

THE NEED FOR RETHINKING ABOUT ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS

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Abstract

There is a mutual connection between Environmental rights and human rights. A safe, clean and healthy environment is essential to the enjoyment of human rights, including the right to life, right to healthy environment and right to health. The linkage between these two approaches has recognized in various international and regional instruments including United Nations Human Rights Council's resolutions. Climate change affects to human rights in different ways. With the process of development there would be a large damage for the sustainability of the environment. While granting the right to development the states must rethink about sustainable development. Accordingly Sri Lankan National Action Plan for the Protection and Promotion of Human Rights 2017 -2021 the contribution made by Sri Lankan government in this regard is creditable. However the progress will be measured under practical

use. This article is intends to describe the interlink between environmental protection and human rights by analyzing instruments taken by environmental and human rights bodies. Further it also examines the connection of climate change and human rights. Finally suggest a mechanism to better protection of human rights.

Keywords: Environment, Human rights, Sustainable development, climate change, development

1. Introduction

"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature." ¹ Every person is entitled to certain fundamental rights, simply by the fact of being human. These are called "human rights" rather than a privilege.² To enjoy these human rights we must have a clean, healthy environment. There is a mutual connection between Environmental rights

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¹ Principle 1 of the Rio Declaration on Environment and Development 1992

² "What Are Human Rights? Human Rights Defined" by Youth for Human Rights Organization Making Human Rights a Global Reality, [https://www.youthforhumanrights.org/what-](https://www.youthforhumanrights.org/what-are-human-rights/)

[are-human-rights/](https://www.youthforhumanrights.org/what-are-human-rights/) Accessed on 15th March 2020 ³ "Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" prepared by John H. Knox Special Rapporteur ,Human Rights Council resolution 37/8 , 2018.07.19, p- 6 <http://srenvironment.org/sites/default/files/Report/2018/Boyd%20Knox%20UNGA%20...> Accessed on 16th March 2020

and human rights. A safe, clean, healthy environment is essential to the enjoyment of human rights, including the right to life, right to healthy environment, right to health. Therefore without healthy environment Human Rights are meaningless. Hence Human rights and Environmental rights are inter-related.

2. Interrelation between Environmental Law and Human Rights

In recent decades, human rights bodies have elaborated on the understanding that a healthy environment is fundamental to the full enjoyment of a vast range of human rights. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies have described how environmental degradation interferes with specific rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life.³ 1972 Stockholm Declaration proclaims that, though the man is both creature and moulder of his environment, both natural and manmade environment are essential to his well-being and to the enjoyment of basic human rights to life itself.³ Principle 1 of this Stockholm Declaration declared that,

*"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations"*⁴

This statement corroborates the interconnection of environmental protection and Human Rights. It proves that safe, clean environment is a precondition for the enjoyment of these fundamental Human Rights.

Since 1972, the right to a healthy environment has gained widespread public and legal recognition across the world. Governments have incorporated it into constitutions and environmental legislation. The right to a healthy environment has also been incorporated into regional human rights agreements and regional environmental treaties. Governments have made genuine efforts, with varying degrees of success, to respect, protect, fulfill and promote this right. Over the past forty years, national courts, regional tribunals, treaty bodies, special procedures and many international institutions have contributed to defining the content, scope and parameters of right to a healthy environment, as well as its relationship with other human rights.⁵

However these legal instruments couldn't provide a sufficient coverage for proper environmental protection. Many human centric activities led to serious environmental threats. Such as global warming, Ozone depletion, flood, droughts and bush fire. Due to these ecological alterations the world has to create an effective platform to discuss those issues.

³ Preamble of 1972 Stockholm Declaration, first paragraph

⁴ Principle 1 of 1972 Stockholm Declaration

⁵ Supra Note 3 p- 11

3. Link between Climate Change and Human Rights

Climate Change is a reality that now affects every region of the world. The human implications of current projected levels of global heating are catastrophic. Storms are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests and the ice is melting. We are burning up our future literally.⁶ Climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture and development. States have a human rights obligation to prevent the foreseeable adverse effects of climate change and ensure that those affected by it, particularly those in vulnerable situations, have access to effective remedies and means of adaptation to enjoy lives of human dignity.⁷ In each and every year world leaders get together and take many decisions on environmental matters to ensure a better enjoyment of human life.

When considering the Kyoto Protocol, which was adopted in 1997 operationalizes the United Nations Framework Convention on Climate Change by committing industrialized countries to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets. It only binds developed countries, and places a heavier burden on them under the principle of

" common but differentiated responsibility and respective capabilities ", because it recognizes that they are largely responsible for the current high levels of GHG emissions in the atmosphere. The Kyoto Protocol sets binding emission reduction targets for 36 industrialized countries and the European Union. Overall, these targets add up to an average 5 per cent against reduction compared to 1990 levels over the five year period 2008 - 2012 (the first commitment period) ⁸ This Protocol gives much prominence to retain the activities of developed countries which effect the degradation of the environment.

When it comes to the Paris Agreement the preamble of the Agreement recognizes the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge. Also acknowledges that climate change is a common concern of humankind, and parties should take action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and

⁶ Michelle Bachelet, United Nations High Commissioner for Human Rights September 9 2019, Opening Statement to the 42nd session of the Human Rights Council, Human rights and climate change,

⁷ Human rights and climate change, <https://www.ohchr.org/EN/Issues/HRA/ndClimateChange/Pages/HRClimateC..>

Accessed on 18th March 2020

⁸ What is the Kyoto Protocol? ,<http://unfccc.int/resource/docs/convkp/kpeng.pdf> Accessed on 22nd March 2020

intergenerational equity.⁹ The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre- industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change.¹⁰

Not only these foremost agreements but the office of the United Nations High Commissioner (OHCHR) for Human Rights also carry out many projects. OHCHR's 2018 -2021 office Management plan aims at ensuring that "International and national environmental and climate policies and plans increasingly are implemented in accordance with international human rights standards. OHCHR also aims, in line with the 2030 Agenda and the Paris Agreement on climate change, to promote a human rights-based approach to climate action. This requires that states take ambitious adaptation and mitigation measures that are inclusive and respectful of communities affected by climate change. They expect to activate some procedures to achieve these goals."¹¹

They are collaboration with partners to integrate human rights in environmental laws and policies; support for the inclusion of civil society in environmental decision-making

process, access to information and effective remedies for victims; assisting human rights mechanisms to address environmental issues, including climate change; advocacy on behalf of environmental human rights defenders and supporting efforts by the UN system to protect them and research and advocacy to address human rights harms caused by environmental degradation, particularly to groups in vulnerable situations.¹²

Hence it's clear that human rights are violated when man pollute the environment. If we want to protect human rights we must consider more about environmental protection. Without environmental protection ensuring human rights are meaningless.

4. Right to Development vs Right to Environment

When considering right to development and environmental rights someone can argue that they are fully incompatible. Because the development process frequently harm the ecological balance. But in my opinion both right to development and environmental rights help to improve the well being of the society. Safe and healthy environment is an essential part of enjoyment of fundamental human rights. So it's clear the connection of right to development and environmental rights. The right to development is about promoting and protecting the individual's

⁹ Paris Agreement ,
<https://unfccc.int/sites/default/files/english-paris-agreement.pdf> Accessed on 25th March 2020

¹⁰ The Paris Agreement,
<https://unfccc.int/process-and-meetings/the->

[paris-agreement/the-paris-agreement](https://unfccc.int/sites/default/files/english-paris-agreement.pdf) Accessed on 31st March 2020

¹¹ Supra Note 8

¹² Ibid

ability to participate in, contribute to and enjoy development, including economic, social, cultural or political. It envisions that "the human person" should be the central subject, participant and beneficiary in the process of development.

Therefore, the right to development is not only a human right in itself, but also necessary for the full realization of all other human rights. It also calls for the fair distribution of benefits that result from development. The right to development is deeply entwined with the right of peoples' to self-determination, and their right to exercise full sovereignty over all their natural wealth and resources.¹³ Introducing 12th annual Trygve Lie Symposium on Fundamental Freedom, the Norwegian Foreign Minister Ine Eriksen SØreide said that, "we see the promotion of human rights and development not as separate goals but as mutually enforcing objectives"¹⁴ Accordingly it's clear the connection of human rights and right to development.

Right to development is reflected in many international instruments. The right to development was proclaimed in the Declaration on the Right to Development,

¹³ United Nations Special Rapporteur on the RIGHT TO DEVELOPMENT An introduction to the mandate, p-4, <https://www.ohchr.org/Documents/Issues/Development/SR/SRRightDevelopment-Intro...> Accessed on 18th April 2020

¹⁴ Human Rights and the 2030 Agenda for Sustainable Development, September 26, 2019, <https://www.ipinst.org/2019/09/human-rights-and-the-2030-agenda#3> Accessed on 16th April 2020

adopted in 1986 by the United Nations General Assembly resolution 41/128. This right is also recognized in the African Charter on Human and peoples' Rights and the Arab Charter on Human Rights and re-affirmed in several instruments including the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous peoples.¹⁵

The Declaration on the Right to Development recognize that, development is a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.¹⁶ The first Article of the Declaration stipulates like this.

"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy

¹⁵ The Right to Development at a glance, <https://www.un.org/en/events/righttodevelopment/pdf/rtd-at-a-glance.pdf> Accessed on 18th April 2020

¹⁶ Preamble of the Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986

economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

"The human right to development also implies the full realization of the right of peoples to selfdetermination, which includes subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resource" ¹⁷¹⁸

This statement explicated that, right to development is an inalienable human right and all human rights and fundamental freedoms must be ensured through this right. However there are some criticizes on this Declaration. More than 30 years after the adoption of the Declaration on the Right to Development, States are still divided in interpreting the right. Further the general level of understanding as to what the right of development really means and engagement in its implementation are low. The implementation of the right to development faces numerous other challenges related to the state of our world today. Some of them are global financial and economic crisis, energy and climate crisis, increasing number of natural disasters and new global pandemics. The United Nations Council also noted a need for the international community

¹⁷ Article 1.1 and 1.2 of the Declaration on the Right to Development, adopted by General Assembly resolution

¹⁸ /128 of 4 December 1986

¹⁹ Supra Note 26 p - 8

²⁰ Human Rights and the 2030 Agenda, Speech at The 2019 Annual Trygve Lie Symposium on

to strive for greater acceptance of the right to development as an integral part of the international human rights framework. This is particularly important in the context of implementing the United Nations' major development plans over the next decade and beyond, including the 2030

Agenda for Sustainable Development, the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda and the Paris Agreement on climate change.¹⁹

The linkage of 2030 Agenda and right to development is proven by this statement. "We also know that human rights approaches are essential to the 2030 Agenda's central pledge to leave no one behind to provide more sustainable and effective development outcomes through the promotion of empowerment, inclusiveness and equal opportunity.

Development that places human rights at its core is the only way that we can truly achieve a sustainable future and without addressing some of the fundamental challenges we face in terms of sustainable development, human rights cannot be fulfilled." ²⁰ Hence it's apparent the connection between right to development and environmental rights. Though these two concepts are separated, the object is ensuring full enjoyment of life.

Fundamental Freedoms on Human Rights and the 2030 Agenda by Minister of Foreign Affairs of Norway, Ms. Ine Eriksen Søreide

<https://www.undp.org/content/undp/en/home/news->

[centre/speeches/2019/human...](https://www.undp.org/content/undp/en/home/news-centre/speeches/2019/human...) Accessed on 20th April 2020

5. Sustainable Development

Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within its two key concepts. The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.²¹ The world's vision and commitment regarding sustainable development have been changing throughout the time. Science has been developing and helping to build the foundations what are the causes and consequences of climate change. Simultaneously, world leaders have been changing their commitments to this problem.²² These commitments spread in wider range from 1972 Stockholm Declaration to 2019 United Nations Climate Change Conference (COP 25) in Madrid, Spain.

In September 2000, hundreds of heads of state met at United Nations and ratified the UN Millennium Declaration. In September 2005, the UN hosted a Millennium+5

summits to evaluate the progress towards the goals spelled out in the document. By adopting the original declaration in 2000, world leaders affirmed their faith in the organization and its Charter "as indispensable foundation of more peaceful, prosperous and just world". Leaders also resolved to meet a number of "Millennium Development Goals".(MDGs), which include halving the proportion of people living in poverty and hunger by 2015, ensuring primary schooling for all children, and reversing the spread of HIV/AIDS, malaria and other major diseases.²³ The Sustainable Developments goals replace the Millennium Development Goals. The objective was to produce a set of Sustainable Developments goals that meet the urgent environmental, political and economic challenges facing our world.²⁴

The Sustainable Developments goals (SDGs), also known as the Global Goals, were adopted by all United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. The 17 SDGs are integrated that is, they recognize that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability.²⁵ The

²¹ Our Common Future, Chapter 2: Towards Sustainable Development, From A/42/427. Our Common Future: Report of the World Commission on Environment and Development, <http://www.un-documents.net/ocf-02.htm> accessed on 5th April 2020

²² World Conferences on Sustainable Development, <https://youmatter.world/en/definition/definitions-worldconferences-sustainable-..> accessed on 5th April 2020

²³ The Millennium Summit and Its Follow-up, <https://www.globalpolicy.org/un-reform/un-reforminitiatives/millennium-summit-and-it..> accessed on 7th April 2020

²⁴ Sustainable Development Goals, <https://www.undp.org/content/undp/en/home/sustainable-developmentgoals/baC..> accessed on 10th April 2020

²⁵ Sustainable Development Goals, <https://www.undp.org/content/undp/en/home>

General Assembly adopted the 2030 Agenda for Sustainable Development by including these 17

Sustainable Developments goals. Building on the principle of "leaving no one behind", the new Agenda emphasizes a holistic approach to achieving sustainable development for all.²⁶

The sustainable development goals are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate change, environmental degradation, peace and justice. There are 17 goals which are interconnected. When consider goal 13 which aims to take urgent action to combat climate change and its impacts.²⁷ As mentioned earlier in the Paris Agreement, all countries agreed to work to limit global temperature rise to well below 2 degrees centigrade. As of April 2018, 175 parties had ratified the Paris Agreement and 10 developing countries had submitted their first iteration of their national adaptation plans for responding to climate change. Limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes in all aspects of society, the Intergovernmental Panel on Climate Change (IPCC) said in a new assessment. With clear benefits to people and

natural ecosystems, limiting global warming to 1.5°C compared to 2°C could go hand in hand with ensuring a more sustainable and equitable society.²⁷

There are some targets of Goal 13 of Sustainable Development Goals. They are, strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries; integrate climate change measures into national policies, strategies and planning, improve education, awareness raising and human institutional capacity on climate change mitigation, adaptation, impact and early warning; implement the commitment undertaken by developed country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$ 100 billion annually by 2020 from all sources to address the needs of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible and promote mechanisms for raising capacity for effective and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities.²⁸ From these targets they hope to ensure right to health including the right to safe, clean, healthy and sustainable

[/sustainable-developmentgoals.html](#) Accessed on 10th April 2020

²⁶ Envision 2030: 17 goals to transform the world for persons with disabilities, <https://www.un.org/development/desa/disabilities/envision2030.html> Accessed on 10th April 2020 ²⁷ About the Sustainable Development Goals, <https://www.un.org/sustainable>

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²⁷ Sustainable Development Goals, Goal 13: take urgent action to combat climate change and its impacts <https://www.undp.org/content/undp/en/home/sustainable-development-goals/bac..> Accessed on 12th April 2020

²⁸ Ibid

environment; right to adequate food and right to safe drinking water and right to all peoples to freely dispose of their natural wealth and resources.²⁹

Moreover Goal 16 also correspond with human rights. It's about promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Targets of this goal include reducing all forms of violence against and trafficking of children; promoting rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing effective institutions; participation in decision making at all levels and legal identity for all. These targets will assure human rights as right to life, liberty and security of person. Further the protection of children from all forms of violence, abuse or exploitation, right to access to justice and due process, right to legal personality, right to participate in public affairs and right to access to information.³⁰ In addition to that goal 11, 12, 14 and 15 also guarantee some fundamental human rights. Accordingly right to adequate housing, including land and resources; right to health including the right to safe, clean, healthy and sustainable environment; right to adequate food and the right to safe drinking water.³¹

It's apparent that sustainable development plays a major role in assuring human rights. Based on the principle of "leaving on one

behind" the parties hope to achieve sustainable development for all. It's the future world we wish to live. Therefore it can argue that the process of sustainable development will help to approach a better existence for all human beings. Not only that it will preserve the ecological balance.

6. Sri Lankan Perspective

The 1978 Constitution of Sri Lanka sets out a framework through which civil and political rights could be enforced through the courts, and provided for an individual redress mechanism. Chapter III on Fundamental Rights in the Constitution contains rights as freedom of thought, conscience and religion, the freedom from torture and the right to equality and non-discrimination. The right to life is not explicitly included in the Fundamental Rights Chapter. However, the Supreme Court of Sri Lanka has recognized the implicit right to life. Sri Lanka ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1980 and therefore is under an obligation to guarantee economic, social and cultural rights (ESCR) through domestic laws and through administrative, executive and judicial action.³²

Chapter VI of the Constitution recognizes to ensure an adequate standard of living for Sri Lankans and to protect nature and conserve its riches under the Directive Principles of State Policy and Fundamental Duties. Article 27 (2) (C) of the Constitution recognizes to

²⁹Sustainable Development Goals Related human rights - OHCHR , <https://www.ohchr.org/Documents/Issues/MDGs/Post2015/SDG-HR-Table.pdf> Accessed on 15th April 2020

³⁰ Ibid

³¹ Ibid

³² Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2017 -2021, p- 3 ,151,

procure an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions for every person in Sri Lanka.³³ According to Article 27 (14) articulates that, "The State shall protect, preserve and improve the environment for the benefit of the community"³⁴ Moreover Article 28 (f) of the Constitution indicate that, it is the duty "to protect nature and conserve its riches" is one of fundamental duty among the other fundamental duties of every person in Sri Lanka³⁵

Goals of ensuring human rights must correspondence with environmental protection. This provable nature includes in some goals under Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2017 -2021. Under universal healthcare and highest attainable standard of health and wellbeing for all there are some objectives. One is ensure the right of citizens to enjoy a safe and healthy environment. Under this object there are some short term and medium term activities. Some of them are taking steps to ensure the safe disposal and clearing of clinical and other waste, strengthen a clean environment within healthcare facilities. Another major goal of the National Action Plan is strengthen the link between human rights and the environment. To achieve this goal there are

objectives like introducing legal reforms and policy reforms, ensuring right to information. Some activities under this are review and consider the right to a safe and healthy environment as a fundamental right, update the national environmental act and making publicly available an up to date consolidated version of all applicable Environmental Legislation.³⁶

Recently three young research scientists rediscover of the endemic plant known as the *Sri Lanka* legume within the trace of the proposed Colombo - Kandy expressway. The project was approved for commencement in 2016, but construction has not yet begun. The provisions contained in the National Environmental Act make it mandatory for all proponents of projects deemed as "prescribed projects" to conduct environmental impact assessment (EIA) or an initial environmental examination (IEE) report as the project warrants, in the process of getting it approved. It also highlights the required role of Sri Lanka's Road Development Authority, which is to act in accordance with the country's laws and to engage in a due consultation process with both the Central Environment Authority and Department of Wildlife Conservation before proceeding with the project.³⁷ This incidence shows the significance of environmental protection during the development process.

³³ Article 27 (2) (C) of the Constitution of the Democratic Socialist Republic of Sri Lanka

³⁴ Article 27 (14) of the Constitution of the Democratic Socialist Republic of Sri Lanka

³⁵ Article 28 (f) of the Constitution of the Democratic Socialist Republic of Sri Lanka

³⁶ Supra Note 33 p- 172, 212

³⁷ The Sri Lankan legume: Extinct, rediscovered, and now in risk again (commentary) by Jagath Gunawardana, <https://news-mongabay-com.cdn.ampproject.org/v/s/news.mongabay.com/201912/the-sri-lankan-legume-extinctredi...> Accessed on 24th April 2020

7. Conclusion

Based on the above facts it's clear the inter connection of environmental rights and human rights. Apart from the protection of environment human rights protection is in vain. The objects of international instruments including the Paris Agreement and 2030 Agenda for Sustainable Development must be fulfilled to achieve a healthy life. Effect of climate change will be a major problem in future. Therefore all countries must emulate the due proceedings denoted by relevant authorities. As the centric person of development man has a huge responsibility to preserve natural resources for future generation.

Steps taken under Sri Lankan National Action Plan for the Protection and Promotion of Human Rights 2017 -2021 is a noteworthy inception for a sustainable future. If we can complete the objectives of the National Action Plan, we can enjoy human rights with the ecological balance. Hence it can be concluded that this is the high time to activate a long time process to ensure protection of environment. If not whole mankind will loose not only human rights but also their lives with the effect of dangerous climate changes.

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