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From the Editor's Desk

We are quite sure that many of our contributors would be surprised at the quick release of this edition of the Nigeria Education Law Journal. Keeping faith with our contributors is one of the major decisions of the Editorial Board. As mentioned in the last edition, we shall no more be bogged down by those who fail to subunit their articles on time.

To accommodate those who submitted their articles late, the Editorial Board had decided to produce two editions in each year. The experiment starts from the year 2000. So if your article is not here, do not despair, it shall come out with the October edition. In doing this, be rest assured that we shall not lose the focus of this journal, that of advancing the course of research and academic excellence through scholarly exposition.

At this juncture, we wish to thank our contributors. The number of contributors has increased, it is a manifestation that you approve of the quality of the journal, we promise not to disappoint. Let us continue to work harder and cooperatively.

Thank you.

Dr. E.O. Morakinyo
Managing Editor

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Women's Rights and the Gender Question: Appraisal of the Journey So Far in the Light of CEDAW and the WCW Beijing Platform for Action

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Abstract

This paper appraises the journey so far in the achievement of women's right, in the light two international instruments namely:

1. *The UN Convention on the Elimination of All Forms of Discrimination Against Women, popularly called CEDAW and*
2. *The Beijing Platform of Action which emanates from the World Conference on Women (WCW).*

For the purpose of this paper, these two international instruments will be referred to as CEDAW and the WCW Beijing Platform of Action or simply as the Platform for Action.

CEDAW is an international human rights document that establishes international standards of equality between women and men. The convention was adopted by the UN General Assembly on 18th December, 1979, and entered into force as binding treaty on 3rd September, 1981. CEDAW abhors anything that can bring about unequal treatment between men and women while they are carrying out their livelihood, describing the contrary as discrimination against women. CEDAW seeks the elimination of discrimination against women under the law (de jure) and in practice (de facto).

The WCW Beijing Platform for Action as a human instrument reaffirms that the:

advancement of women and the achievement of equality are a matter of human rights and a condition for social justice.

In paragraphs 1-6 of its mission statement in chapter 1, the Platform emphasizes that women and men share common concerns that can only be addressed by working together and in partnership towards the common goal of gender equality throughout the world. But has Nigeria and indeed many other countries really worked assiduously towards the achievement of the goal of gender equality? This paper in answering this and positing that the answer is in the negative, appraised a variety of issues concerning women's rights across the globe in the light of conformity or otherwise with the provisions of CEDAW and the Beijing Platform for Action.

Women's Rights in Historical Perspective

Women in many cultures of the world were seen and treated as second-class citizens, as beasts of burden, as chattels and mere properties and as baby-making machines. Women oftentimes are to be seen and not be heard. They are at birth genitally mutilated, at marriage though courteously courted, but are in marriage down-troddenly treated and at the demise of their husbands, are subjected to debasing, dehumanizing, barbaric and sadistic overtures.

The above glommy picture continued unchallenged for a long time, until women began to cry out timidly at first, but loudly and with some conviction. Some men heard the women's cry, and joined them, albeit rather grudginly at the outset, the more relaxingly in present time. There was the need for a reform for women's rights. The 1945 United Nations Charter gave legal basis to this reform making available to women the global platform needed. But nothing significant in the pursuance and practise of women's right was in place after the Charter came into force. It was not until the mid-1970's that resurged efforts were made and intensified to elevate women to their proper position.

Conference on Women was held in Mexico. The 1976-1985 period declared by the General Assembly of the United Nations as the Decade for Women's Equality, Development and Peace was another significant milestone in the race for women's right. In 1980, the 2nd World Women Conference was held in Copenhagen. In 1981, the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW) came into force. CEDAW represents a major step undertaken formally set in legally binding form, internationally accepted principles and measures to achieve equal rights for women, regardless of their marital status, in all fields - political, economic, social, cultural and civil (Okediran, 1997). It calls for national legislation to ban discrimination. It recommends temporary special measures to hasten equality between men and women, and calls for action to modify socio-cultural conditions which encourages discrimination. In 1985, UN convened the 3rd World Confab on women in Nairobi, Kenya, to review and appraise the achievement of the UN Decade for Women. That Confab at the end Brought out and endorsed the document. "The Nairobi Forward Looking strategies". This was a blueprint for action by Governments, Non-Governmental Organisations, and individuals for the advancement of women towards the year 2000. The document contained various areas of concern on women's rights. For example, paragraph 288 addressing the vexed issue of violence against women, called on states to increase public awareness of violence against women as a social problem, and to establish policies and legislative measures to eliminate such violence (Bamgbose, 1996).

The failure to achieve women's rights as well as women's equal participation with men in virtually every aspect of life prompted among other things the need for the 4th World Conference on Women held in Beijing in 1995. Part of the objective of the Confab was to search for new and better ways to implement those parts of the Nairobi Forward Looking Strategies which have either not been implemented or are being implemented very slowly.

The Platform addressed all the impediments encountered by women since the 1985 Nairobi Conference, proposed further strategies to attack these impediments through calling for focus on the twelve identified critical areas of concern namely:

Poverty	Education
Economic Structures and Policies	Effects of Armed Conflicts
Health Care	Violence Against Women
Sharing of Power	Women's Human Rights
Women and Environment	Political Advancement of Women
Survival of the Girl-Child	Women and the Media.

The Platform building upon the Copenhagan Declaration adopted in March, 1994 by the World Summit for Social Development, stresses that broad-based and sustainable economic growth is necessary to sustain social development and social justice. The Platform seeks to hasten the removal of the remaining obstacles to women's participation in all spheres of life, to protect women's human rights and to integrate women's concerns into all aspects of sustainable development.

From the UN Charter of 1945 to the Beijing Confab of 1995, a non-controversial issues that has emerged is that women's equality is a human right. Governments of the various nations of the world have come to realize and acknowledge that equality in the midst of diversity and the empowerment of women are pre-requisites for sustainable human development. Thus, the modern assertion that *Women's Right are Human Rights* holds true in the deepest and most pragmatic forms of sustainable human existence.

The Journey So Far

But what is the journey so far, we may ask? Are the nations who voluntarily signed to carry out the spirit of CEDAW and the Beijing Platform of Action actually doing so? Are they implementing the goals and standards of the treaties they have pledged to adhere to at country level? Is there really gender equality, and are women's rights being recongnised, respected and enforced? A few examples touched upon in the next section will throw light onto the above raised questions. We shall consider specifically, using the case study approach the issues dealing with:

1. Marital issues
2. Sex discrimination in immigration law and policy
3. Pregnancy and discrimination
4. Employment and equal opportunities
5. Women and property inheritance.

Marital Issues

We shall consider two aspects of these issues.

(a) *Covenanting of Marriage*

In Nigeria three forms of marriage are legally recognised, namely:

(i) Statutory - i.e. marriage contracted in compliance with the Provisions of the Marriage Act 1914 Cap 115 Laws of the Federation of Lagos, 1958.

(ii) Customary Marriages - These are potentially polygamous unions whose rules as to formation, incidents and termination are found in customary norms.

(iii) Islamic Marriage - performed in accordance with Islamic laws and tenets.

In traditional Nigerian society, parents of the intended spouses have traditionally played a dominant, if not an all powerful role in the marriage of their children. As a general rule, the consent of the bride's parents is all that is essential to make the marriage valid and come into existence. The marriage guardian (who may be the girl's father, grandfather or other male relations) has the power to compel, and the girl has no choice but to enter the marriage. If she refuses, she can be abducted.

It is gratifying to note that this traditional situation is now being challenged in Nigeria. In the case of Osamwoyin Vs Osamwoyin (1973), the Honourable Justice Fatai-Williams refused to recognise the notion that a girl could be abducted to her husband's house without her consent simply because her parents had consented on her behalf and had accepted the bride price on her.

The refusal of this notion by the Honourable Justice is an upholding of Article 16 of CEDAW which confers on a girl the right to marry and freely choose her spouse. Paragraphs 259 - 285 of the Beijing, Platform for Action, inter-alia, also called on governments to enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses.

What we are saying is that the woman must have a right to determine who she will spend the rest of her life with. The erosion of this right is contrary to natural, justice, equity and good conscience. All such related marriage customary laws in Nigeria which compel a person to enter a marriage without free consent, which demands alarming high bride price and which upholds the unreasonable withhold of parental consent to marriage when the spouses are ready should be examined, and rendered null and void.

(b) *Reallocation Property Consequent Upon Divorce*

Various regimes of law regulate termination of marriage, depending on which of the three mentioned types of marriage method is used. The question in focus here regards a post - divorce situation. Should the entire marital property be fairly and justly redistributed amongst the parties? Should the yardstick for redistribution be on the basis of acquisition as recognised by the strict property laws? I answer in the negative.

Marriage is a special type of partnership based on the equality of the parties, and not a business or commercial enterprise where financial contributions form the basis of sharing at the dissolution of that marital partnership. Love, constructive cooperation, commitment, compromise and reciprocation are in fact the building blocks of any marriage.

In the light of the above, the law should give recognition to the contributions of each party - bearing in mind that such contributions can be in money, or money's worth - i.e. the "invisible contributions according to Ipeya (1996) include all the loving care and attention provided by the spouse (usually the female). Hauserman (1973) believes that included are also the contributions in production of goods and services for consumption within the home. But are the invinsible contributions taken into consideration in the determination of cases? Is the wife usually able to lay claim to a share of any property - be it the home, spousal income and assets - unless she proves with documents before the court, her contributions. Two cases will give us a glimpse of the situation.

A couple built a country home in Nnewi here in Nigeria while the going was good. The going however became sour and a divorce became the solution. The wife made attempt to make a claim of her entitlement to their country home.

Olatawura JCA hearing this case of Nwanya Vs Nwanya insisted that his court was not father Christmas and that whoever avers must come prepared to prove the claims. He therefore resisted all claims of financial contributions made by the wife to the building of the estranged couple's country home in Nnewi. He further insisted that the wife must show clear evidence of all the monies she expended by producing cheque counter foils or receipts of purchases of building materials etc. This, like Ipaye (1996) puts it is an unacceptable position. "For unless the female is a versatile accountant she cannot hope for a share in the marital property".

Olatawura should have taken into consideration the pertinent human rights issue addressed by Borth-y-Gest in Pettitt V Pettitt (1969) when he stated:

> That when two people are about to be married, and when they are arranging to have a home in which to live, they do not make their arrangements in the contemplation of future discord or separation. As a married couple they do not, when a house is being purchased or when contents of a house is being acquired contemplate that a time might come when decisions would have to be made as to who owned what. It would be unnatural if at the times of acquisition there was always precise statement or understanding as to where ownership lies.

In a similar case of Sodipo Vs Sodipo, (1990), though Onalaja came to a conclusion that the marital assets of the family were worth a conservative ₦10m, he refused to consider the wife's contribution to the 43-year old marriage, and merely ordered a lump sum payment of ₦200,000.00 to her.

Certainly, in none of these cases can it be said that justice had been done. Where the spouse (the wife) is unable to prove her exact financial contributions to the

marital property, should she not have an equitable interest in the property based on her contributions as a home maker? How does she get fair compensation? These are issues which Ipaye (1996) confirmed that our laws have not been effectively addressed.

2 Sex Discrimination in Immigration Laws

Anderson (1992) reviewed an interesting case on the issue of sex discrimination in immigration law and policy. It was the case of one Johan Egelstedt a 19 years old Sweedish who arrived Heathrow Airport in August 1992, to take up a job as "au pair" with a family in Leceister, but was initiallly denied entry and detained on the ground that he is a male. This case, though directly relates to a man, is nevertheless a blantant example of sex discrimination. The mother of the children in question had said that she wanted a male "all pair", as a way of showing her children that child-care is the responsibility of both sexes. Her view was however, not accepted.

The policy assumption underlying the British Immigration Rules and 1971 Immigration Act is the recognition of traditional gender roles within the family. Infact, the policy aims of the Immigration Rules on "au pairs" have very little, if anything to do with whether men are suitable for the job. This is directly discriminatory on the grounds of sex Anderson, (1992) lamented saying:

> the existence of sex discrimination in immigration law has been commented on frequently in the past, but despite calls for reform, it has not been remedied by Government. The possibilities for legal challenge are limited. In particular, attempts to argue that the sex discrimination Act 1975 applies to Immigration law have been rejected decisively on several occasions, including once by the House of Lords.

There is yet another example of sex discrimination in immigration law of more practical significance than the "au-pairs" Rules. A male overseas student is permitted to take his wife him, as long as she can be maintained and accommodated without recourse to public funds. There is however no such provision in relation to the husbands of female overseas students. Similarly, the Immigration Act 1971 provides that in the event that a husband is to be deported, the wife gets deported with him even if she has permanent settled status and has never been in breach of immigration law herself (Anderson, 1992). The reasoning behind this provision would appear to be that women are appendages who are economically and practically dependent on their husbands, and therefore generally speaking are to be treated accordingly.

But this is in contradiction of Articles 8, 9 (1) and 15 of CEDWA which takes together, prohibits sex discrimination in the exercise of the right to respect for privacy and family life.

After the decision of the suit in Amin Vs. Entry Clearance Officer, (1983), the European Committee of Human Rights changed the Rules governing the admission for settlement of overseas spouses, but only by way of a "levelling down", to make

the rules more restrictive for both sexes.

Although it seems that the Immigration Rules on the admission for settlement of overseas spouses are now nominally gender neutral, they are nevertheless applied in a discriminatory way. For example, in 1990, 67% of husbands in the Indian subcontinent who applied to join their wives in the U.K. were refused. The comparable refusal for wives to join their husbands for the same Indian subcontinent was only 13% (HMSO, 1990). In the spirit of CEDWA and the Beijing Platform for Action, sex discrimination in Immigration law appears unjustifiable and archaic.

3 Pregnancy and Discrimination

Another very interesting case involving women's rights principles, is that reviewed by Harrison (1992), where she insisted that the Court of Appeal has missed the point of the European Court ruling that discrimination on grounds of pregnancy, is direct and not indirect discrimination. I summarise the case.

The Facts

Ms Webb was appointed as a replacement for an employee who was pregnant and entitled to maternity leave. The anticipation was that Ms Webb would not only cover for the employee during her absence but would also stay after her return. Her appointment was therefore a permanent post. After Ms Webb's appointment she discovered that she was pregnant, told her employer and she was dismissed. The employer did not dispute that the dismissal was because of her pregnancy having written:

> since you have only now told me that you are pregnant I have no alternative other than to terminate your appointment wit our company.

My View

The question we may ask at this juncture is "Would the employer have dismissed a sick man who told his employer that he would have to be absent for a comparable period to that expected of the applicant?" The employer in its evidence which was accepted by the Industrial Tribunal, had confirmed that if at the initial interview, Ms Webb had said she MIGHT be pregnant, she would not been offered the post.

Now, what does the employer mean by "if she had said she MIGHT be pregnant?" As a woman, does it not behove her gender to be pregnant? It is wrong or unlawful for her to be pregnant? Would the evidence of the employer not be tantamount to sex discrimination? Discrimination here means treating a woman less favourably than a man is or would be treated, and since a man cannot be pregnant, no comparison can be made, Ms Webb could thus be said to have been discriminated against because of her gender. To discriminate on the grounds of pregnancy is to discriminate on the grounds of sex.

Dismissal because of pregnancy could be direct discrimination if a pregnant

woman was dismissed because the employer did not want to give her time off from work what could have bee given to a male employee who needed medical treatment. Pregnant women could be compared with sick men. This reasoning was upheld by a five-member appeal tribunal in Webb V Emo (1990) but did not help the complaint because it was decided, that the employer who dismissed her because of her pregnancy would also have dismissed a man whom he discovered needed time off work.

The decision of the members of the Appeal Tribunal was heavily influenced by their views of the justice and fairness of the case. This is where the European Court of Appeal missed the point, for a balance certainly need be struck in European society as well as in other societies in reconciling the demands of professional life with that of motherhood. Domestic law must not be interpreted so narrowly by considering justice and fairness of the case only from the point of view of the employer. This justice and fairness of the case must be extended to the employee, and Ms Webb should either have been given judgment that would favour her reinstatement, or that would at least entitle her to some financial compensation (as provided for in the Trade Union and Labour Relations Act 1974 which gave a remedy for unfair dismissal).

4. Employment and equal opportunities

We shall, in discussing the above, consider the cases of three female applicants in the U. K. who complained to an Industrial Tribunal (IT) that they had been discriminated against by their respective employers in matters relating to their retirement.

(i) The first is Mrs. Mary Eileen Gerland, who complained that her employer - British Rail Engineering Ltd. - granted travel concessions to dependants of retired male employees (i.e. wives and dependant children), whereas female employees were provided with such facilities for themselves alone and not for their husbands or dependant children. The Industrial Tribunal (IT) dismissed her complaint, but on appeal, the Employment Appeal Tribunal (EAT) upheld it. The Employers appealed, and Lord Denning MR sitting on 11th November, 1977 dismissed the appeal of Garland and upheld the appeal of her employers, on the grounds that the provision for travel concessions on retirement was a "provision in relation to retirement" and not a provision ABOUT retirement. Some women's rights questions readily come to mind

(a) Is this not a case of discrimination between men and women?

(b) Is Mrs. Garland not being discriminated against?

(c) Is it not unlawful discrimination that a privilege which existed during employment for both males and females, should not be allowed to continued after employment for both men and women?

The Second case is that of Mrs. Ivy Turton. She complained that the provision of 10 weeks pay made available in a redundancy scheme operated by her employer, was in practice only payable to male employees because female employees were required to retire at the age of 60 whereas male employees were not required to retire until the age of 35.

MacGregor Wallcoverings Ltd. - Mrs. Turton's employer - operates an Additional Payment for adult service - i.e. over the age of 18 - in excess of 20 years at the rate of 2 weeks pay for every completed year as follows:

- Between ages 40-49 inclusive - 4 weeks pay.
- Between ages 50-59 inclusive - 6 weeks pay.
- Over age 60 - 10 weeks pay.

(AMOS, 1990).

But in reality, the last 10 weeks pay is applicable only to men. Mrs. Turton put if succinctly in her application thus:

> We women have to retire at the age of 60. So we can never qualify for the additional; 10 weeks pay. That amounts to unlawful discrimination against the women because we can never qualify.

She claimed that if she was made redundant before age 60, she ought to get an additional payment of an extra 10 weeks pay. The IT and the EAT by a majority held that there was unlawful discrimination because the men were being treated differently from the women.

(iii) The third case is Roberts Vs Cleveland Area Health Authority. Mrs. Catherine Eileen Roberts, a cleaner complained that the Cleveland Area Health Authority discriminated against her by dismissing her because she had reached the age of 60, whereas if she had been a man employed in a similar capacity, she would not have been required to retire until age 65.

Lord Denning Mr upheld the case of Cleveland Area Health Authority when he said that a woman retiring at the age of 60 qualifies for a pension, whereas a man does not qualify even if he retires voluntarily until he reaches age 65. Moreover, he said that the Equal Opportunities Commission in its pamphlet on Sex Equality and the Pension Age recognised that a company is free to set the "age at which he requires workers to retire." That Cleveland Area Health Authority's stipulated requirement is age 60 for women and 65 for men, than the dismissal of Mrs. Turton is lawful and she cannot complain because it is "a provision in relation to retirement."

But Lord Denning has failed to see that the provision of entitlement to Pension is a situation where the provision is not only in relation to retirement, but also CONSEQUENT on retirement. For example, a pension which is payable after retirement is consequent on retirement. The original question bothering on discrimination should not be glossed over. That question is, "Why set different retirement ages for men and women?"

Until this question is answered satisfactorily and the present prevailing situation reversed, the human rights issue of discrimination against women and unequal employment opportunities will still gnaw the society in the face. All forms of discrimination against women must be expunged from the society not only in law but also in practice.

5. Women and Property Inheritance

Let us come back home and consider as our last case study a Nigerian issue- that of property inheritance under the customary law.

In almost all the systems of customary law in Nigeria (except with the Yorubas), women cannot inherit real property, i.e. lands, farmlands, and buildings thereon. Amongst the Edo, Urhobo and Biron speaking people, female children have no inheritance right. The eldest surviving male child inherits the deceased's estate. The was brought out clearly in Ogiamen Vs Ogiamen (1969), Idehen Vs Idehen (1991) and Agidigbi Vs Agidigbi (1992).

In the specific case of Ogiamen, the plaintiff brought an action against his eldest brother, claiming a declaration on behalf of himself and other members of Ogiamen family that under Binin customary law, his eldest brother had no right to sell the property of their father which he inherited. The Supreme Court confirmed thus - Ademola CJM held:

> ... It is common ground that according to Binin custom the ELDEST SON succeed to ALL the property of the deceased father TO THE EXCLUSION OF OTHER CHILDREN
>
> This custom, the learned judge dubbed as repugnant to natural justice, equity and good conscience and refused to be bound by it..except that we see NOTHING WRONG in this custom. We can only say it is not unknown is some other highly civilized countries of the world.

Some parts of the above judgement excerpt were placed on capitals by this writer to draw attention to the human rights issues we want to highlight and emphasize. By virtue of the fact that the custom confers the right of inheritance on the eldest son, any woman is already edged out even when the "eldest son" is a minor, or one far junior in age to the eldest daughter. While the issue in question does not affect only women's rights, a general human rights issue arises since the inheritance by the eldest son is to "THE EXCLUSION OF OTHER CHILDREN". No wonder the learned judge of the lower court found the provision of this custom "repugnant to natural justice, equity and good conscience".

It is a matter of great concern that Honorable Justice Ademola, the then Chief Justice of Nigeria saw "NOTHING WRONG in this custom", thus putting the matter beyond any doubt that on the death of intestate Bini man, his real estate passes on to the eldest son absolutely. The rights of the daughters are insignificant. This is gross discrimination.

In the Igbo speaking areas, inheritance follows the principle of primogeniture. The first born of the male line inherits not only the farmlands, farming implements, livestock, but also all moveable property, wearing apparels, even chieftaincy and ceremonial regalia if any. The widow is not entitled to anything. This discriminatory customary practice is up to date given credence and support in Nigeria in spite of section 39 of the 1979 Constitution which guarantees freedom from discrimination on the grounds of sex or circumstances of birth amongst others.

However, we must recognize the significant departure from the above scenario in the practice amongst the Yorubas of Nigeria. Here, all the children irrespective of age and sex have a right of inheritance of their parents' estates.

While customary law oftentimes recognize the right of the widower to inherit his deceased wife's property, the widow by contrast has no such rights. Even her right of residence in the deceased man's house is subject to her continued good behabviour. This includes her consent to widow inheritance, her refusal to remarry outside the family, and retaining the deceased husbands name. She is compelled not to dispose of any house or farmland allotted to her, thereby making her interest in the allotted estate only possessory and not proprietory.

I submit that in the light of the provisions of CEDAW, the Beijing Platform for Action and the provisions entrenched in the Nigerian Constitution, the courts as defenders of the Constitution, and the oppressed should not hesitate to hold such above mentioned customary laws and practices null and void.

Mention should be made here of the celebrated case of Nnafor Mojekwu Vs Caroline Mojekwu of September 1997 where the presiding judge Hon. Justice Niki Tobi ruled in favour of Caroline as being entitled to the real property in question. More positive rulings like this will increase Nigeria's status in the league of nations respecting women's rights.

Conclusion

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There is definitely a need as well as more concerted efforts to address the question of better legal protection for the women.

Women in many African countries and other countries of the world suffer inequality in the social, political, economic and cultural fields, notwithstanding the fact that there are formal provisions in their several legal systems that pretend to guarantee equality of all before the law. The envisaged equality is at best formal and not actual, though several countries of the world are parties to international conventions and Instruments like the CEDAW and Beijing Platform for Action, that provide for equal enjoyment of human rights by women, even by all.

Students and Students' Unions in tertiary institutions must join the crusade of seeing to the imbibing of the spirits of this Conventions and Conferences as well as the monitoring of their implementation. Students of this level (tertiary level), are not just leaders of tomorrow in the distant futuristic sense, but are ripe and ready to take part in the wider governance of this great nation. Men groups, women groups and the entire civil society join the crusade and ensure the enforcement of human rights provisions in our society. This is where a lot of kudos must be given to the Legal Research and Resource Development Centre (LRRDC) for organising this Workshop which focuses on Human Rights Education in Tertiary Institutions.

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