

Comments on the Concluding Observations on the Third Periodic Report of JAPAN

Para 12 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.12, "The Committee notes with concern that the State party's legislation on employment does not fully protect against discrimination on the basis of disability. Moreover, the Committee is concerned that there is no legal obligation to provide reasonable accommodation in the workplace when required," the bill to partially amend the Act for Employment Promotion, etc. of Persons with Disabilities, enacted on June 13, 2013, provides for the prohibition of discrimination against persons with disabilities on employment as well as measures to minimize obstacles for persons with disabilities to work in the workplace (obligation to provide reasonable accommodation). These arrangements should have eliminated the Committee's concern.

It should be noted that the legislation that has been revised is not the Basic Act for Persons with Disabilities but the Act for Employment Promotion, etc. of Persons with Disabilities. The Committee misunderstands the facts on this point.

The Committee calls on Japan to "apply labor standards to persons with disabilities working in sheltered facilities." In this respect, Japan determines the applicability of labor laws and regulations by comprehensively considering various factors including whether or not the worker in question is in the employment of and subordinated to the employer, irrespective of whether or not the worker has any disabilities.

Therefore, Japan currently applies labor laws and regulations to persons with disabilities working in sheltered facilities if they are regarded as falling within the category of workers, as in the case of other workers.

Para 13 of the Concluding Observations of the Committee

In connection with the Committee's comment (d) in Para.13, the career track system is an employment management system wherein multiple career tracks are set depending on the type of job, qualification, etc. of workers so as to provide assignments, promotions and educational training separately for each track. This system is not itself illegal if it is operated in a gender-equal manner. In accordance with the Guideline to be Noted by Employers Regarding Employment Management Differentiated by

Career-Track, etc., the Government advises companies on how they can ensure that a career-tracking system does not operate as a de facto gender-based personnel management system.

Article 9 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment prohibits stipulating pregnancy, etc. as a reason for the retirement of women workers and also prohibits dismissing or meting out other disadvantageous treatment to women workers for reason of pregnancy, etc. The Government advises companies to take measures to correct any illegal treatment of women workers.

Para 14 of the Concluding Observations of the Committee

1. Purport of Article 6 of the Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 6 of the Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to work, and more specifically, provides for (1) the State Parties' obligation to endeavor to take appropriate measures to ensure that every person who wishes to work will have the opportunity to have a job, and (2) every individual's right to freely decide what job he or she is to engage in and right to carry out the job thus decided.

Work imposed as part of the punishment of imprisonment with work (meaning punishment enforced by confining the sentenced persons at penal institutions and having them engage in assigned work; the same shall apply hereinafter) is a type of punishment enforced for the purpose of correcting criminals, and it is fundamentally different in nature from the work provided for in said Article. Furthermore, even when reviewing the negotiation process, the Government does not recognize any fact that suggests that said Article was drafted as a provision to prohibit the imposition of imprisonment with work.

2. Status of imprisonment with work under Japanese law

Under the existing law of Japan, it is provided that the "assigned work" referred to as part of imprisonment with work (Article 12, paragraph (2) of the Penal Code) "shall, on a best effort basis, be implemented so as to encourage sentenced persons to work and so as to help them acquire vocationally useful knowledge and skills" (Article 94, paragraph (1) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees),

and in practice, it is implemented in this manner. Thus, the Government considers the work assigned as part of imprisonment with work to be an important measure to ensure the reformation and rehabilitation of sentenced persons and their smooth re-entry into society.

3. Treatment of imprisonment with work under the International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR), established based on the essence of the Universal Declaration of Human Rights together with the ICESCR, prohibits forced or compulsory labor in Article 8, Paragraph 3(a), and it provides in (b) of the same paragraph that "Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court," thus it clearly indicates that enforcement of imprisonment with work as a kind of punishment based on a court ruling is not prohibited. Both Covenants should be interpreted consistently with each other as international commitments based on the essence of the Universal Declaration of Human Rights. It is inappropriate to interpret imprisonment with work, which is provided as an exception to the prohibition of forced or compulsory labor under the ICCPR, as being prohibited under the ICESCR from the aspect of protecting the right to work.

4. Conclusion

For the reasons stated above, the Government does not consider that imprisonment with work should be abolished.

Para 16 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.16, the revised Labor Contract Act which came into effect as of 1st April 2013 establishes new rules including the conversion of fixed-term contracts into open-ended contracts to prevent the abuse of fixed-term contracts, based on a proposal (Dec 2011) by the Labor Policy Council (a tripartite advisory council). Additionally, the Government has to pay heed to the fact that the above-mentioned proposal by the council did not come to the conclusion that the Government should regulate grounds for conclusion of fixed-term contracts, considering concern such as frequent occurrence of disputes and decline of employment opportunities.

Firstly, the Government will actively inform and raise awareness of the Act to ensure it gains traction as it just came into effect as of 1st April 2013. Additionally, the Government will take a survey to find out how enterprises deal with it.

Para 17 of the Concluding Observations of the Committee

In connection with the Committee's concern about overwork expressed in Para.17, the percentage of workers whose working hours are over 60 hours, 9.1% in 2012 (12.1% in 2004) , has demonstrated a decline, but the percentage of workers in their 30s whose working hours are over 60 hours, 18.2% in 2012 (23.8% in 2004) , have remained at high levels.

The number of people who died of brain or heart disease and were recognized as workplace fatalities was 133 in FY2013 (106 in FY2009), and the number of people who committed suicide due to mental disorders and were recognized as workplace fatalities was 63 in FY2013 (63 in FY2009).

The Government considers this situation problematic, and in order to prevent damage to health due to overwork, it has established certain standards for the extension of working hours and provides guidance and conducts supervision via the Labor Standards Offices to maintain working hours below such standards. The Government has also made it obligatory by law for employers to take measures such as providing medical checkups for workers and providing consultation by medical doctors to workers who have engaged in long periods of overtime work or worked on their days-off, and it promotes the thorough implementation of these measures.

In addition, the Government revised the Labor Standards Act and raised the rate of increased wages that an employer shall pay in the event that the employer extends working hours or has a worker work on rest days from April 2010 (from no less than 25% to no less than 50%) .

Para 18 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.18, and in view of the fact that the average level of the minimum wage falls short of the standards of public assistance in

some areas of Japan, the Government revised the Minimum Wages Act in 2007 in order to ensure that workers can maintain the minimum standards of wholesome and cultured living. The revised Act clearly provides that when deciding the minimum wage, consideration should be given to the consistency with public welfare benefits.

In accordance with this provision, the Government has raised the minimum wage if it falls below the standards of public assistance in a planned manner. As of October of 2014, the gaps between the minimum wage and the standards of public assistance were eliminated in every prefectures of Japan.

Para 19 of the Concluding Observations of the Committee

In connection with the Committee's concern expressed in Para.19, the Government aims to ensure compliance with Article 4 of the Labor Standards Act, which provides for the principle of equal wages for men and women, as well as the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, which prohibits discrimination due to gender in each phase of employment management.

As the creation of wage disparity is considered to be significantly attributable to the disparity between men and women in terms of job classification or length of service, the Government promotes the implementation of positive actions and supports people in achieving a balance between their work life and family life, thereby taking the initiative to develop a favourable working environment for women to continue to work.

Furthermore, the Government implements measures to raise awareness of the "Guidelines for Supporting Labor-Management Initiatives toward Eliminating Wage Disparity between Men and Women," which incorporates practical support tools for companies such as a form for a fact-finding survey to ascertain wage disparity between men and women.

In addition, the Government issued a notice in 2012 to clarify the interpretation of Article 4 of the Labor Standards Act and it has been pursuing further collaboration with related organizations, with a view to ensuring the effective implementation of Article 4, etc. of said Act.

Moreover, the Government has taken the following measures so that women workers

will not be subject to discriminatory treatment in terms of wages because of gender:

1. Provide Labor Standards Inspectors with sufficient training on the content of the Labor Standards Act;
2. Raise awareness of Article 4 of the Labor Standards Act among employers through meetings wherein the Labor Standards Offices explain the Labor Standards Act to employers; and
3. Give guidance to employers and have them take corrective measures in the event that they have been found to have violated Article 4 of the Labor Standards Act in the course of supervision by the Labor Standards Offices.

Para 20 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.20, an act that constitutes sexual harassment may be punished as a crime stipulated in the Penal Code, such as forcible indecency, defamation and insult, depending on the substance or manner of the act.

In relation to sexual harassment in the field of employment, the revision to the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment in 2006 made it obligatory for employers to take measures to cope with sexual harassment. The revision also included sexual harassment in the scope of a subject regarding which conciliation is sought, and allowed the disclosure of the name of a company which does not take any preventive or corrective measures. In addition, the guidelines under said Act prohibit the employer from meting out disadvantageous treatment to workers by reason that they have sought consultation concerning their suffering sexual harassment, and require the employer to raise awareness of these rules among workers. Among conciliation cases under the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, those concerning sexual harassment have become the most common.

Para 21 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.21, the labor laws and regulations of Japan apply to all workers working in Japan irrespective of their nationality or whether or not they are engaged in illegal employment (without a work visa). The Government promotes measures to secure the statutory working conditions for workers

without making a distinction between Japanese workers and foreign workers.

Furthermore, the Government has taken measures to raise awareness of the principle that labor laws and regulations apply to all foreign workers working in Japan irrespective of their status of residence, such as developing leaflets for foreign workers and for employers who employ foreign workers. In addition, the Government provides various support mechanisms including the assignment of labor consultants for foreign workers to the Prefectural Labor Bureaus and Labor Standards Offices in major cities.

Para 22 of the Concluding Observations of the Committee

In connection with the Committee's comment in Para.22, after the Act for Partial Revision of the National Pension Act, etc. to Support Securing of Income for Those Later in Life through National Pension and Corporate Pension was enacted, the Act for Partial Revision of the National Pension Act, etc. in order to strengthen the Financial Grounds and Minimum Guarantee Function of the Public Pension System was enacted, and the Government took measures to reduce the period of contribution required for receiving a pension to ten years. This has opened the door for elderly people who were formerly unable to receive pensions to be able to receive them.

If pensions are to be paid to those who are unable to receive pensions even after the scope of persons eligible to receive pensions has been thus expanded, it would have an adverse effect on people's incentives to pay pension premiums, which is vital for operating the contributory pension scheme.

The Government repeatedly makes mention of the fact that the Japanese pension scheme allows everyone to join, including those without the ability to pay pension premiums, and it also guarantees a certain amount of pension benefits to those without the ability to pay pension premiums by providing them with an exemption from the liability for paying pension premiums, and thus it is designed to enable everybody to have security through a pension.

Para 23 of the Concluding Observations of the Committee

Any acts that meet the constituent elements of sex crimes and violent crimes prescribed in the Penal Code, such as rape, forcible indecency and assault, are punishable even

where they were committed against a spouse.

Para 25 of the Concluding Observations of the Committee

With regard to the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, the Government has made some comments on his draft report in advance concerning a misunderstanding of the facts from a scientific and juridical viewpoint in response to his request. It seems that his report which was finally submitted to the Human Rights Council does not reflect the Government's comments on said misunderstanding of the facts sufficiently, nor does it take into account the actual circumstances. His report also seems to lack the support of scientific or medical knowledge. Therefore, it is inappropriate to implement all the recommendations made by him.

The Government recognizes that the health management of the residents affected by the situation involving Fukushima Dai-ichi Nuclear Power Station is of considerable importance. Therefore, it has been working on health management taking into account the latest findings of medical experts beyond examining the possibility of influence on health in a limited way.

The Government will continue to carry out measures so that suitable support in health management will be provided to the people who truly need it.

Para 26 of the Concluding Observations of the Committee

The Government of Japan has no intention of denying or trivializing the comfort women issue. With regard to the comfort women issue, Prime Minister Abe, in the same manner as the Prime Ministers who preceded him, is deeply pained to think of the comfort women who experienced immeasurable pain and suffering beyond description, which has been repeatedly expressed.

Recognizing that the comfort women issue was a grave affront to the honor and dignity of a large number of women, in fact, the Government of Japan, together with the people of Japan, seriously discussed what could be done to express their sincere apologies and remorse to the former comfort women. As a result, the people and the Government of

Japan cooperated and together established the Asian Women's Fund (AWF) on July 19, 1995 to extend atonement from the Japanese people to the former comfort women. To be specific, the AWF provided "atonement money" (2 million yen per person) to former comfort women in the Republic of Korea, the Philippines and Taiwan who were identified by their governments/—authority and other bodies and wished to receive it. As a result, 285 former comfort women (211 persons in the Philippines, 61 persons in the Republic of Korea, 13 persons in Taiwan) received funds. Moreover, in addition to the "atonement money", the AWF provided funds for medical and welfare support in those countries/areas (3 million yen per person in the Republic of Korea and Taiwan, 1.2 million for the Philippines), financial support for building new elder care facilities in Indonesia, and financial support for a welfare project which helps to enhance the living conditions of those who suffered incurable physical and psychological wounds during World War II in the Netherlands. The Government of Japan provided a total of 4.8 billion yen for programs of the fund and offered the utmost cooperation to support programs for former comfort women, such as programs to offer medical care and welfare support (a total of 1.122 billion yen) and a program to offer "atonement money" from donations of the people of Japan. In terms of the Fund's activities in the ROK, "atonement money" of 2 million yen, donated from the private sector, and 3 million yen for medical and welfare projects, which was from government contributions (for a total of 5 million yen per person), were provided to a total of 61 former comfort women in the Republic of Korea up to the end of the Fund's activities. In addition, when the atonement money was provided, the then Prime Minister (namely PM Ryutaro Hashimoto, PM Keizo Obuchi, PM Yoshiro Mori and PM Junichiro Koizumi), on behalf of the Government, sent a signed letter expressing apologies and remorse directly to each former comfort woman (see the attachment). While the AWF was disbanded in March 2007 with the termination of the project in Indonesia, the Government of Japan has continued to implement follow-up activities of the fund.

As mentioned above, the Government of Japan would like to call attention again to the efforts of the "Asian Women's Fund (AWF)", on which the Government and the people of Japan cooperated together to establish so that their goodwill and sincere feelings could reach the former comfort women to the greatest extent possible; and, as a result, our feelings were transmitted to many of them. With regard to the AWF, the former comfort women who had received or wanted to receive benefit from the project from the AWF were subject to "harassment" by certain groups in the Republic of Korea. In addition, the former comfort women who had already received benefit from the project

from the AWF would no longer be eligible for the "Life-Support Fund", which was established by the Government of the Republic of Korea with the aim to provide money to the former comfort women. We regret that not all of the former comfort women benefitted from the project from the AWF owing to these circumstances. (Among the approximately 200 former comfort women in the Republic of Korea who were identified by the Government of the Republic of Korea, ultimately only 61 received benefit from the AWF.) In this regard, we consider that the efforts of the "Asian Women's Fund" should be recognized appropriately. We call your attention to the fact that Japan started the support project to the former comfort women through the AWF ahead of that of the Republic of Korea.

The Government of Japan has sincerely dealt with issues of reparations, property and claims pertaining to the Second World War, including the comfort women issue, under the San Francisco Peace Treaty, which the Government of Japan concluded with 45 countries, including the United States, the United Kingdom and France, and through bilateral treaties, agreements and instruments. The issues of claims of individuals, including former comfort women, have been legally settled with the parties to these treaties, agreements and instruments. In particular, the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea stipulates that "problems concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, ... have been settled completely and finally." (Article II (paragraph 1)). In addition, on the basis of the Agreement, Japan provided 500 million US dollars to the Republic of Korea and more than 300 million dollars' credit to the private sector. The amount of 500 million US dollars provided from the Government of Japan was 1.6 times as much as the state budget of the Republic of Korea at that time. The above-mentioned "The Asian Women's Fund" was established as a goodwill effort of Japan, although this issue had been legally settled with the parties to the above-mentioned treaties, agreements and instruments.

On this occasion, it should also be pointed out that there are one-sided claims which lack any corroborative evidence in reports by UN Special Rapporteurs as well as criticisms and recommendations from treaty bodies. For instance, such reports have referred to the testimony of Seiji Yoshida, who is the "only witness" to the "forceful recruitment of comfort women", along with the figure of "200,000 comfort women." A

major newspaper in Japan, which has proactively reported the issue of comfort women, retracted articles, in August 2014, based on “testimony judged to be a fabrication that was provided by the late Seiji Yoshida about forcibly deporting comfort women from Jeju Island, South Korea” and apologized for “publishing erroneous articles” related to him. It also admitted to its confusion between comfort women and women volunteer corps “that were mobilized to work at munitions factories and at other locations during the war” which seemed to be the basis of the figure of “200,000 comfort women”.

Within the materials found during the investigations by the Government of Japan since the early 1990s, which were already published, no descriptions were found that directly indicated any so-called forceful deportation of women by the military or the Government of Japan. Nor was there any evidence of there being “200,000 comfort women.” This figure spread due to the confusion, admitted by the Japanese newspaper, between comfort women and women volunteer corps, and lacks any corroborative evidence. It is very regrettable that this false information provides the essential basis for UN reports and recommendations.

The Government of Japan requests that Japan’s efforts are correctly recognized by the international community based on a correct awareness of the facts.

Throughout history, women’s dignity and basic human rights have often been infringed upon during the many wars and conflicts of the past. The Government of Japan places paramount importance on and is committed to doing its utmost to ensure that the 21st century is free from further violations of women’s dignity and basic human rights.

Lastly, the Government of Japan considers that it is not appropriate for this report to take up the comfort women issue in terms of the implementation of State Party’s obligations under the Convention as this Convention does not apply to any issues that occurred prior to Japan’s conclusion thereof (1979).

Para 27 of the Concluding Observations of the Committee

The Government considers that the exclusion of Korean schools from the scope of schools designated for the tuition-waiver program does not constitute discrimination, for the following reasons:

1. Korean schools are closely related to Chongryon (Chosen Soren in Japanese) and subject to its influence in terms of educational content, personnel affairs and

finance. Since we are unable to confirm that these schools conform with one of the criteria for designation, “proper school management based on laws and regulations,” they cannot be designated for eligibility into the High School Tuition Support Fund System.

2. If Korean schools meet certain requirements such as obtaining the authorization of the prefectural governor and becoming high schools as defined in Article 1 of the School Education Act, they may be eligible for screening under the current program (Note); and
3. A number of Korean students are currently enrolled in schools that fall within the scope of schools defined in Article 1 of the School Education Act or designated foreign nationals' schools, and thus the Government does not exclude Korean schools on the grounds that Korean students are enrolled in these schools.

(Reference)

○ Rules Concerning Designation under Article 1, paragraph (1), item (ii), (c) of the Ordinance for Enforcement of the Act on Free Tuition Fee at Public High Schools and High School Tuition Support Fund (Decision of the Minister of Education, Culture, Sports, Science and Technology of November 5, 2010) (Excerpt)

(Proper School Management)

○ Article 13 - In addition to regulations specified in the preceding Article, designated educational institutions must carry out appropriate school management in accordance with regulations, including ensuring that funds provided through the High School Tuition Support Fund are appropriated to cover equivalent tuition costs.

(Note) The High School Tuition Support Fund is provided to the schools defined in Article 1 of the School Education Act and schools designated as providing educational courses equivalent to those provided in high schools. If diplomatic relations between Japan and the Democratic People's Republic of Korea are restored, it will be possible to conduct the screening of Korean schools via the embassy in order to confirm whether these schools provide educational courses equivalent to those provided by Japanese high schools.

Para 28 of the Concluding Observations of the Committee

In relation to the opportunity for foreign children to receive primary education and

lower secondary education, the Government provided the following information at the review meeting held on April 30, 2013:

- As of the end of 2011, the number of registered foreign residents aged 6 to 15 was 117,286, whereas the number of foreign students enrolled in schools for compulsory education in FY2012 was 63,509.

63,509 is the number of students enrolled in schools regulated under the School Education Act, and there are other foreign students who are enrolled in foreign nationals' schools, etc.

(Reference)

In FY2009, the Ministry of Education, Culture, Sports, Science and Technology conducted a survey with the cooperation of certain municipalities (29 cities). Among the 12,804 children subject to the survey, many children with alien registration who are of an age for compulsory education go to public schools or foreign nationals' schools, etc., while only 0.7% were not enrolled in school.

[Survey results]

- Children enrolled in public schools, etc.: 65.1%
- Children enrolled in foreign nationals' schools, etc.: 12.7%
- Children not enrolled in school: 0.7%
- Children who moved or left Japan: 21.5%

The Government is carrying out a survey on the status of the schooling of foreign children with the cooperation of certain municipalities in FY2014.

When foreign residents seek to have their children go to public schools for compulsory education, the school operators accept these children free of charge. Thus, foreign children are guaranteed an equal opportunity to receive education as in the case of Japanese children, including the free distribution of textbooks and schooling support.

In order to ensure that foreign children will not miss the opportunity of attending school, the Government also takes the following measures:

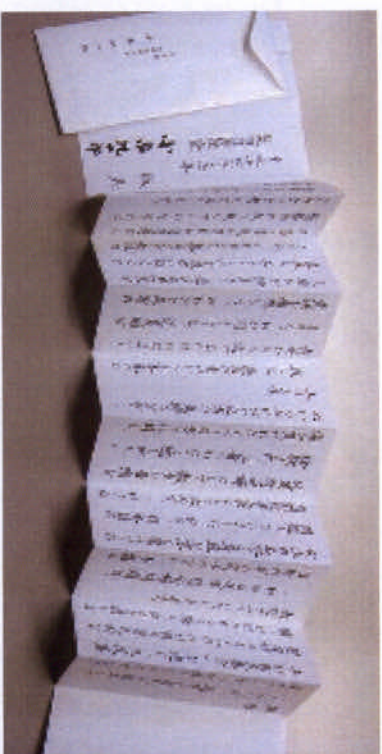
- Instructing the boards of education to issue a notice of schooling to parents of foreign children based on the information in the basic resident register; and

- Enhancing Japanese language teaching for foreign children at school by:
 - increasing the number of teachers and staff at public schools;
 - subsidizing municipalities for supporting Japanese language teaching;
 - preparing and distributing training materials for teachers; and
 - providing the opportunity to learn Japanese language so as to facilitate the entry of foreign children into public schools.

The Government will continue to work to secure educational opportunities for foreign children.

(End)

Letter from Prime Minister to the former comfort women



Dear Madam,

On the occasion that the Asian Women's Fund, in cooperation with the Government and the people of Japan, offers atonement from the Japanese people to the former wartime comfort women, I wish to express my feelings as well.

The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women. As Prime Minister of Japan, I thus extend anew my most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.

We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations. Furthermore, Japan also should take an active part in dealing with violence and other forms of injustice to the honor and dignity of women.

Finally, I pray from the bottom of my heart that each of you will find peace for the rest of your lives.

Respectfully yours,

Ryutaro Hashimoto / Keizo Obuchi / Yoshiro Mori / Junichiro Koizumi
Prime Minister of Japan

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