Gulf countries stand out in the migration picture as most have very small local populations and rely almost entirely on migrant workers to fill posts at all levels, in all areas of the economy. Networks supplying construction workers from South and South East Asia to the countries of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates) developed and expanded in the last decades of the twentieth century (*ibid*) and have continued to grow into the twenty first. In some of the Gulf countries up to 90% of workers in construction are transnational migrants.

Migration for work in construction has also increased in Europe. There is a long tradition in Western Europe of construction jobs being filled by migrants. In some countries (for example Switzerland) jobs in construction came to be known as ‘guest worker jobs’, with foreign labour recruited legally in periods of economic growth and sent home when no longer required. In many more countries migrant construction workers settled, often gaining citizenship (Irish workers in the UK, Turkish workers in Germany). More recently, the formation of the European Union and the steadily evolving integration of the member states’ economies - together with the recent EU enlargements following the collapse of the Soviet Union – have led to the greater movement of construction workers between the countries of the EU, often on a temporary basis (Houwerzijl and Peters 2008). At the same time, restructuring of the industry since the 1970s and the move from permanent employment to more flexible and non-standard forms (see below) has led to a dramatic decline in the recruitment of apprentices in some countries, erosion of the skills base and a search for foreign sources of skills.

The collapse of the Soviet Union has also led to increased migration to Russia from the newly independent states that were once part of the Union. Many of the countries lying in the ‘contested borderland’ between new Europe and a smaller Russian Federation are weak economies with low wages where workers have responded to a decline in wages, employment security and welfare provisions with ‘Exit’ strategies (Morrison et.al.2014). Migration of construction workers from Ukraine and Moldova to Russia, for short periods based on informal networks, began in the mid 1990s and reached considerable proportions. In a search for more stable employment and the chance of resettlement, many are now looking towards Western Europe where Italy is the preferred destination.

A shortage of skilled labour in the construction industry in the USA has led to increasing migration from Mexico and other countries of central and south America since the 1990s. Although there are significant numbers of Hispanic construction workers throughout the United State the largest concentrations exist in the western and southern states. In 2000 Hispanics made up 54% of the total construction workforce in New Mexico, 43% in Arizona and 40% in Nevada and the number has continued to increase (Goodrum 2004). According to the US Bureau of Labor 27.3% of workers in construction were of Hispanic or Latino ethnicity in 2014.¹² Most are undocumented and earn significantly lower wages than US workers.

While the extent and nature of migration for work in construction varies widely across countries and regions and is constantly evolving, it may be concluded that it is a long-standing and in some regions a growing feature of construction labour markets.

3. Employment relationships in the construction industry

The incorporation of migrants into construction labour markets in recent years has gone hand in hand with changes in the way in which workers are employed in the construction industry. Research for the ILO (2001) documented the change from direct employment by general contractors to more *flexible* forms of employment in construction around the world in the last three decades of the twentieth century.

Flexibility in the employment of labour is particularly important in the construction industry due to fluctuating labour requirements. These stem from volatility in investment, the widespread use of the contracting system (whereby any contractors' labour requirements change with his portfolio of projects) and the fact that neither construction products nor skills are homogeneous. The average project will require a variety of different skills at different stages of the work, so a flexible work force is desirable. For these reasons construction has long been characterised in much of the world by the use of the flexible and 'non-standard'¹³ forms of employment that have increasingly been adopted in other countries and sectors in recent decades (Buckley et.al. 2016).

There are two main forms of flexible arrangements for the supply of labour – casualisation and externalisation (Bamu and Godfrey 2009). Casualisation involves an increase in the number of temporary or part time employees who can be taken on and dismissed as required (in the extreme case recruited from day labour markets) but does not change their status as employees in any other way: they are engaged through a contract of employment

¹² <https://www.bls.gov/opub/ted/2015/hispanics-and-latinos-in-industries-and-occupations.htm>

¹³ There is no official definition of Non Standard Forms of Employment (NSFE). A report by the ILO (2015) for a meeting of experts on the subject noted that NSFE typically covers work that falls outside the scope of a 'standard' employment relationship, which itself is understood as full-time, indefinite employment in a subordinate employment relationship. For the purposes of discussion at the meeting, non-standard employment was taken to include: (1) temporary employment; (2) temporary agency work and other contractual arrangements involving multiple parties; (3) part-time employment and (4) ambiguous employment relationships, which include 'dependent self-employment' whereby workers perform services for a business under a commercial contract but depend on one or a small number of clients for their income and receive direct instructions regarding how the work is to be done. This is often referred to as 'false' or 'bogus' self-employment and is common in the construction industry in the UK and increasingly in other European countries.

with the contractor. Externalisation is more radical and occurs through the outsourcing of labour supply to intermediaries.¹⁴ Workers are engaged through a commercial contract between the contractor and the labour supplier who in turn has a contract of employment with the workers.

The externalisation of labour may take different forms, with many variations in the division of responsibility for supervision of the work between the contractor (the user of the labour) and the supplier of the labour. At one extreme it may involve placing the workers at the disposal of the contractor who controls and supervises their work (as is the case with the recruitment of workers through temporary work agencies). At the other extreme it could involve engaging an intermediary to supply workers to complete a defined task within a specified period of time for an agreed price: the workers he employs are then subject to his control and not to the control of the contractor. In the latter case, employing labour indirectly through a labour contractor (also known as Labour Only Subcontractors - LOSC) will enable the contractor to get the required flexibility in labour supply, while also allowing him to pass the problem of labour control to the labour contractor. In this way contractors can distance themselves from the various risks associated with the employment and management of labour.¹⁵ These risks are passed down to the suppliers of labour, while the risk of not having work is passed to the workers themselves.

The ILO (2001) notes that in many countries the practice of recruiting labour through intermediaries is long established. The intermediaries are variously known as *mistris*, *jamadars* or *mukadams* in India, *oyaji* in the Republic of Korea, *kapala* in Malaysia, *gatos* in Brazil and *maestros* in Mexico (ILO 2001). Their function is essentially the same in all these countries: they constitute a bridge between labour seeking work and contractors and subcontractors who can offer work. In India, most contractors and subcontractors have *jamadars* or *mistris* more or less permanently attached to them. They are responsible for hiring labour, controlling and supervising the works during the contract period and taking workers away when the job is finished (Vaid 1999). A similar system of indirect employment has been practiced for many years in Malaysia, Korea, Philippines, Egypt, Brazil and Mexico (ILO 2001).¹⁶

While this has been the traditional way of recruiting the bulk of the construction workforce in many countries, some workers were always employed directly and on a more permanent basis – the ‘core’ workers of general contractors. In many of these countries the permanent, directly employed, workforce was declining and the proportion employed through intermediaries increasing, by the turn of the century (*ibid*). For example, in Brazil the practice of employing workers through *gatos* increased during the economic crisis of the 1980s and continued to increase in the 1990s. Between 1981 and 1999 employees registered with the Labour Ministry (assumed to be permanent staff of general contractors) fell from 41% to

¹⁴ Externalisation of labour also occurs through the subcontracting of packages of work. In this case it is not only the labour that is outsourced but also the supply of the other resources (materials, equipment) needed to complete the package. Subcontracting is discussed under a separate heading below.

¹⁵ These include the risks of interruptions to the work due to adverse weather, non-availability of building materials etc. as well as the risks of labour unrest.

¹⁶ For a recent review of the literature on the role of intermediaries in supplying migrant workers to construction labour markets in India see Zeitlyn and Deshingkar 2014.

20.9% of the construction workforce while unregistered and self-employed workers rose from 56.7% to 74.6% (PNAD 1999). Similar changes were recorded in Malaysia, Philippines, Sri Lanka, Mexico and South Africa. Even in China the proportion of workers directly employed in stable and secure jobs declined dramatically from 72% in 1980 to 35% in 1994 (Lu and Fox 2001).

However, the change from direct to indirect employment in the past few decades has arguably been most dramatic in the more developed (richer) countries. Significant stabilisation of the workforce was achieved in Western Europe in the boom years of the 1950s and 1960s and by 1970 direct employment by general contractors was the norm. Construction workers were employed on permanent contracts with benefits including sick leave, holiday pay, pension provision etc. When construction was badly hit by the recession in 1973 contractors shed labour on a massive scale, but when demand picked up much of the labour shed was not re-employed on a permanent basis. Instead there was a rapid expansion in part-time, temporary and other 'non-standard' forms of employment including self-employment, as well as rapid growth in employment through intermediaries – labour contracting and temporary labour agencies.

By the end of the twentieth century these changes were apparent across Europe, North America and other parts of the developed and developing world. Among European countries the changes in employment practices were most evident in the UK and in Spain (ILO 2001). Spain and the UK are also countries which have seen a big increase in migrant workers in construction. Meardi et.al. (2012) explore the links between changes in employment practice and the use of migrant workers. They provide evidence to show that migrant workers in Spain are much more likely to be on temporary employment contracts than nationals and their contracts are of shorter duration than those of nationals, so they are easier to dismiss when no longer required. There is also evidence (from Spain and elsewhere) that migrant workers bore the brunt of redundancies in the recession that followed the financial crash of 2008. Hence the growth of migrant employment in the construction industry has served to create a buffer against volatility in labour demand. In this context, the employment of migrant workers on temporary employment contracts can be seen as an alternative way of creating flexibility in labour supply.

A rather different trajectory to the employment of migrant workers evolved in the USA. In the USA the construction industry had been dominated by strong unions who controlled training and the hiring of labour and were able to keep wages high through collective bargaining agreements. For many years union members enjoyed higher than average wages and benefits, excellent training opportunities and decent job-site conditions. But the last decades of the twentieth century witnessed a dramatic transformation of the industry, with the growth of non-union subsidiaries by union contractors, decline in union density and a significant fall in construction wages. Reluctance of locals to work in the industry led to labour shortages in some states and the growth of migration from Mexico and other countries in Latin America (Erich and Grabelsky 2005).

As in Europe and elsewhere, the integration of immigrant workers into the labour market in the USA was accompanied and facilitated by changes in employment relationships in the industry, with the emergence of intermediaries such as temporary employment agencies, as well as a growth in 'bogus' self-employment. Bogus self-employment is the term applied to workers with self-employed status who are actually working as employees and economically

dependent on one or more employers. Workers are frequently pushed to accept the status of self-employed, whereby they are denied all the benefits of employment as well as any sort of job security. In their recent study of “wage theft” in residential construction in Massachusetts Juravich et.al. (2015) show how by misclassifying workers as independent contractors and not paying taxes on workers’ wages or contributing to worker compensation funds, contractors were able to reduce their building costs by 30%.

Although the context may differ between the EU and USA, it is clear that changes in employment relationships and growth in the employment of migrants are parallel trends that are both driven by the same force – the need to increase flexibility and lower construction costs.

Attaining flexibility in labour supply is rather more difficult in the countries in the Gulf where the *kafala* system for the recruitment and employment of foreign workers dictates employment contracts for fixed periods of 2 years and doesn’t allow workers to move easily between employers.¹⁷ Research by the author for the ILO in the mid-1990s found international contractors working in Dubai to be employing most of their workers directly, with some companies managing a workforce in the thousands (ILO 1995). This may still be the case on some projects but significant changes have taken place in recent years, in line with developments in much of the rest of the world. Buckley (2012) documents how the severe shortages of construction labour across the skills spectrum in the boom years of 2006 and 2007 led to the proliferation of Dubai based manpower companies which specialised in providing temporary building trade labour. Acting contractually as the employer, these temporary labour agencies were able to sidestep the restrictions imposed by *kafala* laws and move workers among contractors as needed. Many of these agencies are owned by Indian nationals from Kerala who are often former migrant workers themselves.

Similar agencies supplying workers on a temporary basis, as well as labour contractors now operate in Qatar and other countries in the Gulf. While some operate within the law, obtaining visas legitimately, it can still be very difficult for them to find opportunities to keep their workers constantly employed, which can lead to the workers having no work and no pay. If on the other hand the companies continue to pay the workers’ wages during gaps in contracts in order to keep their team together, it can lead to insolvency for the company. These small companies are in fact bearing the cost of flexibility of labour supply in the industry.¹⁸ Even when they operate outside of the law they appear to be tolerated by government as the price necessary to provide the flexibility that contractors require to keep costs down within the constraints imposed by the *kafala* system.¹⁹

¹⁷ Sponsors in Qatar are generally prohibited from permitting their workers to be employed by anyone else. However, the Ministry of Labour may authorise a sponsor to lend workers to another employer for no more than six months that may be renewed for another six months. A similar provision was introduced in the UAE in 2005 subject to the conditions that the number of labourers is not less than 20, the new employer has a need for them and the current employer consents (Maysa Zahra 2015)

¹⁸ A point made in an interview with the general manager of the Qatar Chamber of Commerce, 06/06/13

¹⁹ Another reason could be that it is particularly hard to clamp down on labour supplies operating outside of the law. A report from Kuwait links the problem of not paying wages on time with that of employers exploiting the sponsorship scheme by providing residence permits to foreign labourers for a fee, while not providing them with jobs (known as trading in visas): the Government is reported to have been trying to crackdown on such visa traders and has sent dozens to court but without much effect. <http://news.kuwaittimes.net/website/new-labor-law-stiffens-salary-delay-penalties-visa-trading/>

4. Subcontracting chains

The last decades of the twentieth century also saw a dramatic increase in the practice of subcontracting – a practice which has continued to increase into the twenty first century. It is important to distinguish between the subcontracting of packages of work and the subcontracting of labour, although the distinction is subtle and widely ignored. In the former case the usual practice is for the subcontractor to be responsible for supplying all of the materials, equipment and labour required to complete the work specified in the contract with a reasonable amount of control over the process. In the latter case, it is only the labour that is subcontracted, while the materials and equipment and sometimes also the supervision is provided by the contractor. The variety of trades and skills required in a construction project, particularly building projects, means that subcontracting of packages of work that require particular expertise (specialised trades) has always been important, but the scale of subcontracting has increased dramatically in many parts of the world and not just in the specialised trades.

Houwerzijl and Peters (2008) provide a clear explanation of what has come to be known as the subcontracting chain in the construction industry. It starts with the client (sometimes called the employer) who is often also the owner. The client hires a contractor who is responsible for carrying out the physical execution of the works. The contractor may outsource parts of the work to other contractors. The first contractor is known as the 'principal contractor' (tier 1) and the contractors hired by the principal contractor as the subcontractors (tier two).

The subcontractors may further outsource parts of the work to others (tier three subcontractors) who in turn may outsource parts of the work assigned to them to yet others (tier four subcontractors). Together the principal contractor and all the subcontractors constitute a 'subcontracting chain'. In complex projects the client may appoint several contractors for separate services, in which case multiple subcontracting chains exist side by side.

Both principal contractors and subcontractors may carry out the work themselves through their own directly employed workers, but they may also contract out the labour required through labour contractors or temporary employment agencies. In these instances workers are engaged through a commercial contract with the labour supplier, while the contract of employment is between the labour supplier and the workers. So the companies supplying workers could be seen as another layer of subcontractors, although not the main trunk of the chain, rather branches that are linked in.

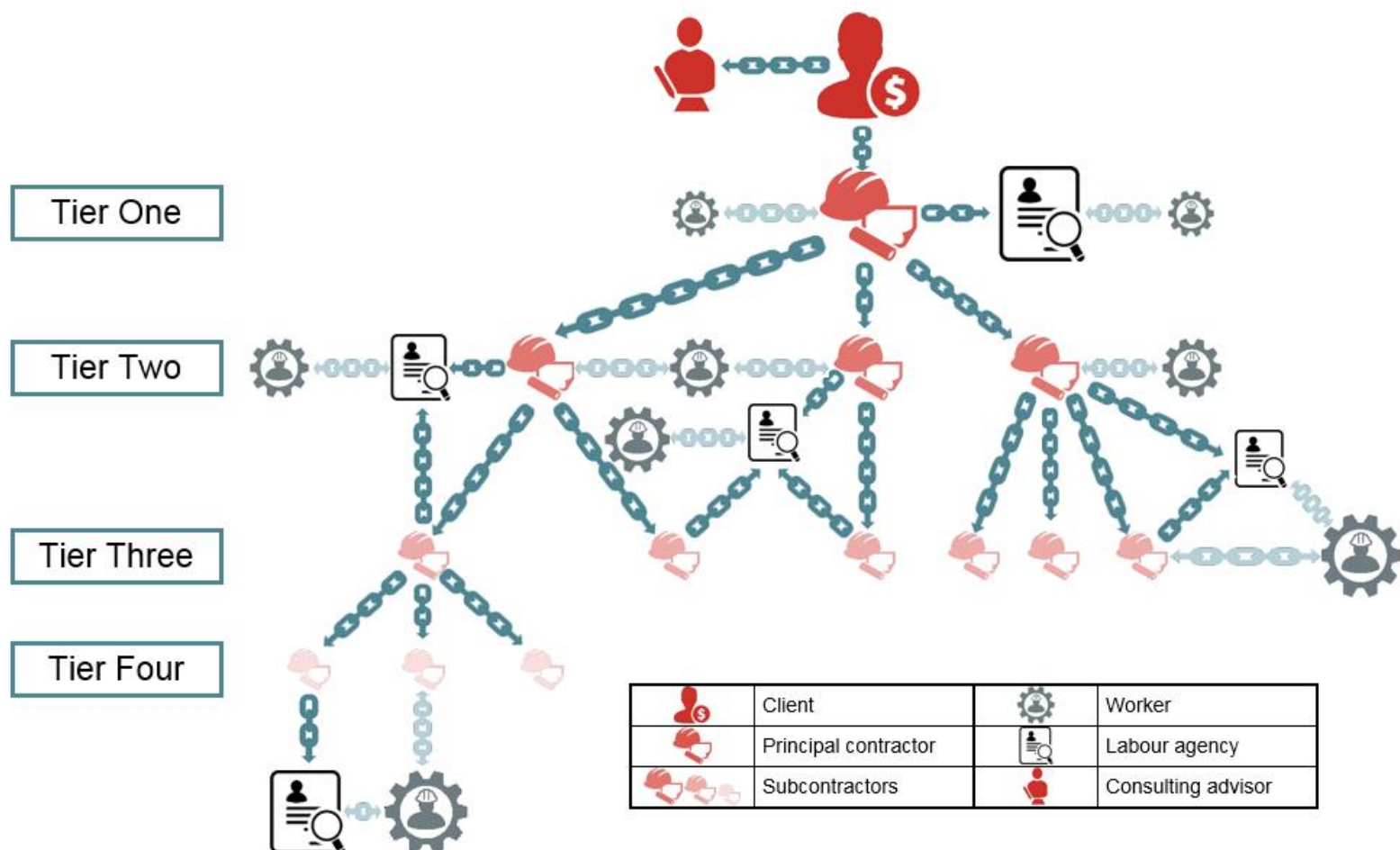
Writing in a European context, Houwerzijl and Peters (2008) note that subcontracting chains have tended to lengthen and broaden over time. Five or more tiers were reported in the subcontracting chain in the UK in 1995 (Harvey 2000) but ten or even 15 tiers were reported by the European Federation of Building and Woodworkers (EFBWW) in 2013.²⁰ Within the European Union (EU) subcontracting chains now stretch across national borders with workers employed by subcontractors in country A winning a contract in country B being

²⁰ EFBWW study of *Temporary migrant workers in the construction sector in the EU*, Construction Labour Research News 4/2013

'posted' to the host country for the duration of the contract.²¹ In recent years temporary work agencies have also mushroomed and many of them also post workers to other countries within the EU.

A simplified version of a subcontracting chain is shown in Figure 1 where workers are shown in grey cogs and labour suppliers in black: commercial contracts are indicated with dark blue lines and employment contracts by light blue lines. A significant feature is that the construction companies acting as consultants and advisers to the client are shown not to be a part of the contractual chain and this is often the case with no direct contractual link between a consultant and the principal contractor who signs a contract directly with the client. However they do have responsibility for overseeing the work and may even be engaged to oversee health and safety and welfare of the workers. They also play a key role in advising clients on these and other issues affecting the workforce. The role of consultants will be explored further in Part Two.

Figure 1: A Schematic Subcontracting Chain



²¹ A posted worker is an employee who is sent by his employer (for example a subcontractor) to carry out a service in another EU Member State on a temporary basis. Posted workers are different from migrant workers in that they remain in the host Member State temporarily and do not integrate into its labour market. The Posted Workers Directive (96/71/EC) sets the terms and conditions for employment of posted workers.

However, the extent of subcontracting varies enormously across and within regions, depending on the type of project, availability of subcontractors and business model of the contractor. Data collected by the Business & Human Rights Resource Centre from contractors operating in the UAE and Qatar ²² reveals significant differences in the number of workers employed by the main contractor and the number employed through subcontractors. The data from the only companies that responded to the survey is shown in the table below. At one extreme Al Naboodah reported it was employing only 2% of workers through subcontractors. At the other extreme 80% of Carillion's workforce and 83% of the workforce of Multiplex Medgulf was employed through subcontractors. The average for all companies in the survey was 40%.

Table 1: Distribution of workers between main and subcontractors in UAE and Qatar, 2015

Main Contractor	Workers employed by main contractor	Workers employed by subcontractors	Percentage of workers employed through subcontractors
Al Naboodah	14,800	350	2%
SNC Lavalin (Canada)	1706 + 2314 **	834	17%
Interserve (UK)	10,417	2,600	20%
QD-SBG	9000	4800	35%
Al Futtaim Carillion (UAE)	4927	3136	39%
Six Construct (Belgium)	3000	2100	41%
Salini Impreglio (Italy)	2160	1735	44%
Aktor (Greece)	4635	3728	45%
Yapi Merkezi (Turkey)	318 + 2218 * (JV)	2512	50%
Vinci/QDVC (France)	4036	4413	52%
TAV (Turkey)	2858 +4931 *(JV)	16,040	67%
Carillion (UK)	1100	5000	82%
Multiplex Medgulf	500	2534	83%

*employed through other business partners; ** employed through manpower agencies

Source: Survey by the Business & Human Rights Resource Centre, 2016

Among respondents to the survey, the largest absolute number of workers employed by a main contractor were working for Al Naboodah, However, employment by the main contractor does not inevitably mean that there is a direct employment relationship between the worker and the contractor, as main contractors may employ workers through intermediaries and most do so. It is interesting that only SNC Lavalin have provided information on the number of workers employed through manpower agencies. A staggering 58% of the workers said to be employed by the main contractor were actually employed by manpower agencies.²³

Restructuring of the construction industry has also seen the emergence of subcontracting in China with several tiers in the chain. At the top are usually state owned enterprises which are the property developers or dominant construction companies. Below them are the

²² <http://business-humanrights.org/search-migrant-workers-in-gulf-construction?questions%5B%5D=136165>

²³ The findings on workforce composition from a second survey in 2018 are reported in Part Three

contractors, either privately or collectively owned companies who outsource parts of the work to privately owned subcontractors. The recruitment of the mass of manual workers, migrants from the countryside, is usually left to the bottom rung of the hierarchy, the labour subcontractors (CDPR 2014b). The authors of the paper ²⁴ argue that the industry has developed a complex and deliberately opaque hierarchical structure in order to extract the maximum work effort from the large peasant migrant workforce while absolving the higher echelons of any direct responsibility for labour conditions in the sector. Others argue that the multi-tiered subcontracting system has allowed a culture of violence to flourish and is implicated in the massive problem of non-payment of wages (Ngai and Lu 2010). The state is indirectly involved through collusion with other actors in shaping how migrant workers are inserted into the urban labour market in what the author calls 'tolerated illegality' (Swider 2015).

While subcontracting has certainly decreased the direct responsibility of the main contractor for the workforce, it does not have to lead to a deterioration in working conditions. However, the subcontracting chain has been described as *a hierarchical, socio-economic dependency network or triangle, based on a linked series of contracts and connections* (Cremers 2009 p. 205). At the top of the chain are the main contractors, regular and completely legal enterprises, but companies at the lower level of the chain are not on an equal footing with the main contractors. Imbalanced power in the chain leads to questionable contracts that define the market transactions between the different levels and exploitation of the subcontractors operating at these levels (*ibid*). The exploitation of subcontractors is most apparent in the area of payment, creating real problems for the workers employed directly or indirectly by the subcontractors. These are very often migrant workers.

5. The payment system in construction

While the industry has changed quite dramatically in the past few decades, the payment system is changing only very slowly, if at all. The traditional practice is for the client to make periodic payments to the principal contractor for the value of the work done and certified during the previous period. Contractors may obtain advance payments for mobilisation at the start of a contract (10% is common) and clients may retain a percentage of the money claimed and certified for poor performance or breach of contract. With very small contracts payment may be delayed until the work is completed. But for the majority of projects where construction stretches over several years, interim payments from the client to the principal contractor are the norm.

The payment process is technical and complex but in essence it should work like this. If we assume for the moment that there are only two tiers of subcontractors, at the end of each payment period the principal contractor (tier 1) assembles the applications for payment from his tier 2 and tier 3 subcontractors. The applications are certified by relevant professional advisers and forwarded to the client. If there are no disagreements the client pays the principal contractor within the number of days specified in the contract, which may be 30, 60

²⁴ Note that the paper draws primarily on a Working Paper entitled *Labour regimes in the construction sector in China*, written by Dao-oup Chang, Development Studies, School of African and Oriental Studies (SOAS) London

or even 120 days from the valuation date. The principal contractor then passes on the appropriate sums to the tier 2 and tier 3 subcontractors (OGC 2007).

However in practice there may be many more tiers of subcontractors. Subcontractors lower down the chain will also forward their applications for work done during the period to the subcontractor in the tier above them who assembles all invoices from below and submits to the subcontractor in the tier above. As applications for payment travel up the chain, actual payment has to travel down what may be a long subcontracting chain. In the best possible scenario, when there are no disagreements and every actor in the chain makes prompt payment to the tier below, it can clearly take several months to reach the furthest points.

In reality of course, clients often do not pay on time. This may be due to disputed items in applications which can cause months of delay, to bureaucracy or it may be a deliberate policy to reduce their financing costs by shifting the burden to contractors.²⁵ Principal contractors may not have large capital assets or credit available to cover payment delays so they in turn may hold back payment to their subcontractors. In many situations principal contractors are not obliged to pay their subcontractors until they have received payment from the client, a practice known as 'Pay when Paid' which is widely considered unethical but is still commonly incorporated into contracts. For example, the widely used FIDIC subcontract states that '*the contractor can defer payment to the subcontractor if the amount has not been certified by the engineer, or the amount has been certified by the engineer but not paid by the employer*' [client].²⁶

Even when principal contractors have received payment they may choose to withhold the money that is owing to their subcontractors. It has been estimated that in good times contractors may be able to generate cash of up to 15% of turnover in this way – money which they may invest in housing or property development.²⁷ Subcontractors in turn may also fail to pass the money on to those further down the chain. Last to be paid, at the bottom of the chain are the small firms employing the workforce. When the flow of cash dries up the only option for these firms with limited cash reserves is to borrow from the bank or renege on their debt to the workers.

The particularly precarious situation of subcontractors and labour suppliers becomes very apparent when the flow of money dries up dramatically because a client or principal contractor is over-leveraged and cannot pay its debts. This happened in Dubai in 2009 when a major state-owned property developer defaulted on an estimated \$4 billion of short term debt with devastating impact on the local property market (Buckley 2012). Payment stoppages to principal contractors translated directly into wage repression and project cancellations that had a particularly significant impact on Keralite workers who were primarily employed at the bottom of the subcontracting chain. An estimated 150,000 Indian nationals lost their jobs in Dubai in 2009 and returned to India often without receiving the payment due

²⁵ Flanagan 2002, cited in Ye and Rahman 2010, suggests that clients are becoming more demanding, more discerning and less willing to accept risk

²⁶ FIDIC recognises that this 'pay when paid' approach may not be consistent with local law and so includes alternative provisions in the Guidance Notes to the Subcontract. The UK for example has prohibited 'pay when paid' clauses under the Housing Grants Construction and Regeneration Act of 1996 (commonly known as the Construction Act). Revisions to the Act in 2011 also prohibited delaying payment when the amount has not been certified.

²⁷ Construction Manager, magazine of the Chartered Institute of Building (CIOB) 6 May 2014.

to them. Others found themselves unable to leave Dubai and return home and were left without the means to support themselves, while some may have chosen to remain illegally in order to avoid defaulting on their debts (*ibid*).

Even a slowdown in the economy and in payments from the client can cause problems for the workers, even workers who are directly employed by principal contractors. In Saudi Arabia in February 2016 low oil prices caused the government to slow its spending on building projects. Many contractors who were relying on short-term funding were reported to be feeling an impact on their working capital and their ability to repay debt. Several companies working on government projects reported having difficulty paying wages to their employees.²⁸ In March 2016 foreign governments including Bangladesh, Philippines and France were pressing the Saudi government to ensure that wages were paid to foreign workers, including the French staff of one firm who had not been paid for four months.²⁹ While media attention and government help focused on the tens of thousands of workers laid off by large companies, such as the Bin Laden Group, those employed in small companies received little help. Press reports reveal that workers in one company employing only 500 workers had not been paid for 19 months³⁰.

The problem is by no means confined to the Gulf. A similar problem is reported from the Republic of Korea where a survey conducted by the Ministry of Labour revealed that 18,000 workers had not received their wages, worth about USD 84.6 million in 2011.³¹ Several reasons were highlighted for the problem, among them *the appropriation of project funds or project costs paid by the public agency in the process of being transferred to the final recipients [the construction workers] through the general contractor and subcontractors*.³²

It may be concluded that the conventional payment mechanism places a considerable and unfair strain on particular parties, leading to calls from academic researchers for a 'paradigm shift' in cash flow research (Serif and Kaka 2003, Motawa et.al. 2008, Ye and Rahman 2010). Indeed, there is substantial evidence from around the world of contractors and subcontractors having been driven out of business by late payment. Less often reported are the millions of workers who have suffered from being deprived of their wages. Even in normal times the payment system does not serve the workers, but if a subcontractor files for bankruptcy due to financial difficulties the construction workers that the company has hired for the work will have their payment delayed – and indeed may never be paid.

6. Conclusion

We have shown that migration to fill low paid jobs is a longstanding and, in some regions a growing feature of construction labour markets. At the same time, the incorporation of

²⁸ www.reuters.com/article/saudi-construction-slump-idUSL8N15N2LU

²⁹ www.reuters.com/article.us-saudi-labour-diplomacy-idUSKCN0W91NS

³⁰ <http://www.middleeasteye.net/news/foreign-workers-saudi-arabia-plead-help-financial-crisis-unravels-1932896314>

³¹ <https://www.oecd.org/governance/observatory-public-sector-innovation/innovations/page/anti-corruptioncleanconstructionssystem.htm>

³² SMG's sub-contractor payment system and electronic human resources management system for construction workers, International Workshop for public construction transparency, UNDP Seoul Policy Centre, p.93

migrants into the labour market has gone hand in hand with changes in the way in which workers are employed. In the past few decades employment relations in the construction industry have been quite profoundly redefined. The business model that has been widely adopted to ensure the labour flexibility that contractors need in order to keep costs down and win tenders, involves extensive subcontracting and the outsourcing of labour supply to agencies that are not the users of the workers. Principal Contractors may still be responsible for a significant share of output by value but everywhere they are employing a declining share of the workforce. Workers are engaged only when needed, so the risk of not having work is passed down the subcontracting chain to the workers themselves, or to the labour suppliers and subcontractors who employ them.

Construction workers also face the much greater risk of being paid late or not being paid at all for the work they have done. The late payment of wages is traced to the payment system in the construction industry that has failed to adapt to the dramatic changes that have occurred around the globe in the way that workers are employed. The usual practice is for interim payments to be channelled from the client via the Principal Contractor down through the tiers of subcontractors to eventually reach the firms employing the workers. In the best possible scenario, with all participants making prompt payment, it would take months for payment to reach the furthest points of the subcontracting chain where the majority of migrant workers are to be found in firms which often have limited financial reserves to draw upon when payment is delayed.

Moreover, clients seldom pay on time, which may be due to disputed items in requests for payment or bureaucracy, but it may also be a deliberate policy on the part of clients to reduce their financing costs by shifting the burden to contractors. Contractors in turn use their superior bargaining power to enhance their own cash flow at the expense of companies further down the subcontracting chain. In much of the world it is still accepted that subcontractors will not receive payment until the funds have been received by the contractor in the tier above and this is often formalised in 'pay when paid' clauses in contracts between the client and the principal contractor and between the various tiers of subcontractors. Slow payment by the client for the work that has been done, the reluctance of contractors higher up the subcontracting chain to pass on the money, plus the predominance of 'pay when paid' practices, combine to create a situation where the firms which are now the main employers of the workers may simply not have the funds needed when wages are due. Insolvencies are common in the construction industry and when there are insolvencies in the chain the workers may never be paid.

In many countries representatives of subcontracting firms have fought for a fairer payment system. It is also significant that late payment to subcontractors is not without costs, in the form of delay to the progress of the work, as well as financial costs which will ultimately be passed on to future clients in the form of higher tender prices. That the current payment mechanism is not only failing to protect subcontractors and workers, but also failing to benefit clients, has led to major industry clients joining the pressure for change and to a few significant changes in payment systems in some countries. These changes are explored in part two alongside the incentives and possible drivers of change.

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