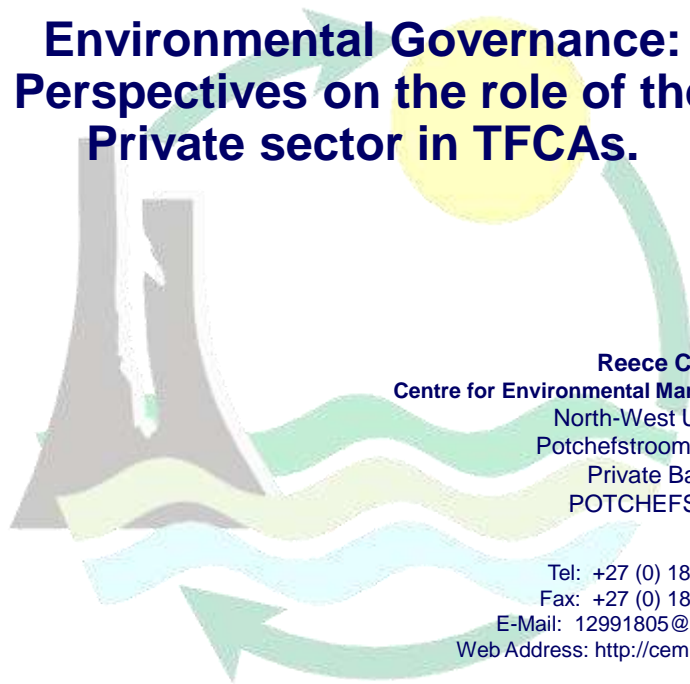


Environmental Governance: Perspectives on the role of the Private sector in TFCAs.



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Introduction

Environmental Governance

- From a legal perspective, environmental governance essentially is a process in terms of which **public** and **private** actors aim to regulate human behaviour and the effects of human behaviour on the environment.
- Law is one of the most important mechanisms to justify, mandate and execute environmental governance with the view, primarily, to regulating behaviour.

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Introduction

- 🌐 Importance of the public sector (government and its agencies) in environmental governance is undisputed.
- 🌐 The private sector (for example, indigenous communities, non-governmental organizations etc) also have an important role to play in ensuring a successful or sustainable environmental governance effort.



Introduction

- 🌐 This is especially true when the object of environmental governance is natural resource conservation
- 🌐 To comprehensively enable private sector participation in natural resource governance, the law must be
 - conducive to facilitating participation,
 - promoting involvement and
 - providing remedies where private sector involvement is discouraged or ignored for whatever reasons.



Introduction

🌐 It is against this background that this presentation will deal with the following:

- Environmental Governance and Biodiversity Conservation
- EG and private sector participation
- The legal framework for private sector participation.

Environmental Governance





Environmental Governance

- Although the main focus of EG is not **biodiversity conservation** *per se*, but rather the environment, biodiversity forms an **integral part** of the environment and therefore falls within the scope of EG.
- Accordingly biodiversity conservation, and consequently transboundary biodiversity conservation all fall within the ambit of EG.



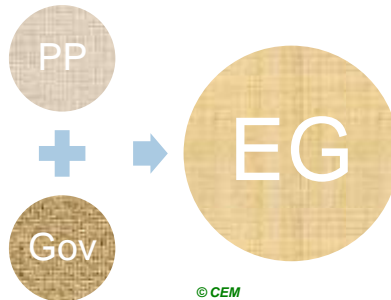
Definition of EG

- EG is defined as being:
 - A management process executed by **institutions** and **individuals** in the **public** and **private sector**
 - to holistically regulate human activities and the effects of human activities on the total environment (including all environmental media, and biological, chemical, aesthetic and socio-economic processes and conditions)
 - at **international, regional, national and local levels**,
 - by means of formal and informal institutions, processes and mechanisms embedded in and mandated by law,
 - so as to promote the common present and future interests human-beings hold in the environment. (Kotze, 2008)



The Private Sector & EG

- 🌐 Clear from the above definition that EG requires the input of private parties and individuals at local level.
- 🌐 For EG to be sustainable government cannot govern alone.



The Private Sector & EG

- 🌐 EG should adhere to the values set out in the Constitution, which include *inter alia*
 - 🐟 accountability,
 - 🐟 transparency,
 - 🐟 efficiency,
 - 🐟 **public participation**
 - 🐟 as well as the rights contained in the Bill of Rights (Feris, 2010)



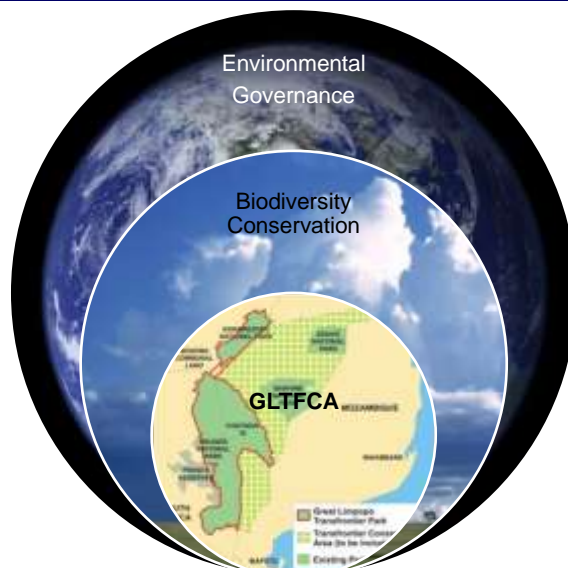
The Private Sector & EG

🌐 Taking this into account, it becomes apparent that:

- The input of private parties and individuals is important with regard to EG,
- That citizens must be aware and are involved in the decision-making and governance process encapsulated in EG.

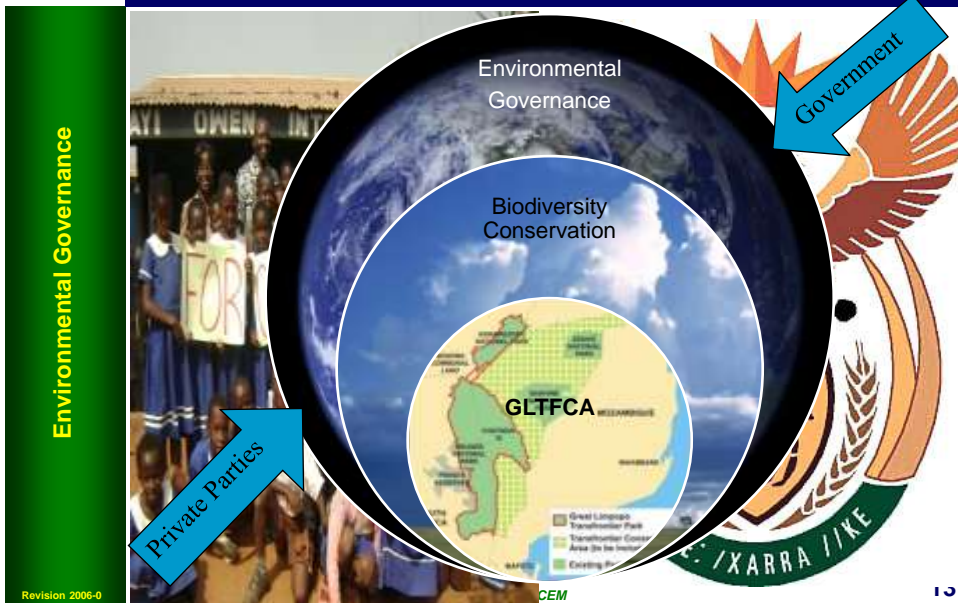


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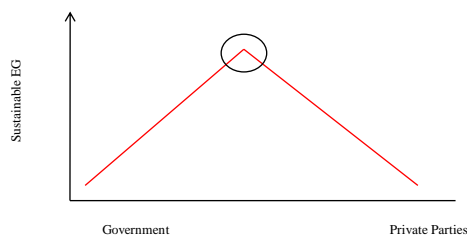
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Private Parties, EG, biodiversity conservation & the Law

Environmental Governance

- Thus a link can be drawn between:
- sustainable EG, which requires the input of private parties and individuals
 - and the role played by private parties in biodiversity conservation, in supporting sustainable EG.



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Past Practices

- 🌐 **Departure from traditional conservation thinking**
 - **Fortress Conservation**
 - **Fines and Fences**
 - **Traditionally protected areas were managed in isolation from adjacent areas, with very little provision made for sharing management responsibilities with surrounding land owners and communities.**
 - **Modern concept of conservation, stresses a human centred management approach.**



Modern Practices

- 🌐 **There is a growing acceptance of the view that effective conservation must be**
 - **socially and economically relevant, and**
 - **requires the acceptance, active participation, involvement and co-operation of private parties**
 - ★ (Paterson, 2007)

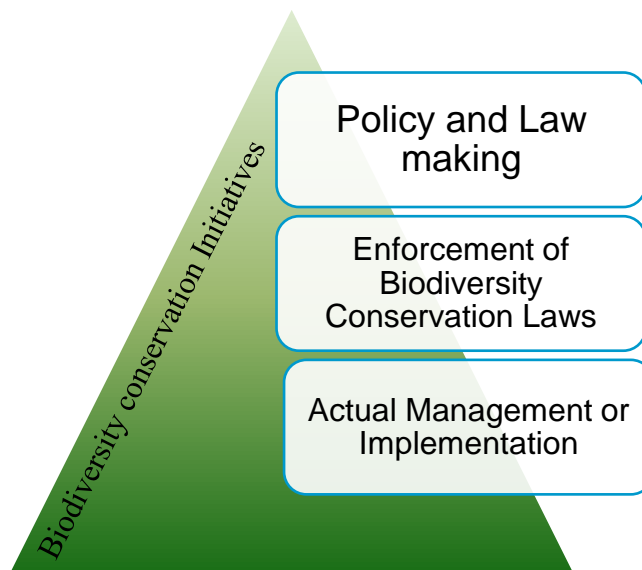


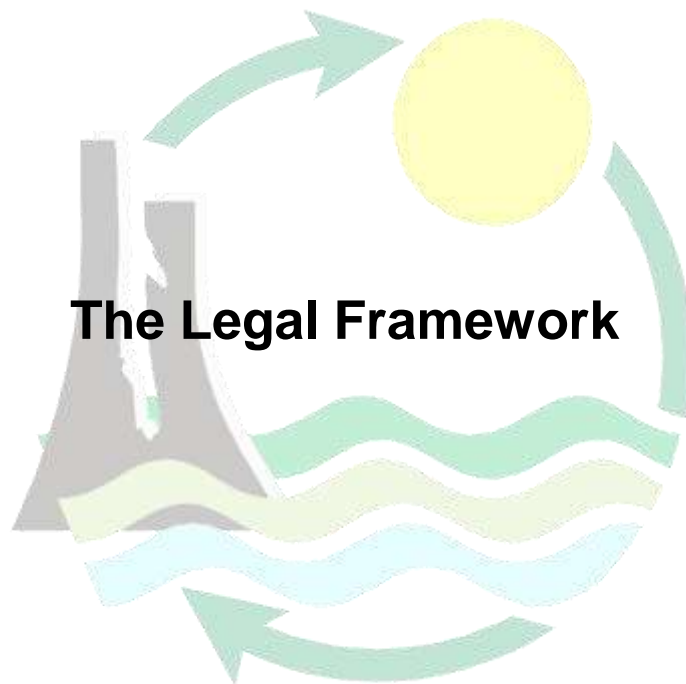
Modern Practices

- It is thus imperative that a policy framework should exist which could guide the drafting and implementation of programmes which advocate the involvement of communities and private parties in biodiversity conservation.



Levels of Private Party Participation





The Legal Framework

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International International Instruments

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International

International Level

Rio Declaration

★ Principle 10

→ Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.

★ Principle 22

→ Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices.

The CBD

★ Article 8(j)

★ Article 8(e)



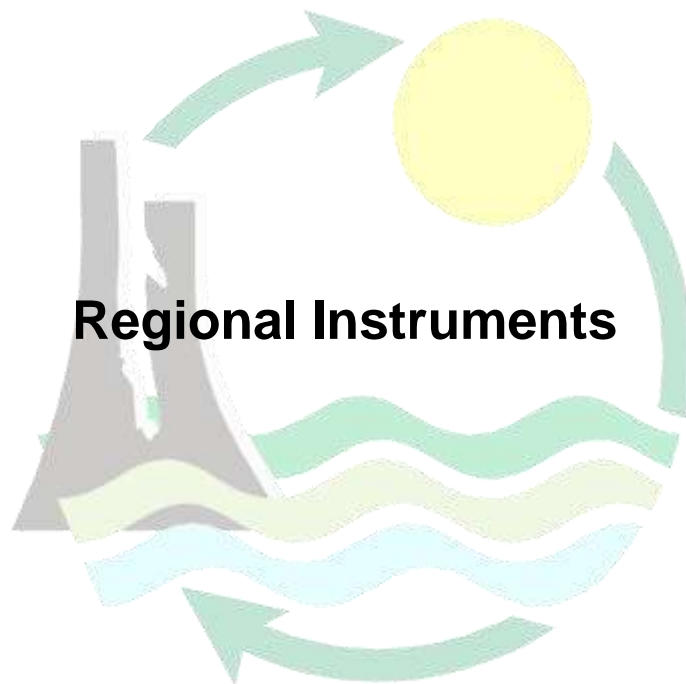
International

CITES

Aarhus Convention

★ Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters

Convention Concerning the Protection of the World Cultural and Natural Heritage



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Regional

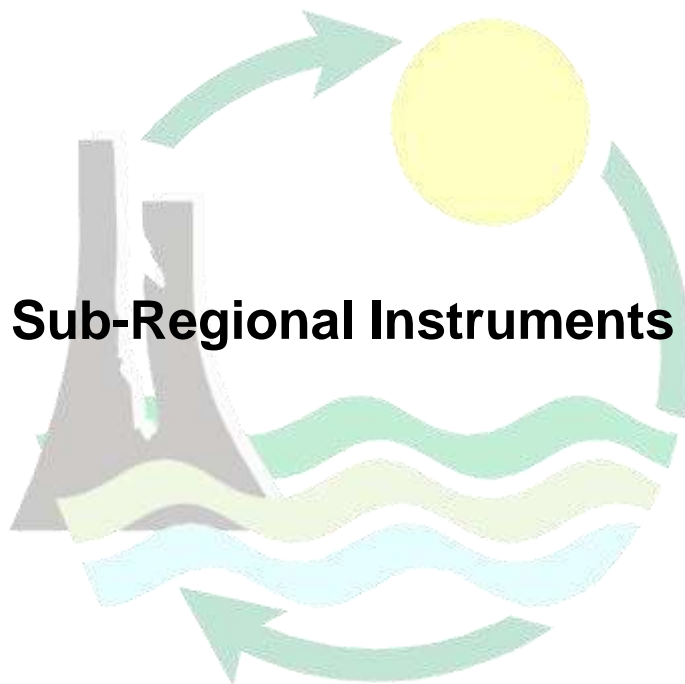
Environmental Governance

- 🌐 ***The African Charter on Human and People's Rights***
- 🌐 ***The African Convention***
- 🌐 ***Treaty Establishing the African Economic Community***

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Sub-Regional Instruments

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Sub-Regional

Environmental Governance

The SADC Treaty, 1992

- **One of the most relevant instruments regulating public party involvement in biodiversity conservation initiatives at sub-regional level is the SADC Treaty.**
 - ★ **article 5(1)(g) and 5(2)(b),**
 - ★ **create the mandate to encourage public party involvement in biodiversity conservation initiatives**

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Sub-Regional

- 🌐 It is an objective of SADC to
 - achieve the sustainable utilisation of natural resources and effective protection of the environment which,
 - in addition to other means, shall be achieved by encouraging the people of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region,
 - and to participate fully in the implementation of the programmes and projects of SADC which include biodiversity programmes and projects.



Sub-Regional

- 🌐 ***Protocol on Wildlife Conservation and Law Enforcement, 1999***
 - has as its main objective the conservation and sustainable use of wildlife. Wildlife is a core component of biodiversity, and thus is an important consideration in the establishment of biodiversity conservation initiatives



Sub-Regional

- specific objective of the Wildlife Protocol is to promote the conservation of shared wildlife resources through the establishment of transfrontier conservation areas. (Art 4(f))

★ *The involvement of communities in conservation initiatives is not specifically mandated, but*

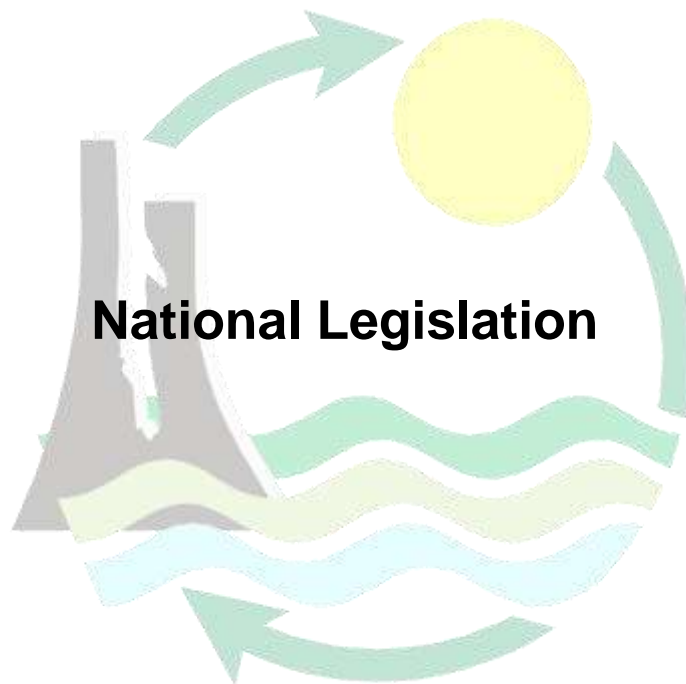
→ *member states are mandated to encourage the people of the region and their institutions to participate fully in the implementation of SADC programmes and projects which include biodiversity conservation initiatives where they are present.*



Sub-Regional

Other protocols:

- Fisheries Protocol, 2001
- Protocol on Forests, 2002



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National Legislation

Environmental Governance

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🌐 Constitutional Provisions

- Section 24
- Section 32 and 33
 - ★ Right of access to info
 - ★ Right of access to administrative justice
 - ★ essentially embraces the concept of administrative justice, which aims to, *inter alia*,
 - ➔ ensure good governance and administration, ensure fair dealing in administrative context, enhance protection of the individual against abuse of state power and to promote public participation in decision-making.
- Section 38- *Locus Standi*

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Specific Biodiversity Related Policies

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Policies

Environmental Governance

Draft Policy on Buffer Zones for National Parks 2010

- Encourage sustainable development that promotes and enhances the conservation values of the surrounding national park, and to assist adjacent and affected communities to secure appropriate and sustainable benefits.
- Interested and affected individuals and groups will have an opportunity to participate in decisions about the ways in which biological resources are conserved and used.

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Policies

- Goal 5 supports the development of community-based biodiversity management initiatives as part of a broader set of approaches to land-use planning and developing local sustainable development strategies.
- Goal 6 promotes the development of partnerships between the management authority, other conservation authorities, community organisations, NGO's, and private entrepreneurs for purposes of planning and managing the use of resources within the park buffer zone and optimising benefits for local people.



Policies

Draft Biodiversity Stewardship Policy Document

- allows for the involvement of private parties in biodiversity conservation through the provision of a mechanism by which such parties can get involved.
 - ★ partnerships and co-operative governance between communities, land owners, government as well as other key role players.



National Environmental Management Act 107 of 1998.

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NEMA

Environmental Governance

Section 2 Principles

- Section 2(4)(f): The participation of all interested and affected parties in EG must be promoted
- Sec 2(4)(g): All decisions taken must take into account the interest, needs and values of all interested and affected parties.

Section 32: *Locus Standi*

Section 35: EMCAs

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National Environmental Management: Protected Areas Act 57 of 2003

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NEMPA

Environmental Governance

- 🌐 Almost all biodiversity conservation initiatives house some form of formal protected area, which would result in NEMPA being applicable in these areas.
- 🌐 NB to remember that the whole area which is encompassed in a biodiversity conservation initiative is not necessarily deemed to be protected areas *per se*, therefore NEMPA only applies to those areas within the area which are.

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NEMPA

- 🌐 **Section 40 of NEMPA stipulates certain management criteria**
- 🌐 **managing authority of a protected area must manage the area in accordance with a management plan.**
- 🌐 **Effective management, however, requires**
 - **unambiguous and precise legal framework**
 - **co-operation between all parties.**



NEMPA

- 🌐 **Section 41 lays down the minimum requirements which such a plan must meet.**
 - **management plan must include a procedure for public participation by any local communities or any other interested parties.**
 - **such a plan should provide for community based natural resource management where this appropriate.**



NEMPA

Section 42

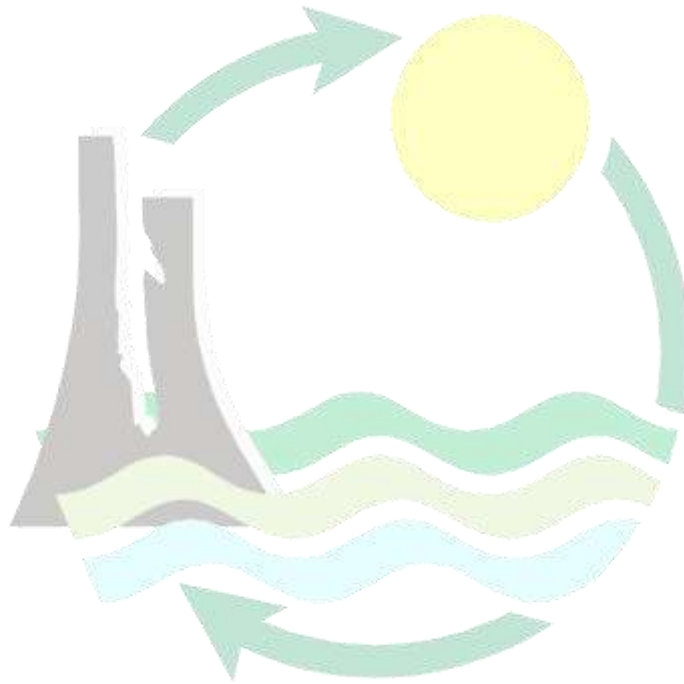
- Co-management of Protected Areas
- Authorises the managing authority to enter into agreements with, *inter alia*, local communities in order to co-manage the area and to regulate human activity within the area.



In Closing

... we believe that no species, no habitat, no place or piece of land can be 'saved' without a community. How that community is constructed and *empowered* to conserve is the question

(Brosius and Russell, 2003)



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