

POLICY BRIEF

# **WITHOUT PURSE OR SWORD, WHAT IS THE PEACE AND SECURITY COUNCIL SANCTIONS SUB-COMMITTEE WORTH?**

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**AMANI AFRICA**

Media and Research Services

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## I INTRODUCTION

Many years after the decision to establish a Sanctions Sub-Committee (SSC) as a subsidiary body of the African Union (AU) Peace and Security Council (PSC) was floated, the process for the establishment of the body was finalized setting the stage for the launch and inaugural convening of the Sub-Committee, is taking place on 12 June 2024. The soul search that the resurgence of military coups during the past several years prompted the finalization of the process of establishment and the impending launch of PSC's sanctions committee.

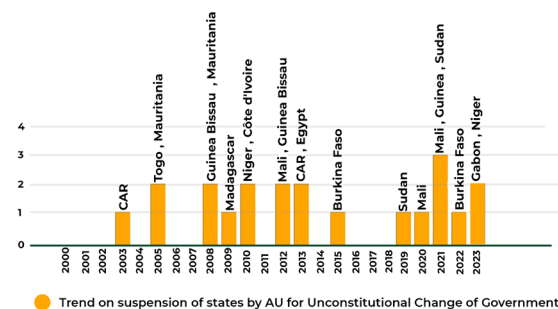
As this Sub-Committee becomes operational, there are several questions worth probing to gain clarity on how and where its role fits in the AU peace and security toolkit. One question is whether and how this committee can make a difference. The other question that arises from the first question is the kind of sanctions for which this Sub-Committee is designed for and whether it is capable of being enforced by the AU.

## II THE LONG WALK TO THE PSC SANCTIONS COMMITTEE

It took 15 years for the PSC sanctions Sub-Committee to come into operation from the time of its conception. The first time a proposition was made for the establishment of a Sanctions Sub-Committee by the PSC was in 2009. The 178<sup>th</sup> meeting of the AU PSC held on 13 March 2009 decided '...in conformity with article 8(5) of the Protocol Relating to the Establishment of Peace and Security Council to establish a Committee on Sanctions.'<sup>1</sup> Yet, as has been the case with

some of the PSC's decisions, this proposal for the establishment of the committee was not acted upon.

A number of years elapsed before the call for activating the committee resurfaced. A series of PSC meetings have made pronouncements on the (re)activation of the PSC Sub-Committee on Sanctions. What prompted the renewed interest in the proposed establishment of the Sanctions Sub-Committee was the soul-searching in the AU policy community on the challenges posed by the resurgence of military coups, which highlighted the declining efficacy of AU's response to coups. Since 2020, the AU has suspended six of its Member States from participation in its activities owing to unconstitutional changes of government (UCG).



● Trend on suspension of states by AU for Unconstitutional Change of Governments

The outcome of the 1061<sup>st</sup> meeting of the Council held on 27 January 2022 under the theme, Promoting Constitutionalism, Democracy and Inclusive Governance to Strengthen Peace, Security and Stability in Africa, '[r]equested AU Commission to reactivate the PSC Sub-Committee on Sanctions to provide support to the PSC and follow up on the implementation of sanctions imposed by the PSC, as well as to provide the necessary support and coordinate with the Regional Economic Communities/Regional Mechanisms (RECs/RMs).'2 As part of the soul

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<sup>2</sup> PSC 1061<sup>st</sup> meeting held on 27 January 2022 <https://>

<sup>1</sup> PSC 178<sup>th</sup> meeting held on 13 March 2009 <https://>

searching, the PSC convened in Accra, Ghana from 15 to 17 March 2022 a forum for discussions on the resurgence of UCG in Africa. This led to the adoption of the Accra Declaration which, among others, reiterated the need for the reactivation of the PSC Sub-Committee on Sanctions.<sup>3</sup> During the 16<sup>th</sup> Extraordinary Session of the AU Assembly on Terrorism and UCG in Africa held on 28 May 2022 in Malabo, Equatorial Guinea, the Assembly adopted Decision [Ext/Assembly/AU/Dec.(XVI)]<sup>4</sup> in which it urged the PSC to reactivate its Sub-Committee on Sanctions towards coordinated oversight on the impact of sanctions, pursuant to the Lomé Declaration.<sup>5</sup>

Another call was made during the 1100<sup>th</sup> PSC meeting held on 15 August 2022, in which it called for the full operationalization of the PSC Sanction Committee and the development of the requisite technical capacities to ensure its effectiveness, including the holding of appropriate capacity-building training programmes for the Sub-Committee, and directed the PSC Committee of Experts (CoE) to develop the Terms of Reference (ToRs) for the PSC Sub-Committee on Sanctions.<sup>6</sup> In addition, it equally tasked the AU Commission to put in place a solid sanctions infrastructure using the available resources in the Political Affairs,

[amaniafrica-et.org/wp-content/uploads/2022/05/1061-on-constitutionalism-and-governance.27.01.2022.pdf](https://amaniafrica-et.org/wp-content/uploads/2022/05/1061-on-constitutionalism-and-governance.27.01.2022.pdf)

<sup>3</sup> Accra Declaration on UCG in Africa [Accra-Declaration-on-Unconstitutional-Changes-of-Government-in-Africa.pdf \(amaniafrica-et.org\)](https://amaniafrica-et.org/wp-content/uploads/2022/05/1061-on-constitutionalism-and-governance.27.01.2022.pdf)

<sup>4</sup> 16<sup>th</sup> Extraordinary Session of the AU Assembly Decision on Terrorism and UCG in Africa [Ext/Assembly/AU/Dec.\(XVI\)](https://amaniafrica-et.org/wp-content/uploads/2022/05/1061-on-constitutionalism-and-governance.27.01.2022.pdf)

<sup>5</sup> Lomé Declaration <https://amaniafrica-et.org/wp-content/uploads/Lomé-Declaration.pdf>

<sup>6</sup> PSC 1100<sup>th</sup> meeting held on 15 August 2022 on Sanctions and Enforcement Capacities: Deterrence against UCG [PSC/PR/COMM.1100 \(2022\)](https://amaniafrica-et.org/wp-content/uploads/2022/05/1061-on-constitutionalism-and-governance.27.01.2022.pdf)

Peace and Security (PAPS) Department that will effectively support the work of the PSC Sub-Committee on Sanctions, as well as a monitoring and evaluation group, to assess the implementation of the sanctions imposed against the Member States.

Against the background of the foregoing, a retreat of the CoE was held from 22 to 26 May 2023 in Zanzibar, to, among others, refine and finalize the ToRs of the PSC Sanctions Committee and AU Ministerial Sub-Committee on Counter-terrorism. On 24 October 2023, the PSC held a discussion on AU's sanction regime.<sup>7</sup> Following that, from 21 to 23 November 2023 the CoE also convened for its annual retreat in Tunisia for the preparations for the 15<sup>th</sup> Annual Retreat of the PSC on the Review of its working methods, in which the members discussed the validation of the Draft ToR for the PSC Sub-Committee on Sanctions. The CoE Retreat finalized the Draft ToRs for the PSC Sub-Committee on Sanctions and submitted to the PSC itself for consideration and adoption. From 25 to 27 November 2023, the PSC convened in Tunisia for the 15<sup>th</sup> Annual Retreat on the Review of its Working Methods. From the adopted Conclusions, the PSC welcomed and endorsed the Report of the Retreat of the PSC CoE, unpacking the AU Sanctions Regime for UCG and similar political situations and specifying the ToRs of the PSC sanctions Sub-Committee.<sup>8</sup>

<sup>7</sup> Amani Africa Insight on Discussion on AU Sanctions regime <https://amaniafrica-et.org/discussion-on-au-sanctions-regime/>; PSC 1181<sup>st</sup> meeting held on 24 October 2023 on AU Sanctions Regime [PSC/PR/SR.1181 \(2023\)](https://amaniafrica-et.org/discussion-on-au-sanctions-regime/)

<sup>8</sup> Conclusions of the 15<sup>th</sup> Retreat of the PSC on the Review of its Working Methods [PSC/PR/Retreat.15 \(2023\)](https://amaniafrica-et.org/discussion-on-au-sanctions-regime/)

### III THE PLACE OF SANCTION IN THE AU POLICY TOOLKIT

In discussing the Sub-Committee and sanctions under the AU, it is worth to note that the significance of sanction as an instrument or tool of the PSC in the execution of its mandate should not be overstated. First, the only instance in which the PSC is explicitly mandated to impose sanction is in relation to UCG. Thus, Article 7(1)(g) of the PSC Protocol empowers the PSC to 'institute sanctions whenever an UCG takes place in a Member State, as provided for in the Lomé Declaration.'<sup>9</sup> The main form that the sanction take under the Lomé Declaration is the suspension 'from participating in the policy organs of the OAU.'<sup>10</sup> This is reinforced in Article 30 of the Constitutive Act of the AU which provides that 'Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.'<sup>11</sup>

Where no progress is made on the basis of suspension, the Lomé Declaration envisages that 'a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted, in addition to the suspension from participation in the OAU Policy Organs.'<sup>12</sup> Such other sanctions referred to in the Declaration 'include visa denials for the perpetrators of an unconstitutional change, restrictions of government-to-

government contacts, trade restrictions etc.'<sup>13</sup> Although sanctions other than suspension are not applied as commonly as suspension, the practice of the PSC shows that the most common forms of sanctions are travel bans and asset freezes. These have been used in Togo (2005), Comoros (2007), Mauritania (2008), Madagascar (2009), Niger (2010), Guinea-Bissau (2012), Mali (2012) and the Central African Republic(CAR) (2013).<sup>14</sup> Diplomatic sanctions using the language of 'complete isolation' of the new regime have been used with respect to the 2009 UCG in Madagascar and the 2013 UCG in the CAR.<sup>15</sup> Other measures such as economic sanctions and closure of borders have been threatened or otherwise used in Cote d'Ivoire (2011) and Mali (2012).<sup>16</sup>

Despite the possibility of using sanctions other than suspension, the most common form of sanction that the PSC adopted under Article 7(1)(g) of the PSC Protocol is suspension.<sup>17</sup> This underscores that in the AU policy practice, the place of sanctions other than suspension remains limited. While in response to the upsurge of coups in recent years particular attention is given to reinforcing the AU sanctions regime, the fact that sanctions occupy limited space does not come as a surprise.

9 Protocol Relating to the Establishment of the PSC of the AU [PSC-Protocol.pdf \(amaniafrica-et.org\)](https://amaniafrica-et.org/PSC-Protocol.pdf)

10 Lomé Declaration <https://amaniafrica-et.org/wp-content/uploads/Lomé-Declaration.pdf>

11 Constitutive Act of the AU

12 Lomé Declaration <https://amaniafrica-et.org/wp-content/uploads/Lomé-Declaration.pdf>

13 Ibid

14 Togo [PSC/PR/COMM.\(XXV\)](#); Comoros [PSC/PR/2\(XCV\)](#); Mauritania [PSC/PR/\(CLXVIII\)](#); Madagascar [PSC/PR/COMM.\(CLXXXI\)](#); Niger [PSC/PR/COMM.2\(CCXVI\)](#); Guinea-Bissau [PSC/PR/COMM\(CCCXVIII\)](#); Mali [PSC/PR/COMM\(CCCXV\)](#); CAR [PSC/PR/COMM.\(CCCLXIII\)](#)

15 Ibid

16 Côte d'Ivoire [PSC/PR/COMM.1\(CCLII\)](#); Mali [PSC/PR/COMM\(CCCXV\)](#)

17 Protocol Relating to the Establishment of the PSC of the AU [PSC-Protocol.pdf \(amaniafrica-et.org\)](https://amaniafrica-et.org/PSC-Protocol.pdf)

## IV DEPLOYMENT OF ROBUST DIPLOMATIC INTERVENTION FOR FACILITATING REFORMS TOWARDS RESTORATION OF CONSTITUTIONAL RULE

For the AU sanction, including suspension, is not meant to punish the state concerned. Accordingly, rather than severing diplomatic engagements with the country concerned, the Lomé Declaration puts particular emphasis on the use of diplomatic and mediation intervention for inducing the resolution of the constitutional crisis and the return of the country back to political and constitutional normalcy. The Declaration thus stipulates that:

the Secretary-General (Chairperson of the AU Commission) should, during this period gather facts relevant to the UCG and establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country; the Secretary-General should seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the unconstitutional change in order to get them to cooperate with the OAU and facilitate the restoration of constitutional order in the Member State concerned; the Secretary-General should speedily enlist the collaboration of the Regional Grouping to which the 'country in crisis' belongs.<sup>18</sup>

As much as, perhaps more than, the use of the enforcement measures of suspension and other forms of sanction, the most critical element of the AU response toolkit to UCG is the deployment of robust diplomatic intervention. This often takes the form of special envoy or high-level ad hoc panel who are mandated to catalyse and facilitate the adoption of relevant reform measures and transition roadmap for the restoration of constitutional order. The importance of this aspect of AU's engagement cannot be overemphasized considering the attributes of the AU as a principally diplomatic and political mobilization-based organization in the promotion and enforcement of agreed norms and policies.

## V SUCCESS DEPENDS ON UNDERSTANDING AND MAKING EFFECTIVE USE OF AU'S SOURCE OF LEVERAGE

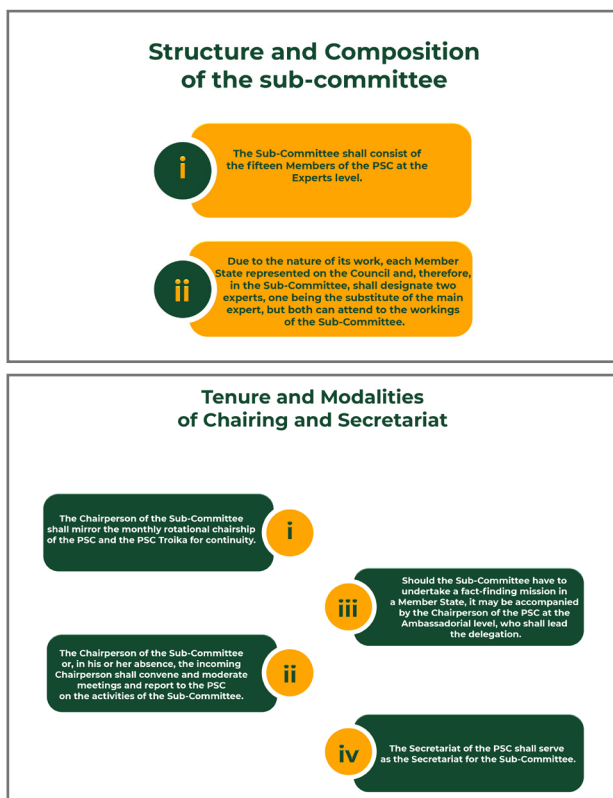
The AU is not an entity that possesses neither a bank nor a tank for enforcing its decisions coercively. Indeed, if one were to search for AU's leverage using a classic realist lens of hard power, s/he may not be successful in their endeavor. This does not mean that AU is bereft of any meaningful leverage. AU's leverage arises primarily from the sources of its soft power. The main sources of AU's soft power are its capacity to establish community standards, its possession of institutions for determining compliance with such standards, its mandate not just to name and condemn but also to diplomatically censure and isolate breaches relating particularly to UCG and its power to convene and mobilize public opinion.

<sup>18</sup> Lomé Declaration <https://amaniafrica-et.org/wp-content/uploads/Lomé-Declaration.pdf>

Whether or not AU's leverage becomes meaningful depends on the extent to which AU puts its soft power to effective use. Effectiveness of the AU mostly depends on a) its technical capacity in developing effective strategy for both preventing and robustly responding to breaches of AU norms, b) the building of strong consensus on the part of and mobilization of solid diplomatic support from its Member States while also ensuring concurrence and full backing of both African and international institutions and partners and c) consistency in AU's response to breaches of its norms.

Whether the proposed PSC's Sanctions Sub-Committee matters thus largely depends on its contribution in enhancing the effective use by the AU of its soft power and how it contributes to filling in the lacuna in AU's response capacity.

## VI THE VALUE PROPOSITION OF THE PSC SUB-COMMITTEE ON SANCTIONS



In its November 2023 retreat in Tunisia, the PSC noted that the AU has primarily responded to cases of UCG by applying a specific type of sanction - the suspension of a member state from participating in the activities of the Union and its Organs. However, the Council also acknowledged the challenges being faced in the implementation of AU sanction regimes which include:

- i) Disparities between the AU and some RECs/RMs on the application of sanctions regimes, which have been undermining AU peace efforts. For example, whereas the AU had suspended Sudan, IGAD had not; whereas the AU had suspended Niger, ECOWAS had not and whereas the AU had suspended Gabon, it remained a member of the A3;
- ii) Non-compliance by some neighbouring countries in the implementation of sanctions imposed by the AUPSC and/or those sanctions imposed by RECs/RMs and endorsed by the PSC;
- iii) Lack of enforcement mechanisms for AU sanctions;
- iv) Member States to respect PSC decisions and the importance of closer coordination between AU and the RECs/RMs on the implementation of sanctions, clarifying the distinction between AU sanctions or punitive measures in response to UCG and those sanctions and other forms of punitive measures imposed on Member States by other institutions and/or bilateral development partners;
- v) PSC called for an institutional mechanism or framework for

enhancing coordination and complementarity of efforts in the implementation of sanctions measures, as well as the best ways and means of communicating accurately the AU Sanctions Decisions to all critical stakeholders, in particular the RECs/RMs;

- vi) With reference to Article 16 of the PSC Protocol, the need to ensure alignment of responses/activities in the field of peace and security between the AU and the RECs/RMs.

According to the [ToR for the Sub-Committee](#), its role encompasses the reinforcement of PSC's engagement with respect to UCG in general rather than being restricted to the limited universe of sanction – which is only one among various avenues for engagement. Thus, it rightly defines the objectives of the Sub-Committee as:

- a) To gather reliable information on countries under sanctions or in a situation where the PSC consider imposing sanctions and advise the PSC accordingly;
- b) To coordinate with RECs/RMs, the UN and other entities with regard to imposed sanctions or those to be imposed on African countries and advise the PSC accordingly;
- c) To monitor and evaluate imposed sanctions in order to ensure that the Member States concerned adhere to the AU norms on democracy, constitutionalism and respect of constitutional procedures for accession to and preservation of political power or the timelines for restoration of constitutional order;
- d) To accompany de facto authorities emerging from UCG toward the time-

ly and effective restoration of constitutional order;

- e) To clearly lay down the steps to be taken by the PSC and de facto authorities towards the restoration of constitutional order so as to standardise responses, ensure coherence and consistency and institute clarity of procedures for the lifting of sanctions measures;
- f) To propose deterrent measures against UCG and other crimes as stipulated by the Constitutive Act and as corrective measures for intransigent de facto authorities, individual and/or entities violating constitutional mechanisms for the preservation of political office or entities violating or supporting the perpetration of acts that undermine constitutional order;
- g) To promote and encourage peaceful measures to resolve political differences, grievances and conflicts in the Continent.

Consistent with this wide scope of the objectives of the establishment of the Sub-Committee, the ToR assigns the Sub-Committee the following functions:

- a) Receive assignments/mandates on specific situations from the PSC and serve as a technical Sub-Committee to assist the PSC on matters relating to sanctions;
- b) Monitor political and socio-economic developments across the continent, in collaboration with the relevant units of the AU Commission, the Committee of Intelligence and Security Services in Africa (CISSA) and other relevant AU Organs/Institutions and RECs/RMs and make recommendations to the PSC on preventive measures against the occurrence of UCGs and eventually the imposition of



- sanctions in a given situation considered;
- c) Monitor the implementation of sanctions measures imposed or endorsed by the PSC and make recommendations about the necessary adjustments and possible additional measures required to enhance their effectiveness;
  - d) Seek from all Member States, RECs/RMs and partners, relevant information regarding the actions taken by them to implement sanctions measures imposed by the PSC, challenges facing imposed sanctions and whatever additional information it may consider useful in this regard;
  - e) Examine information regarding alleged violations of sanctions measures imposed by the PSC and recommend appropriate action for the PSC's consideration;
  - f) Identify individuals and entities to be included or removed from the list of targeted sanctions pursuant to the provisions of PSC decisions;
  - g) Consider and recommend, upon request, lifting of sanctions measures as set out in the PSC decisions imposing the sanctions;
  - h) Regularly review the list of individuals and entities designated for targeted sanctions by the PSC, with a view to keeping the list as updated and accurate as possible and confirm that the listing remains appropriate, and encourage Member States to provide any additional information whenever such information becomes available;
  - i) Serve as the primary unit for informing Member States about the nature and requirements of the existing sanctions regimes and processes for inclusion and removal

from existing lists;

- j) Report at least quarterly, or whenever needed, to the PSC on its activities and on the implementation of specific sanctions measures, including ways to strengthen the effectiveness of the sanctions' measures imposed by the PSC;
- k) Identify cases of non-compliance with the sanctions measures pursuant to PSC decisions and recommend the appropriate course of action on each case, for the attention of the PSC; and
- l) Report on any other matter in relation to Article 7(g) of the PSC Protocol, as directed by the PSC.

## VII CONCLUSION

As the foregoing analysis reveals the value proposition of the Sub-Committee does not lie in clothing the AU with the hard power for coercively enforcing its decisions. It rather lies in enhancing the effective use by the AU of its soft power and how it contributes to filling in the lacuna in AU's response capacity. To the extent that the establishment of this Sub-Committee holds a promise and ushers in a new era, it is in injecting a much-needed catalytical role for a more proactive, predictable, and coordinated response to the scourge of UCG.

Considering the [major blow](#) that the failure of the PSC to consistently apply AU norms to all cases of military seizure of power dealt to the effectiveness of AU response to crisis, one of the critical contributions of this Sub-Committee lies in restoring some level of the lost credibility of AU's anti-coup norm by ensuring consistent application by the PSC.<sup>19</sup> Similarly, another gap that the

<sup>19</sup>

*Amani Africa: "A moment of reckoning for*

Sub-Committee on Sanctions can fill in concerns the process of lifting of sanctions. This requires that the Sub-Committee ensures the establishment of clear benchmarks on the criteria and process for easing and lifting sanctions.

The effective functioning of the Sub-Committee also depends on the extent to which its work draws on and is informed by solid independent technical analysis and advise. It is imperative to accompany the Sub-Committee with an independent expert body on AU Response to UCGs. This is crucial for the provision of objective and in-depth technical advisory and support on the basis of independent assessment and analysis that helps to keep the Sub-Committee above the political fray relating to situations of UCG, which is critical to its successful functioning.

The other and critical issue in the light of the recent experience in relation to Niger is how to ensure that sanctions are targeted. As noted above, the Lomé Declaration took care in specifying the need for targeted sanction. It thus speaks only of 'limited and targeted sanctions.' There is also the related issue of crafting sanctions with the requisite carveouts for ensuring that they do not lead to collective punishment of the population of the target country. Accordingly, when adopting sanctions that go beyond suspension, there is a need for ensuring that they provide for humanitarian carveouts for facilitating humanitarian access and essential socio-economic activities vital for the wellbeing of populations.

Beyond making sanctions smart and tailored to the realities of AU's attributes, of particular significance is how the Sub-Committee executes its role in ensuring that the AU deploys robust diplomatic intervention with a dedicated mandate to catalyze relevant reforms and support ,and accompany the adoption and implementation of such reforms and transitional processes. The importance of this lies in AU's engagement going beyond addressing the symptoms of the crisis and work with the transitional authorities to target the conditions that created the context for the UCG. Unlike sanctions which deal only with the symptoms, such an approach is critical for a successful and importantly sustainable restoration of constitutional order.

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*the AU in Chad as interim leader declares candidacy for presidential election." Ideas Indaba, 9 April 2024*  
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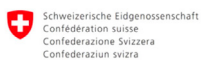
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We support the pan-African dream of peaceful, prosperous and integrated Africa through research, training, strategic communications, technical advisory services, and convening and facilitation.

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