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Comparative study on international petitions

1. Introduction

South Africa is a democratic country, where there are many different platforms where the public can engage with Members of Parliament. One of these forms of engagement is through the petitions process in the legislature, which is similar to some of the systems adopted in some countries abroad. This paper explores international best practices of systems of public petitions systems adopted by legislatures, with specific reference to South Africa, Canada, Scotland, Australia, Namibia and German.

2. Petitions within the South African Context

A petition is basically a formal request to an authority for action. It can presume either a demand for a favour or for the redress of a grievance. In order for a petition to be effective, it has to reflect who the intended recipient is, the nature of the request being made, together with a motivation, and should include the name of the petitioner (s).

Petitions are classified in two ways; namely, special petitions and public or general petitions. A special petition is when an individual makes a specific requests or asks for personal relief from the State, which is not authorised by law such as access to a pension. A public petition is when a group of citizens are requesting general relief with a similar interest, which may include any other petition¹.

It is the inherent right of the members of the public in a democratic society to prepare and present petitions as and when the need arises. According to section 17 of the Constitution of the Republic of South Africa Act (108 of 1996)², any group of citizen (s) and every individual has a right to appeal peacefully and unarmed, to assemble, to demonstrate, to picket and to present a petition. However, there are certain procedures to be followed by individuals and/or groups in processing their petitions. Part 6 of Chapter 10 of the Rules of the National Council of Provinces (NCOP) states that a petition must be in any of the official languages and must be correctly formatted. The rules of the NCOP are silent on who must present the Petition to Parliament. Even though Chapter 4 Section 69 of the Constitution, states that the NCOP can receive petitions, representation or submissions from any interested persons or institutions³.

Part 3 of Chapter 14 of the Rules and Orders of the National Assembly sets out the procedure for the processing of petitions. In terms of the Rules of the National Assembly, technically only a Member of Parliament can lodge a petition in Parliament. Nevertheless, the Speaker has made the trend where a Swazi Royal Family was allowed to lodge a petition directly to the Assembly. In one hand, the above rule of lodging a petition contradicts Chapter 2 of Section 17 and 36; and Chapter 4 of Section 59 of the Constitution of the Republic of South Africa⁴. Some of the recent rules and orders pertaining to petitions are similar to those were implemented as far as 1965⁵. Only few were changed namely; utilisation of any official languages when petitioning the state, which is in line with the National Constitution of 1996.

¹ Petitions, Participate in Parliament @ www.parliament.gov.za

² Constitution of the Republic of South Africa Act, 108 of 1996

³ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

⁴ The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) p, 9, 18 & 36.

⁵ Republic of South Africa, House of Assembly. Standing Orders. (VOL.1 Public Business; 1965, p45-47).



2.1 Functions and Powers of Committees

The Rules of the South African Parliament also provide for the establishment of a committee on Private Members' Legislative Proposals and Special Petitions⁶. One of the main functions of this Committee is to consider all special petitions referred to it by the Speaker in terms of Rule 315⁷ and to make recommendations to the Assembly. Petitions of a general/universal nature must be referred to the relevant portfolio committee⁸.

Nevertheless, a committee to which a petition has been referred to may refer the matter to any department or to the Executive for further attention, subject to the approval of the Council. In most cases a committee refers the matter to a relevant department or administrative agency when more information is needed in terms of guiding any decision or recommendation that needs to be taken. "A committee considering a petition may recommend to the House any course of action it deems fit and proper and the committee shall inform petitioner (s) of any relief of the decision or action taken with regard to the petition by providing reason (s)"⁹.

However, the Rules do not define special or general petitions. Nor does it contain any guidelines on the types of petitions that may be considered by Parliament and the relief that a committee can recommend be provided to a petitioner. It certainly does not contain any provision, which empowers the Committee to entertain individual requests for financial assistance in the form of a pension.

3. The International Experience

3.1 Canada

In Canada a petition is defined as a formal request to an authority for redress of a grievance. A petition is utilised as a tool of communication between the people and Parliament and this communication is addressed to the House of the Commons and as such can only be done by the Members of the House, not the petitioner (s)¹⁰.

The petitions process in Canada is very similar to the South African situation, it is seen to be a vehicle for political input and tries to influence policy-making and legislation processes. The petitions process is therefore a manner in which public concerns can be raised in Parliament. In Canada, a petition is regarded as an old form of communication between the members of the public and Members of Parliament. In the 1980s, petitions appeared to have fallen out of favour with the public. However, notwithstanding this, it is still recognised as a fundamental mechanism for raising issues in the legislative arena. In Canada, petitions that were granted were separated in to one of two formats, namely, private laws and public laws. "Petitions granted to individuals or communities were in the nature of private laws and those granted to the nation as a whole were made public laws"¹¹.

The system of petitioning has become more popular and more frequent in Canada recently, particularly petitions of a general nature and those expressing matters pertaining to national grievances. The modern form of petitioning has links back to the seventeenth century. Nevertheless, during this period there were some challenges on the admissibility of the petitions because the collection of forms and content requirements were not codified in the Standing Orders. Yet, these had to be complied with in order for the petition to be accepted.

In the Canadian experience, there was also a time when concern was raised that the lodging of petitions in the House occupied a large amount of time. Chairpersons, at times, had to intervene to rule on matters related to the acceptance and the presentation of petitions. As a consequence, when making proposals pertaining to the restructuring of the House of Commons the McGrath Committee (Special Committee) had to assist with this challenge. The main role of the Committee was to make several recommendations, which intended to clarify rules

⁶ Assembly Rule 209

⁷ Assembly Rule 211(b)

⁸ Assembly Rule 315(b)

⁹ NCOP Rule 235-236, March 2007

¹⁰ Marleau R. and Montpetit C, 2000, p. 934

¹¹ Marleau R. and Montpetit C, 2000



relating to petitions both in relation to form and content to ensure their admissibility. In 1986-1987, the House adopted the amendments to the Standing Orders based on recommendations made by the committee¹². In 1991-1994, new amendments were adopted including the limiting of the time to 15 minutes for the presentation of petitions to the House during the daily routine of business¹³.

3.1.1 Role of the Clerk of Petitions:

Since the adoption of 1910 amendments to the rules (which rules, rules of Parliament? Please indicate), the Clerk of Petitions became fully responsible for petitions. According to the Standing Orders, petitions have to be certified correct both in relation to form and content by the Clerk of Petitions before they can be presented to the House. Any petition that does not meet the requirements in terms of form and content cannot be certified and presented to the House. The Clerk of Petitions can be consulted to assist during the engagement period of drafting a petition to ensure that it abides with the rules and practices of the House. However, for the petition to be certified by the Clerk of Petitions it has to come through a Member of the House. If not certified, reasons will be given to the Member for clarity to petitioner(s)¹⁴.

3.1.2 Subject Matter of Petitions

Similar to the Rules and Orders of the South African Parliament, petitions in Canada may be written in any of the official languages. A petitioner(s) is responsible to finding a Member of the House that will be present the petition to the House on his/her behalf. Moreover, the Member is not obliged to accept the request from the petitioner to present his or her petition and cannot be forced to do so¹⁵. The rules of the Assembly must be used as the basis for the decision to be taken in each case. According to Marleau R. and Montpetit C, 2000, the Rules empower the Clerk of Papers to dismiss a petition if:

- It is a petition for which legal remedies have not been exhausted.
- It is dealing with matters, which the House has delegated to another body, have not always been found acceptable.
- It is pertaining to a matter falling outside of Parliament's authority to act, such as a matter under the jurisdiction of a Provincial or Municipal government.
- It does not request action, which is within the powers of the House.

3.1.3 Possible course of action by the Government

Standing Orders provide that the Ministry must respond within 45 calendar days to every petition referred to it. However, Marlea and Montpeti (2000, p.937) mentioned that the Standing Orders provide no sanction to apply in the event that the government fails to respond to the petition within the timeframe mentioned above.

3.2 Scotland

The Scottish Parliament is similar to the Parliament of South Africa in its commitment to openness and accessibility to the public. It considers any petition addressed to it by any individual, a corporate body, an interest group or any other association, provided that such a petition meets certain rules of admissibility.

The Scottish Parliament views the petition system as integral to meeting its key objectives of power sharing, accountability, accessibility and equal opportunities. Petitioning the Scottish Parliament is one of the key mechanisms that are employed by members of the public to directly influence Members of Parliament on issues of national concern. As a result, the Scottish Parliament established a Public Petitions Committee to ensure that petitions are treated in a manner that is consistent with its vision of ensuring access by the public.

¹² Marleau R. and Montpetit C, 2000, pp. 926-27.

¹³ Marleau R. and Montpetit C, 2000, pp. 927.

¹⁴ Marleau R. and Montpetit C, 2000, pp. 930-34.

¹⁵ Marleau R. and Montpetit C, 2000, pp. 934.



3.2.1 Public Petitions Committee (PPC)

The Public Petition Committee (PPC) is a Parliamentary Committee that is dedicated to consider petitions, which are considered individually by the Committee during their meetings. The Committee consists of Members from different political parties and it has to broadly reflect the balance of the different political groups in Parliament. The PPC holds its meetings in public as it directly deals with the public concerns. The idea of looking at petitions individually is employed by this Committee to ensure that each petition is given the attention it deserves. The role of the Committee is to ensure that appropriate actions are taken in respect of each admissible petition. Petitioners have to be given formal feedback by the Committee, stating clearly the action that is to be taken. In an event where no action is to be taken, the Committee has to play its role by giving reasons to petitioners as to why actions were not taken. The Committee also monitors the action taken in respect of all petitions submitted to the Parliament and publishes an annual report containing a summary of the petitions received and the actions taken in respect of these petitions¹⁶.

3.2.2 Subject Matter of Petitions

Petitions should always be in the public interest. A petition can make a request to the Scottish Parliament to¹⁷:

- Take a view on a matter of public interest or concern.
- Amend existing legislation or introduce new legislation.

Parliament can only amend or introduce legislation in relation to those matters, which are devolved to it. It cannot legislate on any matter, which is reserved to the United Kingdom Parliament. Furthermore, the Parliament does not have any power to interfere with or overturn the executive decisions of other public bodies in Scotland. For example, the Parliament cannot overturn the decisions of local authorities on planning applications or school closures or the decisions of Health Boards in relation to health care facilities.

Moreover, it is not the role of the PPC to recommend further action in respect of petitions which relate to cases which are or have been subject to legal or court proceedings, industrial tribunals, appeals procedures, etc. The Committee could, however, consider proposals to amend laws, procedures or rules, which are prompted by such cases.

3.2.3 Possible Courses of Action by the Public Petitions Committee

The PPC will consider each admissible petition and make a decision on the action to be taken in each case. It has several courses of action it may take, namely:

- Consider and agree to take no further action.
- Consider and forward to another committee of Parliament or to another body or person within Parliament such as the Presiding Officer, the Parliamentary Bureau or the Scottish Parliamentary Corporate Body for its consideration.
- Consider and forward to another body or organisation outside of Parliament, e.g. the Executive, for consideration and response.
- Consider and recommend to the Parliamentary Bureau that the petition be debated at a meeting of Parliament.
- Invite the petitioner/s to appear before it and/or to provide additional information to assist it in reaching a decision on the action to be taken in relation to the petition.
- Take any other action it considers to be appropriate.

The action taken by the Committee will depend on the merits of each case.

¹⁶ Factsheet No.11, House of Representatives. Revised April 1996.

¹⁷ The Scottish Parliament, How to submit a Public Petition



3.3 Australia

In Australia any citizen, resident, or group of citizens or residents, may petition the House of Representatives to take action that should be guided by the Standing Orders of the House.

3.3.1 Subject Matter of Petitions

Petitions may ask the House to introduce legislation, or to repeal or change existing legislation, or to take action for a certain purpose or for the benefit of particular persons. However, the subject of a petition must be a matter on which the House has the power to act. In other words, it must be a matter, which involves legislation or government administration in some way. A petition from an individual citizen may rarely seek the redress of a personal grievance, such as the correction of an administrative error. Only a Member of Parliament may present a petition to the House. Cite source.

3.3.2 Possible Courses of Action by the Minister

The Minister has several options on how to respond to a petition, including:

- Lodging a response with the Clerk for announcement at the end of the petitions announcements.
- Writing personally to petitioners.
- Ordering administrative action to be taken in response to a particular grievance.
- On occasion when the House has taken action itself by referring the issues raised in a petition to the general purpose standing committees that has the power to consider and report on petitions referred to it by the House.

3.4 Namibia

In Namibia, the Rules of the National Assembly provide for the establishment of a Standing Committee on Petitions to receive all petitions lodged in the Assembly.

3.4.1 Role of Public Petitions Committee

In terms of Assembly Rule 31(3) the Petitions Committee:

- Must draft terms of reference to deal with the petition at hand.
- Has discretion to establish such sub-committees, as it deems necessary to deal with petitions on specialised topics.
- Has discretion to transfer specific powers or functions to one or more of its Members. The Committee must specify the nature and extent of these powers and functions.
- Has discretion to obtain the comments of any other committee competent to deal with the specific subject matter.
- Where another committee is debating the subject matter, the petitions committee has a duty to obtain the comments of that committee.
- Has discretion, depending on the nature of the matter being petitioned, to recommend to the Rules Committee that such a matter be referred to another Committee with the authority to deal with such matters.

3.4.2 Subject matter of petitions

The Rules of the Assembly do not contain a list of subject matters that may be entertained by the Petitions Committee. However, they empower the Petitions Committee to draw up rules that govern the treatment of requests and complaints. These rules must be used as the basis for the decision of the Committee in each case.



Furthermore, the Rules empower the Committee to dismiss a petition if:

- It is a petition for which legal remedies have not been exhausted.
- It is a petition on a matter within the jurisdiction of the Ombudsman, and no application was made to the Ombudsman without good cause shown.
- It is a petition on the same matter as an earlier petition which was finally dealt with by the House. An exception is created in a case where substantial and material evidence, which was not available when the earlier petition was considered, becomes available.
- A complaint made in the petition relates to matters that are irrelevant to the main issue raised.

3.4.3 Possible Courses of Action by the Petitions Committee

Similar to the Assembly Rules of the South African Parliament, the Namibian Rules do not prescribe the type of relief the Committee can provide after considering a petition. It only states that the Committee should submit a report, along with its recommendations, to the Rules Committee after it has considered a petition. The petitioners must be informed of the manner in which their petitions have been dealt with, and the reasons for any recommendations made.

3.5 Germany

"Anybody in German can make use of the right of petition: adults and minors, Germans and people from other countries, but also prisons and legally incapable persons".¹⁸ Section 45(c) of the German Basic Law (Constitution) obliges the Bundestag (Parliament) to appoint a Petitions Committee to deal with requests and complaints addressed to it. In order to fulfil this constitutional role, the Bundestag has set up a specific body to deal with petitions, i.e. the Petitions Committee. Like other Bundestag committees, the members of the Petitions Committee are elected at the beginning of each electoral term in accordance with proposals of the parliamentary party groups. To help it process the large number of petitions, it is assisted by the Central office for Petitions and Submissions, a department of the Reference and Research Services of the German Bundestag¹⁹.

3.5.1 Role of the Petitions Committee

The Petitions Committee has exclusive competence to deal with all requests and complaints addressed to the Bundestag. The President of the German Bundestag refers petitions directly to the Petitions Committee, and the petitioner has a right to have his petition dealt with by this committee. The Central Office for Petitions may merely subject the petitions to a preliminary administrative examination. Only in those cases in which Parliament is unquestionably barred from dealing with the petition may the Central Office inform the petitioner of this fact itself²⁰.

3.5.2 Subject matter of petitions

The Petitions Committee performs its functions in accordance with the "Principles of the Petitions Committee Governing the Treatment of Requests and Complaints". These consist of the Committee's rules of procedure and internal instructions to the Central Office. Accordingly, a distinction is made between 2 different procedures, i.e.²¹:

- "Requests" (for example a proposal on legislation), are processed in accordance with section 109(1) of the Rules of Procedure of Parliament, in terms of which the petition is referred to the competent

¹⁸ German Bundestag: Petitions Committee @www.bundestag.de/htdocs

¹⁹ Procedural Rules, Principles of the Petition Committee governing the Treatment of Requests and Complaints

²⁰ Rules of Procedure of the German Bundestag & Mediation Committee 2003.

²¹ Procedural Rules, Principles of the Petition Committee governing the Treatment of Requests and Complaints



specialised committee. At this stage, therefore, the Petitions Committee does not itself deal with the subject matter in question.

- "Complaints", the Central Office endeavours, through questions addressed to the ministries and agencies in question, to clarify the facts and, where possible, to obtain a favourable decision for the petitioner at this preliminary stage. If the petition cannot be dealt with in this way, the Central Office refers the petition, together with proposals for a decision, to 2 rapporteurs. They are members of the Petitions Committee who have been entrusted with handling a specific subject matter.

The rapporteurs examine the petition and make proposals to the Committee on how to deal with it. Such proposals may include that the Committee either summon a representative of the Federal Government, and/or that the petition be dealt with in a specific way. Particularly difficult cases are dealt with in great detail in the committee, while less complex cases are voted on collectively in the Committee.

In the event where the information is not clear the Committee has a right to do proposal for further clarification of the matter²². The following proposals in particular may be made:

- that additional comments be request ;
- that a representative of the Federal Government be summoned to the meeting;
- that use be made, in the case of complaints, of the powers granted to the Committee under the Law on the Powers of the Petition Committee, namely
 1. to request the submission of files
 2. to hear the petitioner, witnesses or experts;
 3. to inspect premises

However, the Committee is merely empowered to examine petitions, while the final decision and vote is taken at plenary. To this end, the Committee compiles a monthly collection of petitions, which are submitted to the plenary for its decision.

It is only after the plenary has taken a decision on the collectively submitted recommendations of the Petitions Committee that the petitioners are informed of the success or failure of their petitions.

Recommendations that Parliament may make:

The recommendations are graded according to the extent to which the petition is justified. Parliament may therefore recommend that²³:

- The petition be referred to Federal Government to "take into account" if it is justified and it appears necessary that the Government should remedy the situation.
- The petition be referred to Federal Government "for its consideration" if it is to serve as a basis for an administrative review of the case and for provision of some kind of assistance.
- The petition be referred to Federal Government "as informational material" if the information in it can be incorporated into legislation.
- The petition be referred to Federal Government "for its cognisance" if the case appears to provide a suitable basis for a parliamentary initiative.

²² Annex to Rule 7.6. of the Procedural Rules

²³ Article 17 of the German basic Law, The Petition Committee.



- The petition is declared, "disposed of" if the remedy demanded has already been provided, or if there is no reason to object to the administrative act.

4. Conclusion

As can be seen from the comparative study, a number of the countries studied adopt similar processes in terms of the eliciting legislative petitions from the members of the public. These countries have a common understanding on the role and value of public petitions to parliament or government. Petitions are considered as part of a wider parliamentary review of policy that can stimulate parliamentary debates and discussions, which can result in policy changes by the government.

As can be seen from the countries considered above, the petitions process does not tend to yield immediate results, given the processes that need to be followed. Notwithstanding this, petitions tend to inform Members of Parliament on viewpoints held by members of the public and often become the subject of parliamentary discussions.

Unlike the South African scenario, the countries considered above have established a Public Petition Committee or a Petition Committee that considers all petitions and are able to refer them to other Committees when it is necessary to do so. In South Africa, there are two Committees in Parliament that deal with petitions namely, a committee for special petitions and committee for public/general petitions. State again where the public petitions are considered and where the special petitions are considered. The Secretary of the South African Parliament has the right or powers to decide on where to refer petitions. However, the two Committees dealing with petitions can make requests through the Office of the Secretary when referring petitions to other relevant Committees or Departments for further investigation.

In terms of the rules of the South African Parliament, a petitioner (s) is responsible for finding a Member of Parliament to support and present the petition on his/her behalf to Parliament. In terms of the rules, no provision has been made to assist members of the public who live in rural or farm areas in terms of access to information and a lack of resources such as transport. The rules, therefore, as they stand, tend to place limitations on members of the public and create impediments in terms of facilitating their participation to Parliament. The rules, as they stand, technically only Members of Parliament to lodge petitions to the House. But a precedent has been set where the rules were not followed and that members of the public were allowed to directly petition²⁴. Only a few of the rules and orders pertaining to petitions were amended in South Africa after the transition to democratic governance but the rest remains the same.

5. RECOMMENDATIONS:

There is a need for the South African Parliament to review its rules governing the petitions process and to amend them in a manner that facilitates the participation of all members of the public, as is the spirit of the South African Constitution (Act No 108 of 1996) here you must spell out which parts of the Constitution. Prior to the transition to democratic governance in 1994, the Parliament of the Republic of South Africa was governed under a system that was totally different and far less participatory from the system implemented after 1994 elections. In the period before the transition to democracy, the Parliamentary system was designed to only serve the interests of a minority group. During this period, Members of the Parliament presented the petition on behalf of the public. In keeping with the spirit of the times, the Constitution did not encourage members of the public to participate in Parliament and their rights, respect and dignity were destabilised by the State at that time. As a result, an arrangement was made by the State to grant Members of Parliament the responsibility of representing members of their area, region or district in Parliament. These Members were well known within their areas and it was therefore relatively easy for Members of the Parliament to represent their constituency.

After the 1994 elections, many processes in terms of governing the country changed and opportunities were created for members of the public to exercise their Constitutional right to participate in legislative processes. However, notwithstanding this, the rules of Parliament need to be adapted to ensure that petitioner(s) can directly petition Parliament, given that they may well find it difficult to get Members to represent them and this would then serve to

²⁴ For example, See the Guide to Procedure on the National Assembly, 2004, p. 134, where the a private person lodge a petition directly, "the Speaker was deemed to have condoned this by tabling the petition in the Assembly. See Petition of the Swazi Royal Families, 2002".



limit their participation and rescue the potential for their concerns to be raised in Parliament. The South African Constitution (Section 17), clearly states that any individual of this country has a right to present a petition. It does not stipulate that petitions should be represented by members of Parliament on behalf of members of the public a petitioner (s). The fact that Members of Parliament have to lodge a petition on behalf of members of the public forms part of the Rules and Orders of the National Assembly and technically speaking is therefore a prerequisite for lodging a petition in Parliament. However, this is not in keeping with the spirit of the Constitution, which seeks to facilitate public participation in Parliament in the Bill of Rights. These Rules and Orders need to therefore be reviewed and amended accordingly.

It is further recommended that Parliament establish a Petitions Committee that will deal solely with all petitions (both of a private and general nature). This Committee should be granted powers to refer petitions to relevant Committees or Departments when it is necessary to do so. This will limit the delays with some of the processes that are currently employed by the Parliament in dealing with or addressing matters of concern. Moreover, a Petitions Committee will eliminate the challenges and frustrations faced by the members of the public in instances where MPs are not obliged to represent or present petitions on their behalf. The Committee will assume responsibility for this.

Parliament should also investigate how it can facilitate the participation of members of the public who are economically disadvantaged, particularly those who live in rural and farm areas, which are very far from Parliament and lack the resources to participate. One potential way of addressing this, is to encourage members of the public to lodge petitions when Parliament visits certain areas such as through the NCOP taking Parliament to the People. There is a definite need though, to increase public awareness of the petitions process in Parliament.



REFERENCES

- Rules of the National Assembly, Parliament of the Republic of South Africa: 2nd Edition, January 2000.
- Participate in Parliament@www.parliament.gov.za
- Constitution of the Republic of South Africa Act, 108 of 1996
- Republic of South Africa, National Assembly??(House of Assemble): 1965, Standing Orders, VOL.1 Public Business.
- South African Parliament; Rules of the National Assembly: 2004, Guide to Procedure.
- SA parliament Rules of the National Council of Provinces, 8th Edition, March 2007.
- Marleau R. and Montpetit C: 2000, House of Commons, Cheneliere/Mc Graw-Hill, Montreal-Toronto (Canada).
- Petitions, House of Representatives Factsheet No.11, Revised April 1999 _____@australianpolitics.com
- A guide to procedures of the Australian House of Representatives @ www.aph.gov.au
- Factfile 5: Guidance on the Submission of Public Petitions to the
- Scottish Parliament @ www.scottish.parliament.uk
- The Work of the Committee in the Scottish Parliament @ www.scottish.parliament.uk
- Guidance on the Submission of Public Petitions @ www.scottish.parliament.uk
- Rules of the Parliament of Namibia.
- Procedural Rules, Principles of the Petition Committee governing the Treatment of Requests and Complaints
- Rules of Procedure of the German Bundestag & Mediation Committee 2003.
- Article 17 of the German basic Law, The Petition Committee.

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