



Extractive Industries
Transparency Initiative



POLICY BRIEF

THE CASE FOR
CONTRACT
TRANSPARENCY



ASIA



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Why contract transparency matters

Contracts, licenses and associated agreements are important elements of a country's legal framework. They explain the rights and obligations of all parties involved in the exploration and production of oil, gas and minerals.

By shedding light on the rules and terms that govern extractives projects, contract transparency can help curb corruption and empower citizens to assess whether they are getting a good deal for their resources. Publication of contracts gives visibility on how much revenue is expected to flow to national and subnational governments. This information can be crucial in contexts where precious revenues are impacted by market volatility and emerging energy transition policies.

The EITI Standard requires EITI implementing countries to disclose all contracts and licenses that are granted or amended from 1 January 2021. This requirement reflects how contract transparency in the extractive sector has become a global norm in recent years.

When EITI countries commit to contract transparency, they accept to publicly disclose the full text of any contract, license, concession or other agreement governing the exploitation of oil, gas and mineral resources.

30+

EITI countries have disclosed some or all mining, oil or gas contracts



PHOTO CREDIT: DOMINIK VANYI

Benefits of contract transparency

16

companies have made a public commitment to support contract transparency



Benefits for citizens

Contract transparency can be a powerful antidote to corruption in resource-rich countries.

- Contract transparency helps **all parties to understand the terms** on which oil, gas and mining activities take place.
- Communities affected by extractives operations can see **how much revenue to expect from companies**.
- Communities can see what **subsidies and tax incentives** are awarded to companies.
- Citizens can understand what obligations are placed on companies to protect communities and the **environment, make social payments or provide local employment**. Knowing this information enables citizens to monitor whether extractive companies are fulfilling their obligations.



Benefits for companies

Publishing the rules and terms of extractive projects supports responsible investment.

- Contract disclosure makes it easier for companies to **show that they comply** with their financial and social obligations, helping them to address reputational risks.
- Disclosing the terms of contracts supports open, fact-based dialogue that can **build trust, reduce conflict** and **reinforce a company's social license to operate**.



Benefits for governments

Publishing the terms of extractive contracts helps governments maximise revenue from the extractive sector to meet development needs.

- Contract disclosure incentivises government officials to arrange **fair contracts with reputable companies**, drafted in a way that is consistent with the country's legal framework.
- Opening contracts deters officials from concluding agreements that are **disadvantageous** or result in personal gain.
- Open contracts can be **compared**, helping to create a level playing field for business.
- Contracts that are disclosed can be **more easily enforced**. All agencies and ministries within government become aware of the contract terms and can collaborate more effectively to ensure that contract terms are maintained. Taxation rules are more likely to be applied accurately, thus contributing to domestic resource mobilisation.

Common myths about contract transparency

Myth	Response
<p>Contracts are too technical and complex for the public to understand.</p>	<p>While contracts in the extractive sector are not always easy to interpret, civil society organisations, accountability initiatives and the media can perform an intermediary role in scrutinising and explaining them.</p>
<p>Contracts cannot be disclosed because they contain commercially sensitive information that could harm competition.</p>	<p>Research shows that contracts rarely contain information that is commercially sensitive. Furthermore, there is no universal agreement on what constitutes commercially sensitive information. Companies such as Rio Tinto¹ and Total,² have taken the position that legal and commercial issues are addressed when host governments decide to publish contracts.</p>
<p>Contract transparency makes it difficult for the government to negotiate good deals.</p>	<p>Public and commercial scrutiny provides an incentive for parties to conclude sustainable deals that lead to a more stable business environment. Governments are in a better position to negotiate good deals when they have access to contracts other than their own. Contract publication can reduce risks of negotiating contracts that deviate from legal and fiscal frameworks.</p>
<p>Contracts contain confidentiality clauses which are insurmountable and cannot be addressed.</p>	<p>According to a 2009 report on oil, gas and mining contracts, most confidentiality clauses do not refer to contracts.³ One potential solution is that parties to the contract can be asked to execute waivers of confidentiality.</p>
<p>License regimes do not require contract disclosure.</p>	<p>Some licenses may include project-specific terms that vary from other contracts. The EITI Standard applies equally to license regimes. The onus is on the country to substantiate any claim that there is no deviation from standard terms.</p>

Contract transparency as a global norm

More than half of EITI implementing countries have published extractive contracts with varying levels of disclosure. International institutions such as the International Monetary Fund (IMF) and the OECD support the principle of contract transparency and recognise its benefits.

There is also strong support from private sector forums like the International Council on Mining and Metals (ICMM) and The B Team, as well as leading development finance institutions and international governance organisations like the UN and the International Finance Corporation (IFC).

Further, a growing number of oil, gas and mining companies endorse contract transparency.⁴ Many EITI supporting companies have supported contract transparency either through disclosure practices, policies or statements of support, including BHP, BP, Equinor, Freeport-McMoRan, Kosmos, Newmont Rio Tinto, Shell, Total and Tullow.

“We believe that the only way for a level playing field to be guaranteed is for governments to disclose contracts (and to do so in a systematic way), either through an EITI requirement or through government regulation.”

**TOM BUTLER,
CEO
INTERNATIONAL
COUNCIL ON
MINING AND
METALS**



PHOTO CREDIT: TULLOW OIL PLC

Requirements in the EITI Standard

Contract transparency under the EITI Standard means the disclosure of the full text of any contract, license, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources.⁵ This includes the full text of any annex, addendum or rider which establishes details relevant to the exploitation rights or the execution thereof, as well as the full text of any alteration or amendment to these documents.⁶

Under Requirement 2.4 of the EITI Standard, implementing countries are required to:

- Disclose any contracts and licenses that are granted, entered into or amended after 1 January 2021.
- Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This includes:
 - A description of whether legislation or government policy requires or prohibits disclosure of contracts and licenses
 - An explanation for deviation from policy, if any
 - An explanation of where the government policy is embodied
 - Documentation of the multi-stakeholder group's discussion on what constitutes government policy on contract disclosures.
 - Reforms relevant to the disclosure of contracts and licenses planned or underway
 - An overview of which contracts and licenses are publicly available including a list of all active contracts and licenses with corresponding links
 - An explanation of legal or practical barriers where contracts cannot be published

Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals (entered into before 2021).

The multi-stakeholder group is expected to agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure. This plan will be integrated into work plans covering 2020 onwards.

Legislating contract disclosure in countries

EITI processes are helping countries advance contract disclosure in many ways, including in sector-wide legislation. Over the past ten years, the number of countries adopting law that favour disclosure has increased significantly, demonstrating that contract transparency is becoming more commonplace.

AFGHANISTAN: The petroleum contracts state: “The Ministry shall have the right to keep a copy of this Contract in the Hydrocarbons Register, publish and keep publicly available and distribute to provincial offices such information and reports on the Contract, related documents and the Contractor as is required pursuant to the Hydrocarbons Law....” These contracts have been published by the Government.

DOMINICAN REPUBLIC: The Dominican Republic passed legislation requiring that all acts and activities of the “Public Administration” be made public. This includes mining contracts.

MEXICO: Mexico has targeted legislation on disclosure of oil and gas site assignments to the state-owned company Pemex as well as contract allocations to private investors in the hydrocarbon sector.

MONGOLIA: The contract for the most important mine in the country—the Oyu Tolgoi copper mine—states in clause 15.21 that “This Agreement shall be made public.” The government has published both the original 2009 contract and the 2015 contract amendment.

UKRAINE: Legislation has been developed with the aim of harmonising Ukraine’s legislation with the EITI Standard and the EU Accounting Directive. Law 2545-VIII mandates the disclosure of payments at the project level, the ultimate beneficial owners of companies and “material” elements of contracts relating to the extractive industry, such as social obligations, building infrastructure and barter arrangements.

Key components of legislation requiring contract disclosure:



Scope of contracts/licenses to be disclosed



When to disclose



Format of disclosed contract



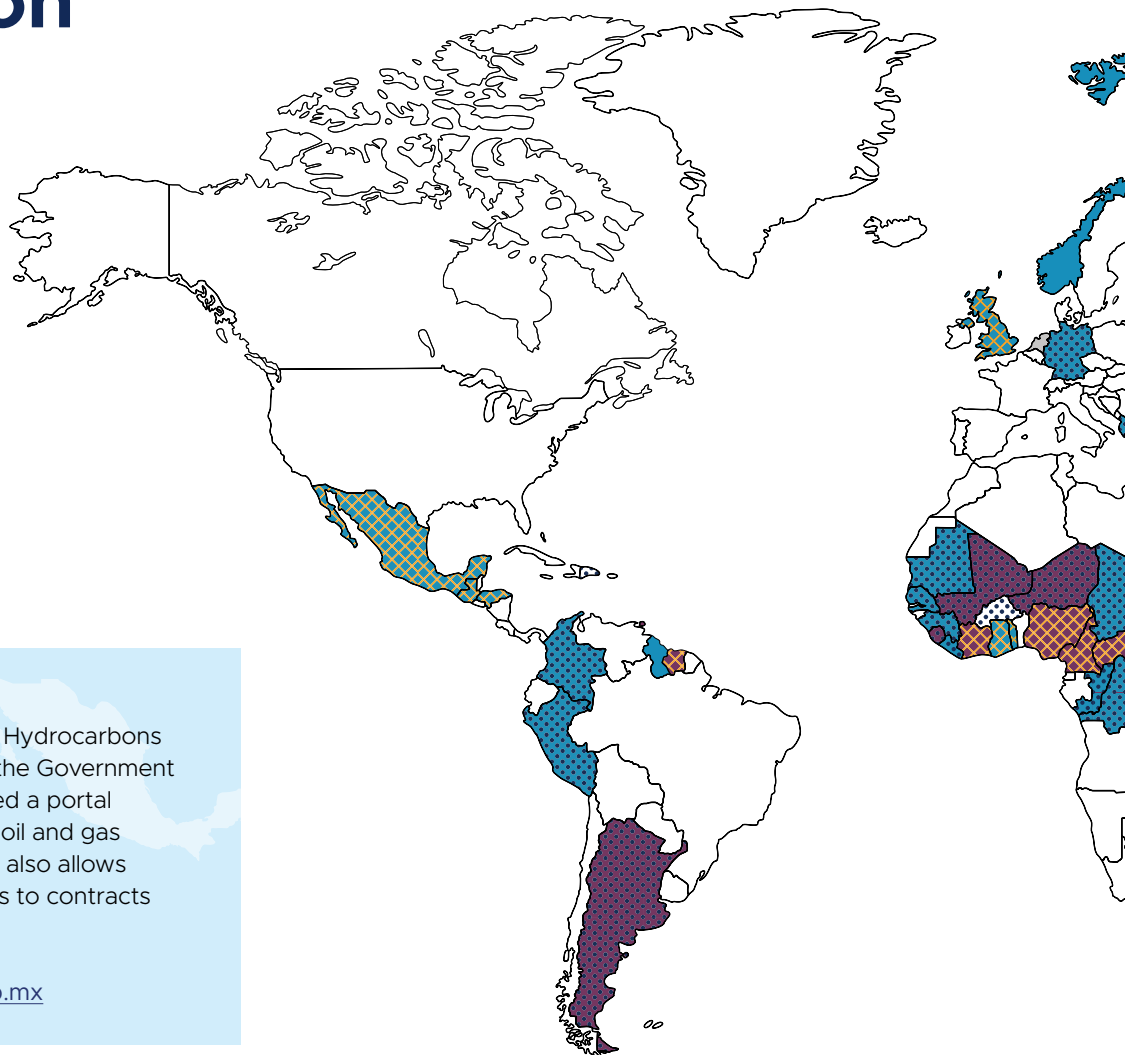
Means of publication



Contract transparency in action

Key

- Oil and gas contracts**
- Some/all contracts
 - No contracts
- Mining contracts**
- Some/all contracts
 - No contracts



MEXICO

Through its National Hydrocarbons Commission (CNH), the Government of Mexico has created a portal that not only makes oil and gas contracts public, but also allows users to see changes to contracts over time.

> rondasmexico.gob.mx

PERU

Peru discloses oil and gas contracts through an online, publicly accessible portal.

> perupetro.com.pe

UKRAINE

The State Service of Geology and Subsoil of Ukraine publicly discloses subsoil contracts issued from 2016 onwards.

> geo.gov.ua

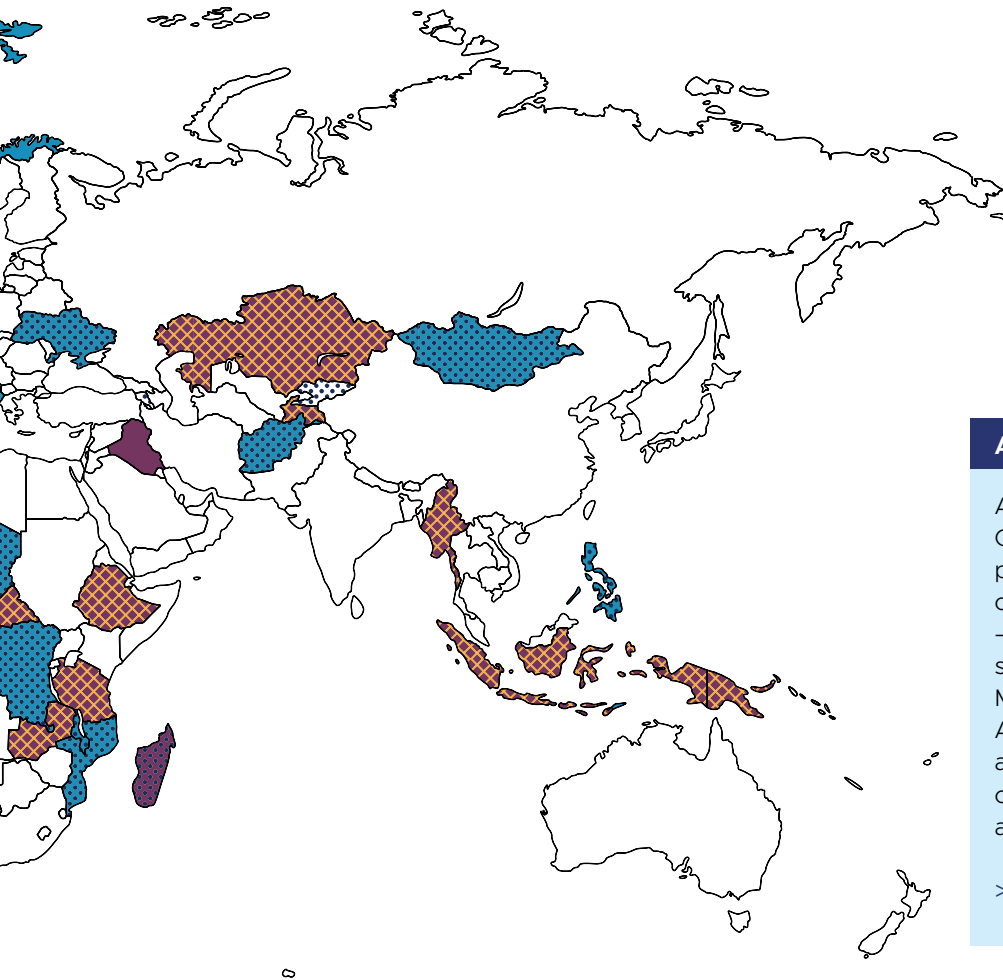
GHANA

Ghana's journey to contract disclosure has been possible due to combined efforts by governments, companies and civil society. In February 2018, the government launched an online public register with 18 major petroleum contracts, responding to increased demands for contract transparency.

> ghanapetroleumregister.com

900+

*petroleum and
mining contracts
have been
published in EITI
implementing
countries*



ARMENIA

Armenia amended its Subsoil Code in 2017 to require publication of extractive contracts by Ministries – a reform that was heavily supported by Armenia’s EITI Multi-Stakeholder Group. All contracts are now accessible through the website of the Ministry of Infrastructure and Natural Resources.

> minenergy.am

PHILIPPINES

In the Philippines, the civil society organisation involved in the multi-stakeholder group (Bantay Kita) has helped local communities and indigenous peoples understand and evaluate mining contracts. This has empowered stakeholders in mining areas to monitor companies’ compliance with contractual obligations and has informed discussions on local development projects.

> contracts-eiti.dof.gov.ph

CHAD

As a fragile state, Chad lacks the resources to systematically publish contracts and licenses online. Yet commitment from the government, along with the national secretariat’s innovative and solution-oriented approach, has paved the way to contract transparency. Following a decree in November 2019, ITIE-Chad collated existing contracts in open data formats, available online.

> itie-tchad.org/mini-cadastre

Publication and use of contracts

Public contracts are only truly “public” if they are easy to find, browse, search and use. If governments do not seek to improve access to meet these criteria, increased disclosure may not achieve the desired outcomes.

The EITI’s requirement on contract publication offers an opportunity to move from policy to practice.⁷ Publication of contracts is technologically simple and not labour intensive. Some EITI countries publish extractive contracts through government platforms such as Armenia and Mexico. Others publish contracts through a dedicated contracts portal, such as Ghana and the Philippines. Some companies also publish contracts on their websites, including Kosmos, Rio Tinto and Tullow.

Using contracts to inform debate and strengthen accountability

Contracts yield valuable information to communities who wish to see how revenue from their resources flows to regional or local governments. They can be analysed and used to help citizens understand and monitor performance on the obligations placed on companies, including measures to protect communities and the environment, make social payments, provide local employment or use local suppliers.

GUYANA: Civil society organisations in Guyana have analysed publicly available Production Sharing Contracts to raise concerns regarding exemptions on capital gain tax.

MALAWI: In Malawi, a 2017 report by civil society organisations analysed the terms of disclosed production sharing agreements and [inconsistencies with the Model Production Sharing Agreement \(PSA\)](#).

MOZAMBIQUE: In 2019, civil society in Mozambique used the disclosed 2006 Exploration and Production Concession Contracts (EPCCs) for the Rovuma Basin to conduct an [independent government revenue forecast](#).⁸

TANZANIA: Africa Energy Tanzania has used its [disclosed PSAs](#) to explain the terms of their contract and its implications through a [public FAQ](#). Tanzania has introduced a contract disclosure law.

2400+

petroleum and mining contracts and associated documents are available on [resourcecontracts.org](#), a database hosted by the Natural Resource Governance Institute (NRGI).

CASE STUDY

The Philippines **Addressing confidentiality concerns**

An early mover on contract disclosure, the Philippines launched a dedicated [contracts portal](#) in 2015, which extracts information from PDFs to allow for more interactive use. As of January 2021, the portal contained 155 extractive contracts.

Yet the issue of confidentiality clauses stirred debate among stakeholders, with some arguing that these pose a barrier to disclosure. In 2015, the Philippines' EITI Multi-Stakeholder Group facilitated a discussion among government, companies and civil society to reach a common understanding of alleged confidentiality restrictions on the disclosure of petroleum contracts. The dialogue prompted an examination of both laws and contractual provisions.

They concluded that the confidentiality clauses in these contracts do not apply to the entire contract, but only to certain financial information, technology and negotiation procedures. Even with such confidentiality clauses, they concluded that disclosing these terms cannot be regarded as unduly divulging trade secrets and proprietary information that could affect the competitiveness of the Philippine petroleum industry. The consortium's legal team confirmed that contract disclosure would not cause any harm and is in fact aligned with the 1987 Philippine Constitution to prevent corruption and inequitable agreements.

150+

*extractive
agreements
are disclosed
through the
Philippines'
contracts portal*

CASE STUDY

Mongolia **From public demand to public monitoring**

Contract transparency has been a matter of public interest in Mongolia since 2013, largely because civil society wanted to know how extractive projects benefit citizens and local communities.

Civil society organisations played a key role in campaigning for Community Development Agreements (CDAs) – contracts which are negotiated directly with local administrations to ensure that communities benefit from investment projects. Mongolia has subsequently seen 88 new CDAs between 2012 and 2019.

These CDAs and other contracts are publicly available on a dedicated [contracts portal](#), which the government launched in 2017 following a number of policy clarifications and reforms. As of January 2021, over 800 contracts are systematically disclosed through the portal. By providing public access to CDAs and extractive agreements, Mongolian citizens can monitor the terms and hold companies and local governments accountable.

Endnotes

- 1 See “Q&A with Rio Tinto”, eiti.org/blog/qa-with-rio-tinto
- 2 See “Q&A with Total: the first major to adopt contract transparency policy”, eiti.org/blog/qa-with-total-first-major-to-adopt-contract-transparency-policy
- 3 Rosenblum and Maples, Contracts Confidential, 23.
- 4 See Oxfam’s report, “Contract Disclosure Survey 2018”, oxfam.org/en/research/contract-disclosure-survey-2018.
- 5 See EITI Requirement 2.4, eiti.org/document/eiti-standard-2019-r2-4.
- 6 See EITI Board decision 2020-69/BC-295, eiti.org/board-decision/2020-69.
- 7 See the EITI’s guidance on implementing Requirement 2.4 on contract disclosure: eiti.org/document/guidance-note-7-on-contract-transparency-checklist
- 8 See Oxfam’s report, “Government Revenues From Coral Flng” oxfamamerica.org/explore/research-publications/government-revenues-coral-flng/

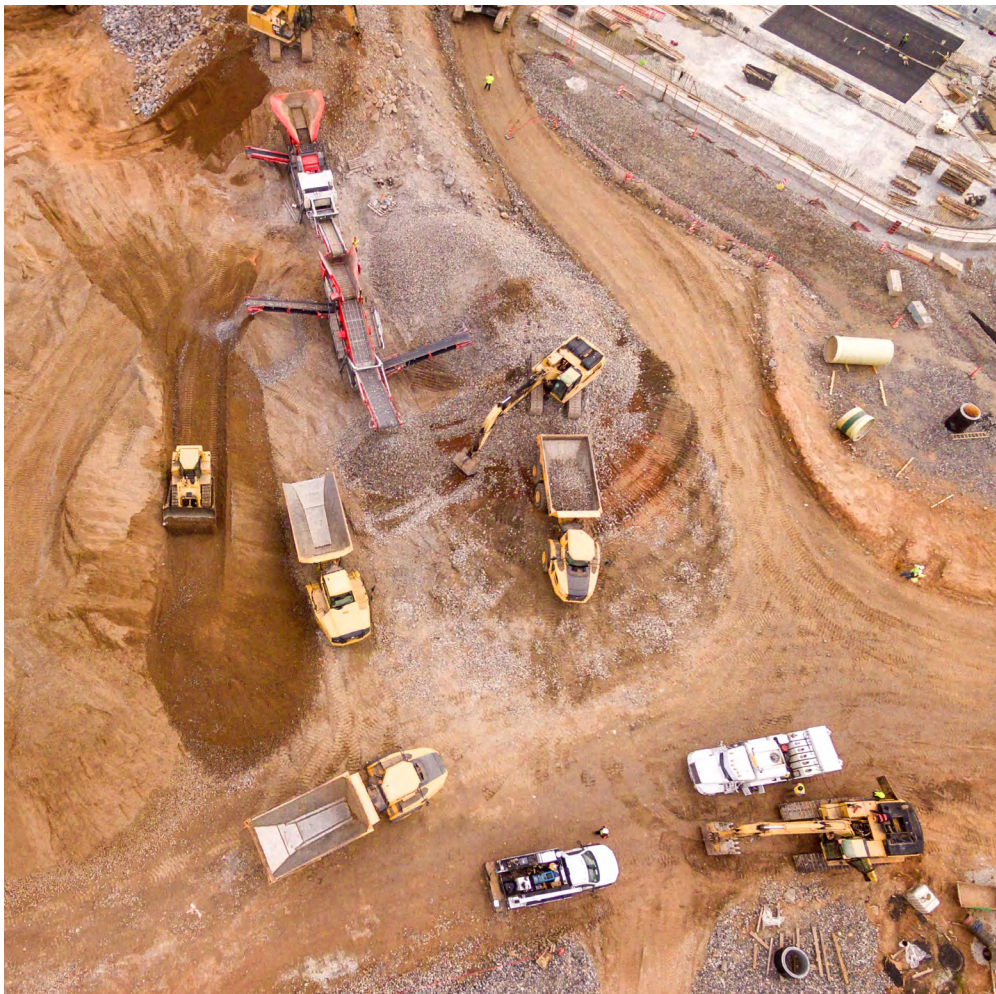


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