



FACT SHEET

THE EAST AFRICAN COMMUNITY (EAC) AND WOMEN AND GIRLS' RIGHTS

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Introduction

The East African Community (EAC) has a strong normative framework on gender equality and women and girls' rights and is increasingly involved in promoting this agenda. The legal and institutional framework is evolving, showing recognition of the Maputo Protocol (*see box*), the Maputo Plan of Action and the International Conference on Population and Development commitments, among others.

This factsheet aims to provide insight into the role of the EAC and its member states in advancing women and girls' rights in SRHR, particularly in the fields of:

- Gender-based violence against women (GVAW)
- Female genital mutilation (FGM) and child marriage
- Reproductive rights and sexual and reproductive health, and
- HIV and AIDS.

The factsheet presents progress made and remaining challenges in these areas against provisions in the Maputo Protocol.

The Maputo Protocol is a ground-breaking protocol on women and girls' human rights, both within Africa and beyond. The Protocol compensates for shortcomings in the African Charter (1981) and includes 32 articles on women and girls' rights.

- It provides an explicit definition of discrimination against women, which was missing in the African Charter.
- The progressive and innovative character of the Maputo Protocol lies in, among other things, the legal prohibition of FGM and the prohibition of forced marriage and marriage of girls under 18.
- It provides for the eradication of all forms of GVAW in public and private spheres, and for the legal protection of adolescent girls from abuse and sexual harassment.
- It articulates women and girls' right to health, including sexual and reproductive health, and their reproductive rights and access to safe abortion. It refers explicitly to HIV and AIDS, and
- It recognises specific groups of vulnerable and marginalised groups, including adolescents, widows, elderly women, women with disabilities, poor women and migrant and refugee women.

The EAC normative and institutional framework on gender equality and women's rights

The EAC Treaty is founded on the principles of

'Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights...' (Art. 6.2)

and promotes

'The mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic, and technological development' (Art. 5(3)(e)).
It also calls on states to enact legislative and other measures on participation in decision-making; harmful practices and discrimination; and awareness creation aimed at countering prejudices against women and girls. (Art. 121 and 122)

The East African Community (EAC) is a regional intergovernmental organisation initially established in 1967 and re-installed in 1999. Member states are Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.



Core elements to promoting and realising women and girls' rights in the EAC region are:

Political commitments

- The **draft Gender Policy** which offers clear modalities and strategic priority areas and will guide the EAC on the planning, implementation, monitoring and evaluation of programmes to address women and girls' rights in the region.
- The enactment of the **EAC Gender Equality and Development Bill 2016** which aims to realise EAC's commitment to gender equality as set out in the Treaty.
- The ratification of the **Maputo Protocol**. In 2018, all six EAC member states signed the Maputo Protocol and five ratified it, out of which three did so with reservations.¹
- The adoption of the **Consultative Dialogue Framework (CDF)**, which allows participation of advocacy actors in the development agenda. EAC is the only Regional Economic Community that speaks to the consultation of civil society in an institutionalised, as opposed to ad hoc, manner.

Advocacy networks and monitoring tools

- The **Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI)** has had a leading role in the development of and advocacy for the Gender Equality and Development Bill. EASSI also developed the **EAC Gender Equality and Development (GED) Barometer** to monitor legislation and gender responsiveness of EAC member states.
- Other regional advocacy networks include the **East African Law Society (EALS)**, which engages in public interest litigation on human rights issues; the **East African Civil Society Organisations Forum (EACSOFF)**, which provides a platform for representation of East African CSOs with the EAC; and the **Eastern Africa National Network of AIDS Service Organisations (EANNASO)**, which influenced the passing of the EAC HIV and AIDS Prevention and Management Act 2012.

¹ The countries who have ratified with reservations are Kenya, Uganda, and South Sudan. Reservations concern articles on marriage, fertility and access to safe abortion. Details can be found in the SOAW full report on page 82: <https://rightbyher.org/resource/tthe-state-of-the-african-women/>



Gender-based violence against women (GVAW)

'Violence against women means 'all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.' (Maputo Protocol, Art. 1)

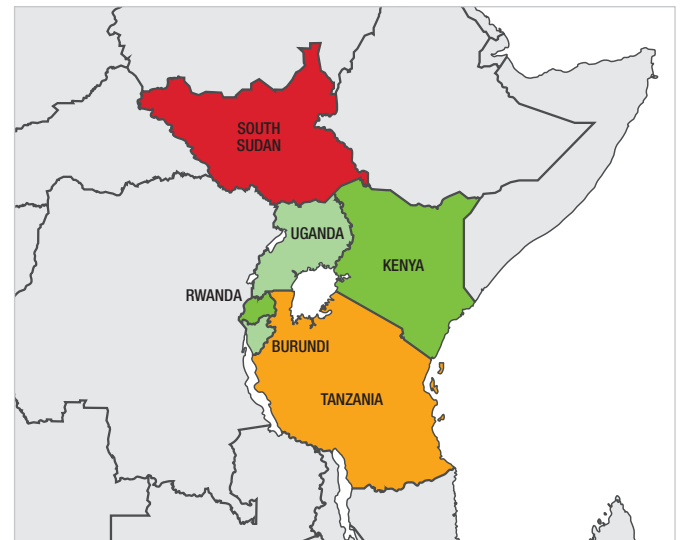
The Maputo Protocol sets a high bar for **state responsibility** regarding GVAW, to ensure the prevention, punishment and eradication of all forms of GVAW. This requires states to:

- Enact and enforce laws that prohibit all forms of GVAW.
- Identify causes and consequences of GVAW.
- Punish perpetrators.
- Support, rehabilitate and offer reparation of victims and survivors of GVAW, and
- Prevent and condemn trafficking in women and girls. It also requires the provision and operationalisation of adequate budgets and other resources to implement and monitor these actions aimed at the eradication and prevention of GVAW.

Unfinished business

- One in three women and girls in Africa has experienced GVAW in their life. Much of this violence is **physical and/or sexual violence** and is **committed by her husband, boyfriend, intimate partner, relatives or friends**. Non-partner sexual violence is estimated at 11.5% among women in Eastern Africa.
- **Not all women and girls are exposed to or experience GVAW in the same way.** Young and adolescent women, elderly women, women with disabilities, female sex workers and bisexual and transgender women can be more exposed and vulnerable to certain types of violence.
- There is a **high variation across the EAC countries in terms of legal and policy reform** regarding GVAW (see map 1 and details in annex 1). Kenya and Rwanda stand out as the countries with more comprehensive legal and policy frameworks on GVAW. Tanzania lacks legislation on domestic violence and marital rape, and South Sudan lacks legislation on most forms of GVAW. Protection from marital rape is a key concern and is not criminalised in 4 out of the 6 countries.
- There is a strong need for reliable, accurate and comprehensive data on GVAW to inform evidence-based policy making and monitor progress and gaps in implementation.

Map 1 Gender-based Violence against Women



Legend

- Legislation on domestic violence, sexual harassment and criminalisation on marital rape.
- Only legislation on domestic violence and sexual harassment. Marital rape is not criminalised.
- Only legislation on domestic violence. No legislation on sexual harassment and marital rape is not criminalised, or missing data.
- Only legislation on sexual harassment. No legislation on domestic violence and marital rape is not criminalised.
- No legislation on domestic violence nor on sexual harassment. Marital rape is not criminalised.
- Legislation on sexual harassment and marital rape is criminalised. No legislation on domestic violence.



Harmful practices

'Harmful practices refer to behaviours, attitudes, and practices which violate the fundamental rights of women and girls and are conducted for non-therapeutic purposes.'
(Maputo Protocol, Art. 1)

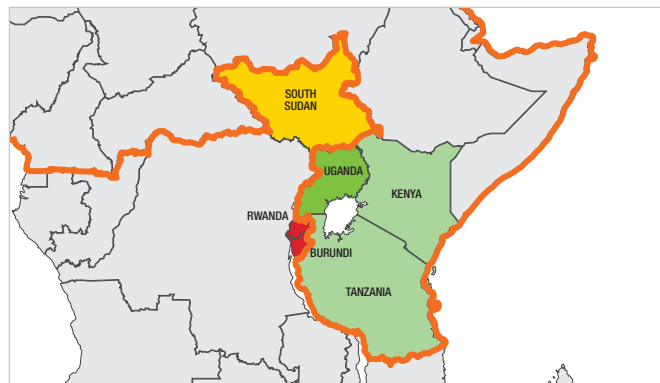
The Maputo Protocol provides that State parties have an **obligation** to:

- Prohibit all forms of harmful practices.
- Protect women who are being subjected to harmful practices and support victims with health services, legal support, counselling and vocational training.
- Prohibit all forms of FGM in order to eradicate them.
- Ensure that no marriage takes place before the age of 18.
- Ensure that no marriage takes place without the free consent of both parties and that the legal age of marriage applies to civil, customary and religious marriages.

Unfinished business

- In East and Southern Africa, more than **1 in 3 girls are married by the time they turn 18**. This happens to half of the girls in South Sudan. Countries with high levels of child marriage also have high rates of maternal deaths and high adolescent birth rates.
- EAC countries vary in the **legal and policy reforms** that they have introduced to eliminate child marriage (see *map 2 and details in annex 1*). Kenya has the strongest legal and policy framework regarding child marriage. Rwanda sets the legal age of marriage at 21 while Tanzania has not yet adopted new legislation regarding child marriage. Uganda and Tanzania's legal frameworks contain loopholes where full and free consent is not guaranteed or where the legal age of marriage does not apply to all marriages.
- The EAC Secretariat has not yet engaged in any women and girls' rights campaigns such as those seen at the continental level (for example, the AU Campaign to End Child Marriage).
- **Female Genital Mutilation (FGM)** is concentrated in 27 African countries but prevalence varies strongly between regions and within a country. Tanzania, for example, is a country with low FGM prevalence (10%) but prevalence in regions ranges from 0% to 71%.
- Uganda has the strongest legal and policy framework in the EAC region to address FGM (see *map 3 and details in annex 1*), Burundi and Rwanda the weakest. Tanzania and Kenya lack a **constitutional provision on harmful practices** but do have **legal provisions and policies** against FGM. Kenya's legislation does not provide against the medicalisation of FGM, creating loopholes that encourage health professionals to perform the practice. South Sudan has constitutional and legal provisions on harmful practices and FGM in place but lacks a programmatic response towards FGM. This is related to the relatively low prevalence rates of FGM (therefore South Sudan is not included in the region where FGM is concentrated – demarcated by an orange line on map 3).

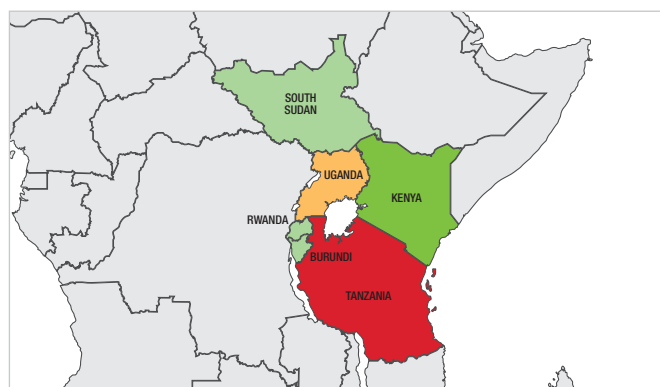
Map 2 Harmful practices and FGM



Legend

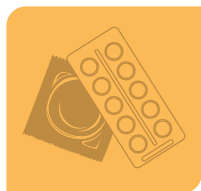
- Constitutional provision on harmful practices, legal provisions on FGM and programmatic response or action plan to end FGM in place.
- Legal provisions prohibiting FGM and programmatic response or action plan to end FGM in place. No constitutional provision eliminating harmful practices.
- Constitutional provision on harmful practices and legal provisions prohibiting either harmful practices or FGM. No programmatic response or action plan to end FGM in place, or missing data.
- Legal provisions prohibiting either harmful practices or FGM. No constitutional provision eliminating harmful practices and no programmatic response or action plan to end FGM in place, or missing data.
- Only a programmatic response or action plan to end FGM in place. No legal provision prohibiting FGM and no constitutional provision to eliminate harmful practices.
- No constitutional provision eliminating harmful practices, no legal provisions prohibiting harmful practices or FGM and no programmatic response or action plan to end FGM in place, or missing data.

Map 3 Child marriage



Legend

- Legal age of marriage set at 18, with full and free consent, applying to all marriages. Action/strategic plan or campaign to end child marriage in place.
- Legal age of marriage set at 18, with full and free consent, applying to all marriages. No action/strategic plan or campaign to end child marriage in place, or missing data.
- Legal age of marriage set at 18 but presence of legal loopholes (either or both: no full and free consent and/or not applying to all marriages, or missing data).
- Legal age of marriage not set at 18, or missing data. Action/strategic plan or campaign to end child marriage in place.
- Legal age of marriage not set at 18 and no action/strategic plan or campaign to end child marriage in place.



Reproductive rights and sexual and reproductive health

'The right to health of women, including sexual and reproductive health, includes the right to control their fertility, to decide whether to have children, the number of children and the spacing of children, to choose any method of contraception, [...] and the right to have family planning education.'

(Maputo Protocol, Art. 13)

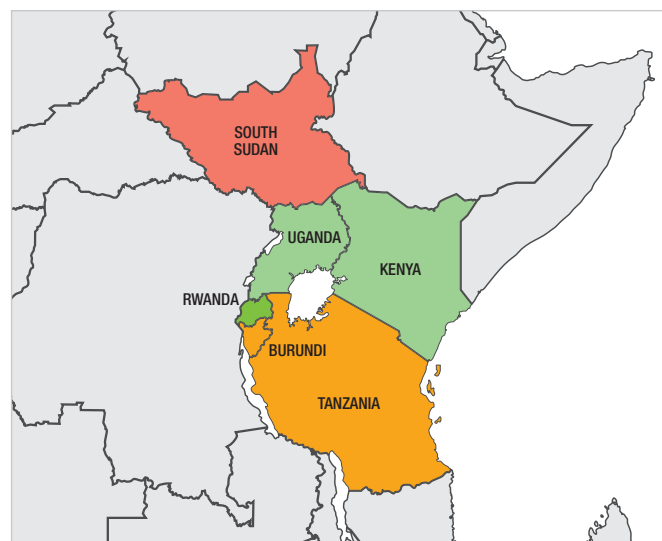
The Maputo Protocol provides that State parties take **appropriate measures** to:

- Provide adequate, comprehensive and accessible health services, including information and education, to all women.
- Strengthen health services for pregnant women and new mothers.
- Authorise safe abortion in cases of sexual assault, rape or incest; when the life and/or the health of the woman is in danger; and in cases of foetal impairment.

Unfinished business

- 1 in 4 married women in Eastern Africa have an unmet need for contraception.
- 3 in 4 abortions in Eastern Africa are unsafe. Married and unmarried adolescent girls are more at risk of being **exposed to unsafe abortions**.
- There are no countries in the EAC region where abortion is completely prohibited. Kenya and Uganda allow safe abortion in line with the Maputo Protocol (*see map 4 and details in annex 1*). Rwanda has the strongest provisions. Tanzania and Burundi do not allow safe abortion in cases of sexual assault, rape or incest, or in cases of foetal impairment. Neither does South Sudan, which also does not allow safe abortion when the health of the mother is in danger.
- In Sub-Saharan Africa, there are **546 maternal deaths** per 100,000 live births. Maternal mortality ratios have declined but vary strongly across countries, regions and groups.
- The withdrawal or stalling of **safe abortion care standards** and guidelines, for instance in Kenya and Uganda, obstructs implementation of existing law and can restrict women and girls' access to safe abortion even when the law permits it.
- Provision of good quality, integrated and fully compulsory **comprehensive sexuality education** is not yet realised and continues to be contested, despite all EAC members' signatures on the 2013 Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for ESA.

Map 4 Legal guarantee to access safe abortion



Legend

- Legal guarantee to access safe abortion when the life of the mother is threatened, when pregnancy poses a threat to physical and/or mental health of the mother, in cases of foetal impairment, in cases of sexual assault, rape or incest or in other circumstances.
- Legal guarantee to access safe abortion when the life of the mother is threatened, when pregnancy poses a threat to physical and/or mental health of the mother, in cases of foetal impairment and in cases of sexual assault, rape or incest.
- Legal guarantee to access safe abortion when the life of the mother is threatened, when pregnancy poses a threat to physical and/or mental health of the mother or in cases of sexual assault, rape or incest.
- Legal guarantee to access safe abortion when the life of the mother is threatened or in cases of sexual assault, rape or incest.
- Legal guarantee to access safe abortion when the life of the mother is threatened, when pregnancy poses a threat to the physical and/or mental health of the mother (and in some cases foetal impairment).
- Legal guarantee to access safe abortion when the life of the mother is threatened.
- No legal access to safe abortion.



HIV and AIDS

HIV and AIDS affect women and girls disproportionately across the continent. Respect and promotion of women and girls' human rights are at the heart of the fight against HIV and AIDS.

The Maputo Protocol provides that State parties have an **obligation to:**

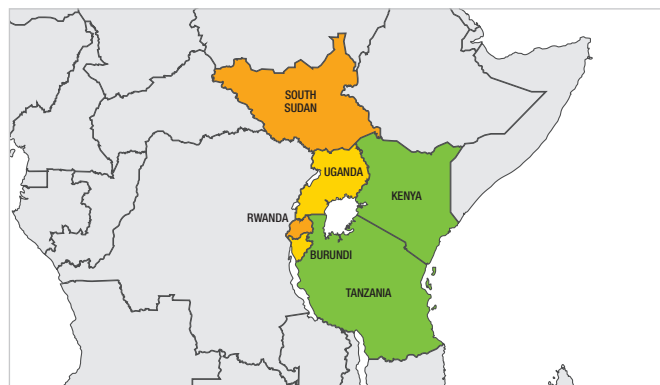
- Respect and promote women and girls' right to protect themselves and be protected from HIV.
- Respect and promote women and girls' right to be informed of their health status and that of their partner, including through voluntary testing, ensuring informed consent.
- Ensure that adequate, affordable and accessible sexual and reproductive health (SRH) services are provided to ALL women and girls, irrespective of their marital status, age, HIV status or other factors, and
- Inform and educate all women and girls on SRH, sexuality, and sexual and reproductive rights, especially those in rural areas.

As part of its legal framework, the EAC has in place an **EAC HIV and AIDS Prevention and Management Act** ('the HIV Act'). This was passed in 2012 and operationalised in December 2014. The Act is a regional response in the management of HIV across the EAC countries. It serves to ensure a harmonised approach in the region by addressing gaps, discrepancies and inconsistencies that may be found in national approaches to preventing and managing HIV and AIDS.

Unfinished business

- 6 out of 10 people living with HIV in Eastern and Southern Africa are **women and girls**.
- AIDS-related illnesses are the second leading cause of death for young women aged 15–24 on the continent.
- Rwanda and South Sudan lack legislation that guarantees **non-discrimination on the basis of HIV** (see map 5 and details in annex 1). Burundi and Uganda have not ensured voluntary testing on HIV.
- All EAC countries have legislation that criminalises **wilful transmission of HIV** (see map 6 and details in annex 1). Such legislation poses a threat to voluntary testing and counselling and access to SRH services and information.
- All EAC countries, except for Rwanda, **criminalise same-sex sexual acts and relations**. This criminalisation hampers non-discriminatory access to SRH services for all, and complicates the work of NGOs working on sexual orientation and gender identity and expression (SOGIE) issues.

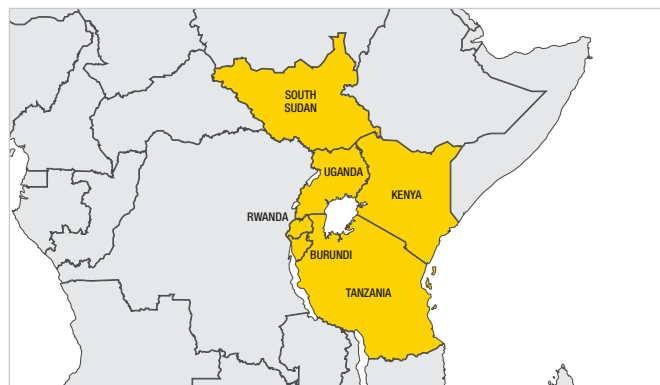
Map 5 Non-discrimination based on HIV and legislation/policy on voluntary testing



Legend

- Non-discrimination legislation based on HIV in place. Legal and/or police regulations regarding voluntary HIV testing in place.
- Non-discrimination legislation based on HIV in place. Legislation on mandatory HIV testing for specific groups or circumstances, or missing data.
- No legislation regarding non-discrimination based on HIV in place. Legal and/or policy regulations regarding voluntary HIV testing.
- No legislation regarding non-discrimination based on HIV and no legal and/or policy regulations regarding voluntary HIV testing in place, or missing data.

Map 6 Criminalisation and wilful transmission of HIV



Legend

- Wilful transmission of HIV is criminalised.
- Wilful transmission of HIV is not criminalised.

Annex 1.

EAC legal and policy indicators, State of African Women report

	Burundi	Kenya	Rwanda	South Sudan	Tanzania	Uganda
Gender-based Violence Against Women						
Legislation on domestic violence	Yes	Yes	Yes	No	No	Yes
Criminalisation of marital rape	No	Yes	Yes	No	No	No
Law on sexual harassment	Yes	Yes	WP	No	Yes	WP
Law on human trafficking	Yes	Yes	Yes	No	Yes	Yes
NAP 1325	Yes	Yes	Yes	Yes	No	Yes
Harmful Practices – Child marriage						
Legal age at marriage at 18	Yes	Yes	Yes	Yes	No	Yes
No exceptions (full and free consent)	Yes	Yes	Yes	Yes	No	No
Applies to all marriages	Yes	Yes	Yes	Yes	Yes	No
Action/strategic plan/campaign to end child marriage	No	Yes	No	No	No	Yes
Harmful Practices – FGM						
Constitutional provision eliminating harmful practices	No	No	No	Yes	No	Yes
Legal provisions prohibiting FGM	No	Yes	No	Yes	Yes	Yes
Programmatic response or action plan to end FGM	No	Yes	No	Yes	Yes	Yes
Reproductive Rights and Sexual and Reproductive Health						
Constitutional provision on health	Yes	Yes	Yes	Yes	No	Yes
Joined/launched CARMMA campaign	Yes	Yes	Yes	No	Yes	Yes
Government funding for health > 5% of GDP	No	No	No	-	No	No
Government funding for health > 15% of general gov't expenses	10-15%	10-15%	<10%	-	10-15%	10-15%
Legal access to safe abortion in specified circumstances						
When the life of the mother is endangered	Yes	Yes	Yes	Yes	Yes	Yes
When mental and/or physical health of mother is threatened	H	H	H	No	H	H
In case of sexual assault, rape or incest	No	Yes	Yes	No	No	Yes
In case of foetal impairment	No	Yes	Yes	No	No	Yes
On other grounds	-	-	Yes	-	-	-
HIV and AIDS						
Non-discrimination legislation based on HIV	Yes	Yes	No	No	Yes	Yes
Policy and/or legal regulations regarding voluntary HIV testing	MAN*	VOL*	VOL	VOL	VOL	MAN*
Criminalisation of wilful HIV transmission	Yes	Yes	Yes	Yes	Yes	Yes
Programmatic responses to access ART	Yes	Yes	Yes	Yes	Yes	Yes
Programmatic responses on MTCT	Yes	Yes	Yes	Yes	Yes	Yes

* VOL = voluntary testing; MAN = mandatory testing for groups/circumstances, or exceptions specified to voluntary testing

Colophon

This factsheet provides a summary of *The State of African Women Regional Report for EAC* (2019), which is published as part of the *State of African Women Report* (2018). Both can be consulted for further details (www.rightbyher.org). The reports have been published in the context of the State of African Women Campaign project that seeks to contribute to securing, realising and extending women's rights enshrined in African Union policies in African countries. They are developed by KIT Royal Tropical Institute within a consortium of eight partners led by IPPF Africa Region.

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