

DECEMBER 2015

**ANNUAL** PRO BONO AND  
HUMAN RIGHTS  
NEWSLETTER

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TRAINING AND  
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COME TOGETHER  
HOME YEAR END  
PARTY



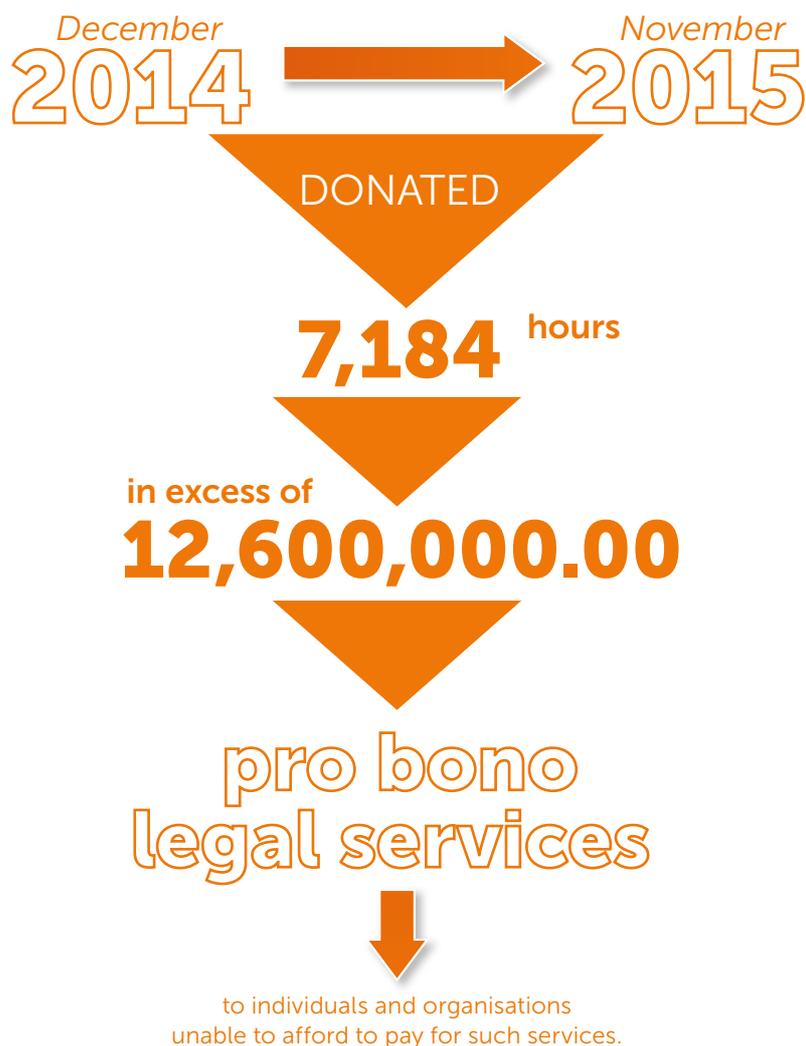
## INTRODUCTION

During the period December 2014 - November 2015 Cliffe Dekker Hofmeyr (CDH) donated 7,184 hours / in excess of R12,600,000.00 in pro bono legal services to individuals and organisations unable to afford to pay for such services. CDH was also involved in a number of high profile human rights and public interest law matters.

In line with its mandate to constructively engage in promoting constitutional values and uplift communities (in particular the youth) through training and other special projects work, our Pro Bono and Human Rights Practice (our Practice) also planned and together with other members of the firm, carried out a number of external and internal training and awareness building initiatives. It also made contributions to external publications.

Given the comparatively small size of our Practice, which not only manages the distribution and administration of pro bono work by other practice areas, but also runs its own matters and projects, we believe that the contribution made by the firm over the period was an impressive one.

In this newsletter we share some of the highlights of our work over the year.



## SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD & OTHERS // DEMOCRATIC ALLIANCE & OTHERS

In September 2015 our Practice represented Corruption Watch in the Supreme Court of Appeal (the SCA) in a high profile matter concerning the alleged failure by the South African Broadcasting Corporation (the SABC) and the Minister of Communications (the Minister) to comply with remedial action directed by the Public Protector following an investigation conducted by her office into various complaints lodged with it about alleged abuse of power and maladministration at the SABC. Corruption Watch was admitted as *amicus curiae* in the proceedings before the SCA.

Central to the matter was the alleged irregular appointment of and salary increments awarded to Mr Hlaudi Motsoeneng, the current Chief Operations Officer of the SABC. One of the legal issues considered by the SCA was the question of the status of the powers of the Public Protector and in particular whether her decisions/remedial action have binding legal effect or are merely recommendatory in nature.

In a judgment which makes groundbreaking findings concerning the powers of the Public Protector, the SCA dismissed the appeal which had been brought by Mr Motsoeneng, the SABC and the Minister against an earlier judgment handed down by Schippers J in the court a quo in the Western Cape High Court. The SCA's judgment affirms many of the submissions made by Corruption Watch on the nature of the powers of the Public Protector.

While the SCA upheld the order of Schippers J requiring the SABC to institute disciplinary proceedings against Mr Motsoeneng (made pursuant to the report handed down by the Public Protector) and that he be suspended pending the finalisation of these disciplinary proceedings, it overturned the finding that the Public Protector's powers are only recommendatory in nature. Having taken into account the language, history and purpose of s182(1)(c) of the Constitution which empowers the Public Protector to take appropriate remedial action, the SCA found that the decisions taken by the Public Protector have 'legal effect'. In addition to the finding that Parliament had carefully considered the importance of the office of the Public Protector in legislating additional powers applicable to the Public Protector in the Public Protector Act, No 23 of 1994, the SCA found that an important shift in language from the interim to the final Constitution directly conferred powers on the Public Protector to investigate, report and to take appropriate remedial action. Ultimately, the power to provide an effective remedy for State misconduct was found to include the power to determine the remedy and direct its implementation.

In reaching its decision, the SCA found that it is generally accepted in our law that 'until a decision is set aside by a court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot simply be overlooked'. Accordingly, it was impermissible for the SABC to have established a process parallel to that being undertaken by the

Public Protector by appointing a firm of attorneys to investigate the veracity of the Public Protector's report and to then assert privilege in respect thereof. The proper remedy would have been to review the Public Protector's findings. Absent such review, the SABC was obliged to implement the Public Protector's findings and remedial measures.

In its judgment, the SCA emphasised that an essential component of ensuring that government complies with Constitutional principles is a system of checks and balances that allow for measures to be implemented and steps to be taken in order to ensure that Organs of State are accountable for their actions. One such check is the office of the Public Protector, a Chapter 9 institution provided for in the Constitution to act as a 'watchdog' and important defence against corruption and maladministration.

Mr Motsoeneng, the SABC and the Minister have all since applied for leave to appeal the SCA's decision to the Constitutional Court.

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SOME NOTABLE NEW MATTERS

# HIV/AIDS DEFAMATION CASE

*Our Practice is assisting an organisation that works in the field of HIV/AIDs (our client) to defend a defamation claim lodged against it by a doctor who has been marketing a clinically untested sexual lubricant (gel) in what it believes is a misleading manner.*

In response to what it considered to be unlawful and unethical conduct, our client wrote a letter to various authorities which was posted on its website and also published a newsletter in which it took issue with this marketing of the gel. One of the concerns was that the public would view the gel as a potential substitute for condoms. Subsequent to these interventions, the product was withdrawn from the market.

The doctor in question claims that these publications are defamatory and seeks an order requiring our client to remove the material from its website and to publish a retraction and an apology. Our client believes there are important points of principle at stake and is defending the matter on various grounds including that the alleged defamatory statements are true; that some of them constituted fair comment and that it was reasonable for it as a media respondent to publish the impugned publications in the way and at the time that it did.

This matter is particularly important given the background of the HIV/AIDS epidemic in South Africa and its disproportionate impact on young women. Statistics show that young women are especially at high risk of HIV infection. In circumstances where there is documented resistance to use of condoms, women are particularly vulnerable as they have very few options to protect themselves. Advocate Gilbert Marcus SC and Jonathan Berger from the Johannesburg Bar are assisting us with the matter which is now ripe for hearing and likely to be set down early next year.

**2014**  
**RANKED #1 BY DEALMAKERS FOR DEAL FLOW 6 YEARS IN A ROW**  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in General Corporate Finance Deal Flow.

**2013**  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in Unlisted Deals - Deal Flow.

**2012**  
1st in M&A Deal Flow, 1st in General Corporate Finance Deal Flow, 1st in General Corporate Finance Deal Value, 1st in Unlisted Deals - Deal Flow.

**2011**  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in General Corporate Finance Deal Flow, Legal Advisor - Deal of the Year.

**DealMakers**

**2014**  
**#NO1DEALPARTNER**

**No. 1 LAW FIRM**  
by M&A DEAL COUNT in Africa and the Middle East

**No. 1 AFRICAN LAW FIRM**  
by M&A DEAL VALUE with 9.2 Billion USD worth of deals



**FINANCIAL AND CORPORATE**

RECOMMENDED FIRM

**2016**

SOME NOTABLE NEW MATTERS

## NEW REFUGEE MATTER

This year our Practice took on another refugee matter on behalf of an asylum seeker from the Democratic Republic of Congo (DRC) whom we are assisting to bring an appeal before the Refugee Appeal Board (RAB) against a decision by the relevant Refugee Status Determination Officer (RSDO) rejecting his application for asylum.

Our client, who was studying to become a social worker at the time, was a member of an opposition party in the DRC and was detained and tortured by police loyal to the ruling party on several occasions in the run up to the 2006 elections. He finally fled the DRC in August 2006 owing to fears for his ongoing safety after his father was murdered and his mother and wife were assaulted by security forces who were searching for him.

As in many other instances, our client's application was refused by the RSDO in a materially flawed decision without him having been afforded a proper hearing in accordance with the prescripts of the Refugees Act and the Regulations made thereunder. In the meantime, according to reports by various NGO's and IO's, country conditions in the DRC remain volatile with members of opposition parties and journalists facing renewed persecution by the state in the run up to the 2016 elections in which Joseph Kabila seeks to stay in power for a third term.

Heads of argument were filed and numerous consultations were held with client in preparation for his appeal hearing which was scheduled for 24 August 2015, only for the hearing to be cancelled by the RAB without explanation and rescheduled for May 2016.

Our client who has already been waiting for five years to have his appeal heard is accordingly forced to wait together with his family for another nine months just to receive an audience before the RAB. In all likelihood he will have to wait another few years thereafter for the RAB to hand down its decision. In the meantime as asylum seekers with precarious rights he and his family are forced to continue to live in a state of horrible uncertainty. Neither our client nor his wife, who recently passed away, have been able to secure formal employment seemingly because of their asylum seeker status.



asylum  
seeker  
waited



5

years



9

months

## R2K // MINISTER OF POLICE



Our Practice represented both the Right2Know Campaign (R2K) and the South African History Archive Trust (SAHA) in an application to enforce a request for access to information in terms of the Promotion of Access to Information Act, (PAIA) concerning National Key Points declared under the National Key Points Act, (National Key Points Act). The National Key Points Act is a piece of Apartheid-era legislation aimed at providing for the declaration of sites of national importance as national key points, in order to protect them from sabotage. Once declared a national keypoint it becomes a criminal offence to perform various acts in relation to such a keypoint including publishing certain information concerning the keypoint or protesting nearby it.

The PAIA request was made against a background of widespread concern relating to allegations of improper reliance on the National Key Points Act by public officials as well as the misappropriation of public funds for improvements to private properties declared as National Key Points. For example the Act was recently invoked during the ongoing probe into the funding of various upgrades to President Jacob Zuma's Nkandla residence. Notwithstanding the fact that Ministers had on occasion provided the names and addresses of various National Key Points in Parliament, the Minister of Police and the relevant Deputy Information Officer (the respondents) refused to provide R2K and SAHA with the names of the places declared national key points.

In a judgment handed down in December 2014, the High Court declared that the Respondents' decision not to disclose the requested information was unlawful and ordered them to supply all the names of places declared as National Key Points to the Applicants. Although the Respondents filed an application for leave to appeal the decision, they abandoned the application and furnished our Practice with the list of National Key Points during the course of January 2015. The list has now been widely published.

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## SAHA PAIA APPLICATIONS: TRC DATABASE AND S29 TRANSCRIPTS

Due to a lengthy and ongoing failure by the Department of Justice and Correctional Services (the Department) to comply with a decision by the then Minister Jeff Radebe to grant our client, the South African History Archive (SAHA), access to the Truth and Reconciliation Commission Database (the Database), subject to the necessary protection of confidentiality, we were forced to institute a court application against the Department in order to enforce the decision. The application was launched in June 2015.

The Department has since sought to meet with us in order to reach a settlement of the matter and a comprehensive record of the Database has now been supplied to SAHA. Given the significance of the TRC in the history of our nation, and the public interest in preserving and making public the record of its proceedings, this is an important victory. SAHA will in time be making the Database available to the public.

Progress was also made in another matter in which we have been representing SAHA for some time – the s29 transcripts matter. The s29 transcripts are the transcripts of hearings of TRC investigative enquiries held on camera at which individuals were required under oath to divulge the full extent of their knowledge of some of apartheid's most serious crimes. Hearings held under s29 included discussions of the plane crash that killed Mozambiquan President Samora Machel; the Helderberg disaster; and the deaths of anti-apartheid activists such as Griffiths Mxenge. A number of the transcripts have been provided to our client and the Department is in the process of reviewing its decision to redact information from the records made available.

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## HIGH COURT REVIEW OF RAB DECISION

*Our Practice has been assisting one of our refugee clients to review a decision of the RAB refusing her application for refugee status. Our client, a citizen of the Democratic Republic of the Congo, has been seeking asylum in South Africa for almost a decade following violence directed against her and other members of an opposition political party. Both the decision of the RSDO and the RAB made some nine years later were vitiated by material irregularities and unreasonable administrative delays.*

*The application was argued before the North Gauteng High Court on 28 July 2015 and judgment was reserved.*

## NATIONAL MOOT COURT COMPETITION

On 7 October 2015, CDH was abuzz with bright young minds who attended a workshop facilitated by our Practice to assist them with their preparation for the oral rounds of the National Schools' Moot Competition (NSMCC).

Together with their educators, approximately 72 learners from schools across the country listened attentively to presentations and panel discussions on topics ranging from an introduction to the South African legal system, a discussion of relevant constitutional rights and principles as well as the art of mooting. Members from various practice areas assisted in bringing important theoretical legal concepts to life for both learners and their educators, while Nadine Fourie and Benny Makola from the Johannesburg Society of Advocates provided the learners with many useful tips on how to effectively prepare

and present argument. The learners also thoroughly enjoyed engaging with associates and candidate attorneys alike during the breakaway group sessions.

The workshop culminated in an address by guest speaker Acting Justice Matojane from the Constitutional Court who motivated learners with a presentation of his personal journey to becoming a Justice in our country's highest court. In addition, Justice Matojane sought to sensitise the learners to the significance of our Constitutional regime in achieving justice. The event was rounded off with an informal dinner hosted for the learners by the firm and the University of Pretoria.

Feedback received from learners and educators confirms that the seminar was a great success and that it inspired many of the attendees to consider a career in law.

In a tense final held at the Constitutional Court on Sunday, 11 October the two (all girl) teams which made it through the semi-final rounds, faced a barrage of difficult questions from the four Adjudicators (Justice Van der Westhuizen presiding) with consummate grace, confidence and composure. In the end it was only a fraction of a point which separated the winners (Claire Rankin and Claire Marie Macheke from Springfield Convent Secondary School) from the runner's up (Chandre Smith and Katelyn Chetty from Gibson Pillay Secondary School). As with last year the standard of the learners participating in the national rounds of the Competition was high and the level of passion, dedication and determination displayed by most was heartening. As a result CDH is once again offering a generous bursary to the four finalists and we hope we may one day see them entering the profession.



## IMMIGRATION SEMINAR

28 JULY 2015 SEMINAR



Immigration Act and Refugees



presented by

**MICHAEL YEATES**

a director in CDH's

**Employment Practice,**

with a specialty in Immigration Law.

On the morning of 28 July 2015 our Practice hosted a seminar at our Johannesburg Office on the Immigration Act and Refugees in collaboration with our Employment Practice and ProBono.Org. The seminar was presented by Michael Yeates, a director in CDH's Employment Practice, with a specialty in Immigration Law.

In our experience in assisting many refugees over the years, the bounds between refugee law and immigration law is often not well understood by lay persons or even many lawyers. As a result foreigners often seek to obtain refugee status in circumstances where they may not qualify for it and would be better suited applying for some form of immigration status. Accordingly, we felt there was a need for someone like Michael with specialist expertise in both areas of the law, to help build awareness amongst practitioners, NGO's and community organisations working in the field. Michael gladly and generously obliged.

Topics covered at the seminar ranged from the procedural requirements necessary to apply for various types of visas from work visas to relative's visas and from spousal visas to study visas to the discourse surrounding illegal, undesirable and prohibited persons. In addition, forms

of direct and permanent residence were discussed and an overview of the new amendments to the Immigration Act and Regulations was provided. In respect of refugee law in particular, developments relating to the Zimbabwean Special Dispensation permit were considered as were the differences between economic migrants and refugees.

The seminar was well-attended by various representatives of law firms, paralegal institutions and NGOs including Lawyers for Human Rights, the Legal Resources Centre and the Wits Law Clinic. It proved to be an interactive and engaging experience in which a number of topical questions were raised as a result of attorneys' and activists' experiences in the discipline. Issues around the independence of services offered on behalf of the Department of Home Affairs by VFS Global were raised through audience discussion as were challenges experienced in respect of converting visas and dealing with spousal permits. All in all, the seminar provided attendees with a concise and current overview of immigration law and related refugee matters relevant to South Africa today.

Our sincere thanks go to Michael Yeates for all the time and hard work he put into preparing and presenting the seminar.

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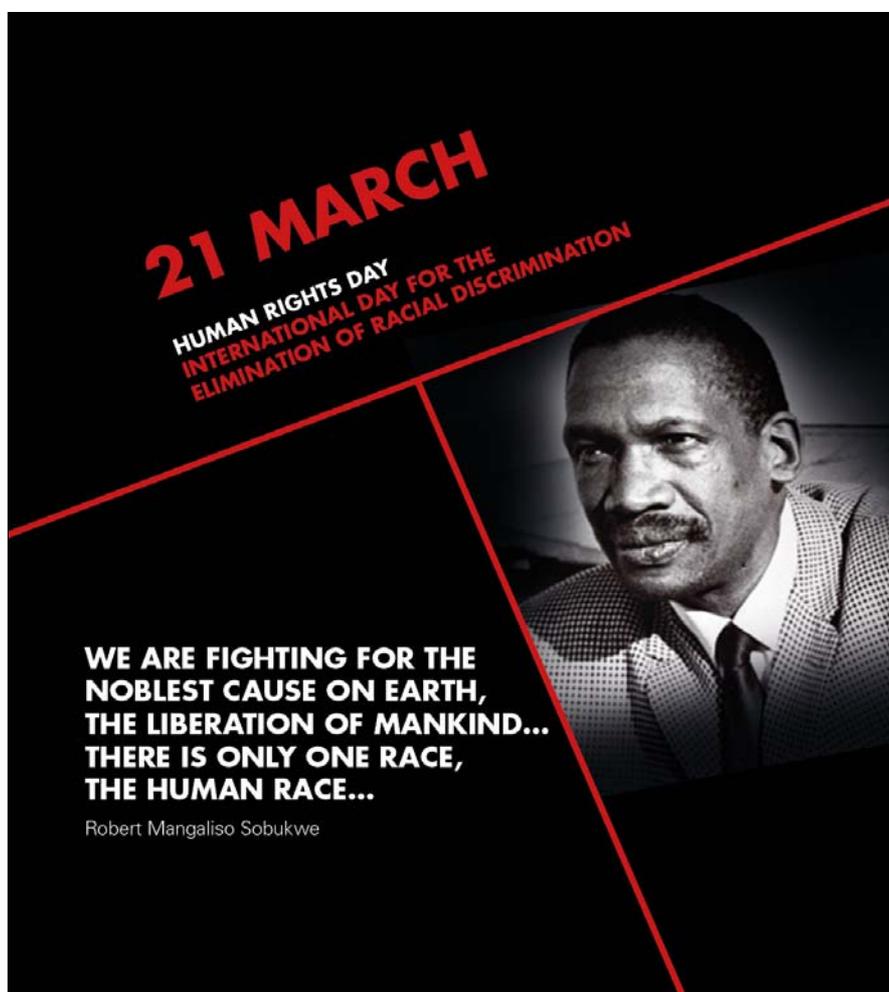
## PROBONO.ORG HOUSING WORKSHOP

During the course of April 2015 Samantha Kelly, from our Real Estate Practice, presented an informative housing workshop for the community of Daveyton in conjunction with Pro Bono.org.

The workshop was aimed at providing the community with information regarding inter alia legal status, the treatment of immovable property in deceased estates and evictions.

The workshop highlighted the importance of estate planning especially in instances where immovable property and multiple beneficiaries are involved.

## INTERNAL HUMAN RIGHTS AWARENESS CAMPAIGNS



*Our Practice conducted a number of internal human rights awareness campaigns during the course of the year in commemoration of certain key public holidays/commemorative events, including Human Rights Day and Youth day. Posters, information sheets and informative quizzes were prepared in conjunction with our marketing department and circulated within the firm.*

## HUMAN RIGHTS DAY WORKSHOP

21 MARCH 2015



### HUMAN RIGHTS DAY WORKSHOP



# 120

learners and educators from disadvantaged backgrounds

*On 21 March 2015, 19 volunteers from CDH (including CAs, Associates and the head of the Pro Bono Practice) in conjunction with Conhill Edu, spent their day hosting a Human Rights Day workshop for around 120 learners and educators from disadvantaged backgrounds.*

The workshop forms part of a training initiative set up by the Constitutional Hill Trust. With recent attacks on foreigners making news headlines, the workshop dealt with topics such as xenophobia and why it is contrary to the values enshrined in the Constitution.

Justice Edwin Cameron gave an inspiring talk in which he explored the theme of diversity with the learners and their educators. The learners were also provided with a tour of the Constitutional Court during which the symbolism infused in the architecture, interior and the art of the Court was explored. CDH prides itself in its continued annual participation in this training initiative to commemorate Human Rights Day.



## PROBONO.ORG AWARDS CEREMONY



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## MEDIA ARTICLE

*In July 2015 our Practice submitted an article about our various refugee matters for publication in the Pro Bono Section of 'Without Prejudice' in which we highlight some of the systemic problems encountered by asylum seekers in the processing of their applications for refugee status.*

*The article was well received and published in the September edition.*

## COME TOGETHER HOME END OF YEAR PARTY

The Come Together Home (“the Home”) is a foster home for orphans in the Sebokeng area and serves as a base from which caregivers go out into townships to feed and assist child headed homes. The Home remains one of CDH’s key CSI beneficiaries and we continue to provide significant financial and other support to the Home.

As part of CDH’s ongoing commitment to the Home, on the 5th of December 2015 we hosted the much anticipated annual “Come Together Home End of Year Party” at the Home in Sebokeng for a group of approximately 40 children, including the foster children resident at the Home as well as other children who attend a crèche run by the Home for the surrounding community. With generous help from other CDH staff members, we were able to ensure that the children enjoyed themselves tremendously.

The children experienced a day of dedicated fun and entertainment with a range of activities such as face painting and balloon sculpting having been organised for them. Without doubt playing on the jumping castles was the highlight of the day.

In true Christmas spirit we were able to collect a sizeable donation from the firm and staff members for the Home. Gifts were given to all the caregivers and children residing at the Home in order to brighten up their festive season.

A special thank you to those staff members who dedicated their time to planning the party and all who volunteered their time to celebrate with the children on the day.



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