

Gender equality in the context of transitional justice in DRC: state of play of legal reforms

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The Democratic Republic of Congo (DRC) has experienced violent conflicts since the mid of 1990s. From 1996 to date, the country is grappling with more than 250 armed groups located in its eastern part. The same dynamics becomes nascent in the western part. The war that occurred from 1998 to 2003 has been described as the deadliest conflict after the World War II.¹ To date, the activism of armed groups increased the number of victims whose majority is constituted by women and children in the provinces of North-Kivu, South-Kivu and Ituri. The transitional justice process entrenched in 2003 with the creation of the truth and reconciliation commission to deal with the war legacy has not yielded expected results. The TRC was abruptly removed from the 2006 constitution as an institution to support democracy. In this jeopardy, women and children are still importantly affected: displacement, rapes and other human rights violations alike. How does one address issues of women victims within a society dominated by the patriarchy?²

The patriarchy structures gender inequality between men and women. This situation seems aggravating in the context of insecurity and fragility. In DRC, socio-cultural norms, attitudes and beliefs that reinforce gender inequality and gender discrimination are strong and persistent constraints to gender equality, female empowerment, prevention and response to gender-based violence. The DRC ranks 148th out of 149 in terms of gender gap in educational attainment the World Economic Forum says.³ From the 2019 UNDP reports, one learns that Congolese women benefit from 5.3 years of schooling compared to 8.4

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See IRC, *Crise au Congo : 5,4 Millions des Morts*, disponible au <http://www.rescue.org/news/crise-du-congo-54-millions-de-morts-selon-une-tude-de-l-4332> accessed in November 08, 2023.

See Catherine J. Nash, in *International Encyclopedia of Human Geography* (Second Edition), 2020 available at <https://www.sciencedirect.com/topics/social-sciences/patriarchy> accessed in November 8,

1 See IRC, *Crise au Congo : 5,4 Millions des Morts*, disponible au <http://www.rescue.org/news/crise-du-congo-54-millions-de-morts-selon-une-tude-de-l-4332> accessed in November 08, 2023.

2 See Catherine J. Nash, in *International Encyclopedia of Human Geography* (Second Edition), 2020 available at <https://www.sciencedirect.com/topics/social-sciences/patriarchy> accessed in November 8, 2023.

3 See World Economic Forum. 2018. *The Global Gender Gap Report 2018*.

years for men. As a result, only 37% of women have attended secondary school compared to 66% of men. Because of unequal access to education, only 64% of Congolese women are literate compared to 88% of men.⁴ To change this shambolic panorama, the Congolese Government has entrenched a string of reforms since the early 2000s.

This paper aims at portraying the state of play of legal reforms conducted so far to address gender inequality in the DRC. It also demonstrates what the Congolese government should do to promote gender while struggling to implement the holistic approach of transitional justice. It then describe the current situation of transitional justice process in DRC (1); enlightens the sociological situation of women in health, education, democracy and governance and conflicts (2); details legal reforms to promote gender (3) and concludes with recommendations to further improve gender mainstreaming in public affairs in the Congo.

1. Transitional justice and gender in DRC

Conflicts in DRC are still ongoing and the number of victims is still climbing everyday. We always recommend the implementation of the holistic of transitional justice to address many issues at the origin of the permanent instability in the country. The right to truth for victims, the prosecutions of international crimes, the clemency upstream (amnesty) and downstream (grace and conditional liberation), individual or collective reparations and guarantees of non-repetition constitute the holistic approach of transitional justice. Implementing them simultaneously or by sequence depend on each country context. The holistic approach would bring the Congo at the height of the international standard of human rights.

To date, the country still not have a clear national strategy for transitional justice. However, there are some signs that predict a better future for such a process. This is the case of the promulgation of the law n°22/065 of December 2022 fixing the fundamental principles related to the protection and the reparation in favor of victims of sexual violence from conflicts and in favor of victims of crimes against peace and the security of the humanity. The Congolese Government has also created in the course of 2023 the reparations fund for victims of sexual from conflicts (FONREV).

Beside FONAREV, the DRC's government has created the inter-institutional commission for aid to victims and support of reforms known by its French acronym CIAVAR (*Commission Inter-institutionnelle d'aide aux Victimes et d'appui aux Reformes*). As statistics will show later in this paper, women represent the majority of victims and should benefit from the support of FONAREV and CIAVAR. In creating new institutions to address reparations issues for gender based violence victims, the DRC is giving consideration to gender issues. However, the budget allocated to those structures is yet to be known. How many money will be allocated to these transitional justice institutions? How will the money

4 See UNDP. 2019. Democratic Republic of Congo: Human Development Indicators.

be managed? Nevertheless, one year has not passed since their creation. This is to say that it is too early to conduct any assessment of their actions.

2. The current situation of women vis-à-vis men in various sectors of the Congolese society

Traditionally in African societies, women do not have power despite the crucial role they play in everyday life. Dominated by the patriarchy, the Congolese society grants more power to men than to women. Women are then excluded from decision-making positions in public and private affairs. Across the country, women rights are violated such as the right to inherit, the right to freedom of marriage, the right to start a private business, etc. Despite severe legal reforms that will be described later on, let us say that a lot of efforts remain necessary to improve gender mainstreaming in health, education, governance and democracy as well as in conflicts.

2.1. Gender and health

The access to health for both men and women is guaranteed by the Constitution but the reality tells the contrary across the country. The access to health service remains expensive for a population living in severe poverty. If the country has been *polio-free* for four years,⁵ this great improvement should not overshadow the difficulty that women and children are still facing to get basic healthcare. The 2012-2014 demographic and health survey noted an increase in the total fertility rate from 6.3 births/woman to 6.6 births/woman.⁶ The high fertility rate means the low contraceptive use by women which moderately improved from 5.8% to 7.8% from 2007 and 2014.⁷ It might also mean the high rate of early marriages and age of first pregnancy.

The risk of maternal mortality becomes consequently high and the reduction in educational attainment significant. Several women do not have access to reproductive health services in DRC.⁸ Several factors make this difficult situation persisting *inter alia* the large distances which limit access to basic services;⁹ the poverty of users limits access

5 See <https://www.usaid.gov/democratic-republic-congo/global-health> accessed on November 11, 2023.

6 See Demographic and Health Survey in the Democratic Republic of Congo (DHS-DRC II) (2013-2014)

7 See Guengant, et al. 2014. Bénéficiaire du Dividende Démographique? Replacer la population au centre des trajectoires de développement de la Démocratie du Congo, Étude financée par la Banque Mondiale et l'AFD.

8 *Ibid.*

9 See World Bank. 2017 (draft). Congo, Democratic Republic of – Addressing Gender in DRC Inputs for the Country Partnership Framework, Report No: AUS0000375, October 2017.

to health services especially for women and the youth;¹⁰ different cultural practices that affect behaviors and feed bad perceptions and health facilities that are neither gender nor youth-friendly.¹¹ *Last but not least*, the lack of sex-disaggregated data for prevention of infectious diseases¹² and future planning.

2.2. Gender and education

The access to education is a right for everybody and it is gender neutral. But men have more access than their counterparts female. The World Bank report on gender gap in DRC is very telling:

*“the DRC ranks 148th out of 149 in terms of the gender gap in educational attainment. On average, Congolese women benefit from 5.3 years of schooling compared to 8.4 years for men. As a result, only 37% of women have attended secondary school compared to 66% of men.”*¹³

These alarming figures were later on confirmed by the UNDP report on human development indicators in DRC that stated the following:

*“because of unequal access to education, only 64% of Congolese women are literate compared to 88% of men.”*¹⁴

The gender analysis conducted by the United States Agency for International development (USAID-DRC) in 2020 outlines majored factors at the origin of such an imbalance in the access to education between male and female.¹⁵ Amongst factors the large distances which increase exposure to violence¹⁶; the inability to pay school fees due to severe poverty; black traditional practices such as early mariages evidenced by the Congolese 2019 multiple indicator cluster survey (MICS 2019) that indicates the highest rate of early marriages in the provinces of Kasai Oriental (57%), Kasai (51%), Kasai Central (51%), and Tanganyika (49%); the school based gender violence with the harmful practice

10 See Insanally, Sarah, Catherine Greene, Neha Acharya, Cristine Better, Abt Associates Inc.; Marie-Claude Mbuyi and Nite Tanzam, Pathfinder International. “Gender Analysis and Implementation Strategy.” Prepared for USAID’s Integrated Health Program, December 10, 2018

11 *Ibid.*

12 *Ibid.*

13 See World Economic Forum. 2018. The Global Gender Gap Report 2018.

14 See UNDP. 2019. Democratic Republic of Congo: Human Development Indicators.

15 USAID-DRC, report on gender analysis, 2020, p20.

16 See World Bank. 2017 (draft). Congo, Democratic Republic of – Addressing Gender in DRC Inputs for the Country Partnership Framework, Report No: AUS0000375, October 2017.

of “sexually transmitted grades”¹⁷; the lack of gender-sensitive pedagogy¹⁸; insufficient integration of water, sanitation and hygiene (WASH) activities in schools; school dropouts due to delinquency and early pregnancy¹⁹; weak capacity and lack of gender balance among all institutions across the country²⁰ and the importance of education participation in decision-making.

2.3. Gender and governance and democracy

The law regarding women participation in politics is gender neutral in DRC. Discrimination is legally prohibited. However, there is no quota policy to facilitate women accessing positions at the parliament and senate. The electoral reform passed 5 years ago foresaw public financial support to political parties that respect gender parity in their electoral rolls. The 2023 electoral reform provides exemption from paying deposit to political parties that respect gender parity on their electoral rolls. In the upcoming elections to be held in late December 2023, there are several political parties that have not paid electoral deposit because they respected the parity in their electoral rolls.

Despite this legislative reform encouraging women, the participation of women in politics remains low. In the second premiership of Jean-Michel Sam Lukonde as the head of government, none of the five vice-prime ministers is woman. Of 11 ministers of state, only four are women. For the rest 30 members of the Government, only five are women which brings the total to 9/46. For the deputy ministers. Of 11 deputy ministers, only 3 are women. Thus, in the Government of 57 people, only 12 are women which makes 21%, far away from 50% required by the Constitution. Moreover, it should be noted that over the last 63 years, the DRC has never had a female as a prime minister.

Data from the Inter-parliament union and counterpart international reveals that in the last three legislative elections (2006-2011-2018) at the national and provincial levels, the number of women parliamentarians has never reached higher than 11%.²¹ It is currently at 10%.²² Interviews with key actors of civil society and policy makers reveals several factors behind such as bad performance: the lack of financial resources; traditional gender norms and stereotypes; burden of reproductive work; weak enforcement of laws, policies

17 See Search for Common Ground. 2012. “Education and Conflict.”

18 See <https://www.camb-ed.com/intdev/article/480/no-sustainable-change-to-drc-education-without-robust-governance> accessed in November 12, 2023.

19 See Multiple Indicators Cluster Survey (MICS) 2019. It indicates the following: the seven provinces that have more than 70% high-school dropouts are: Kwango, Kasaï, Ituri, Mongala, Tshuapa, Tanganyika, and Lualaba.

20 See UNICEF, 2019. Evaluation of the UNICEF Level 3 Crisis Response in the Democratic Republic of Congo, June 2019.

21 See data for 2018 come from Inter-Parliament Union and Counterpart International; data for 2006 and 2011 come from UN Women DRC.

22 *Ibid.*

and mechanisms; lack of specific laws; women's lesser access to education; women's lesser access to financial resources and lack of political ambition for women; etc.

1.4. *Gender and conflict resolution*

Statistics are very telling on how conflicts are affecting more women than men. For the last three decades starting from 1996, the DRC has experienced any kind of violence and women and children represent more than the half of victims. For instance, in 2018, the United Nations Organization Stabilization Mission in the DRC (MONUSCO) documented 1,049 cases of conflict-related sexual violence against 605 women, 436 girls, 4 men and 4 boys.²³ If armed groups account for the majority of cases, the report of the UN secretary general to the Security Council²⁴ lists cases of sexual violence perpetrated by state actors such as the army, and members of the Congolese police as well.²⁵

However, conflict affected areas are still the most affected by gender base violence. Interviews conducted to draft this paper lists factors behind the persistence of this phenomenon: socio-cultural norms, attitudes and beliefs that reinforce gender based violence; a culture of impunity for perpetrators and limited access to justice for victims and survivors; an absence of domestic violence shelters, counseling and rehabilitation services for domestic violence victims and survivors; ineffective implementation of laws prohibiting sexual and gender-based violence; lack of awareness among men of the harmful nature of sexual violence and other forms of gender based violence; a culture of silence, family and community social stigma and the fear of abandonment.

3. **Legal reforms as guarantees of non-recurrence: state of play**

In the context of transitional justice, let us say that legal and structural reforms are the best way to build guarantees of non-recurrence that will prevent injustice to re-occur. Reforms are part of transitional justice's pillars. They constitutes guarantees of non-repetition. The DRC should commit itself to build new and resilient institutions as recommended by the Guidance Note of the UN Secretary General defining the UN approach to transitional justice:

“public institutions that helped perpetuate conflict or repressive rule must be transformed into institutions that sustain peace, protect human rights, and foster a culture of respect for the rule of law. By reforming or building fair and efficient public

23 See <https://www.un.org/sexualviolenceinconflict/countries/democratic-republic-of-the-congo/> accessed in November 14, 2023.

24 See Report of the Secretary-General to the Security Council (S/2021/312) issued on 30 March 2021 quoted by MONUSCO available at <https://www.un.org/sexualviolenceinconflict/countries/democratic-republic-of-the-congo/> accessed in November 14, 2023.

25 See <https://www.un.org/sexualviolenceinconflict/countries/democratic-republic-of-the-congo/> accessed in November 14, 2023.

institutions, institutional reform enables post conflict and transitional governments to prevent the recurrence of future human rights violations.”²⁶

To remind, the reach of guarantees of non-repetition was defined by the United Nations General Assembly resolution as follows:

“Guarantees of non- repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.”²⁷

All that said, the DRC entrenched a string of reforms in the early 2000s. Several laws were then passed to improve the situation of women and restore their natural rights as any human being.

2.1. New labor law in 2002

The first striking twist in gender reforms was the suppression of the marital authorization from the labor law instated since 1967. This was the best way for the Congolese government to increase women’s revenue and representation. In fact, this legal obstacle excluded married women from the Congolese labor market. All married women who secured a job from 1967 to 2002 were meant getting the marital authorization to work and could lose it once the authorization is revoked. It was likewise in terms of entrepreneurship for the trade registrar number which was inaccessible to married women without husband’s leave. The

26 UNITED NATIONS, Guidance Note of the Secretary-General. United Nations Approach to Transitional Justice, March 2010, p.9.

27 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by the UN General Assembly resolution 60/147 of 16 December 2005, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> accessed on 14 November 2023.

same shambolic situation in the access to justice was replicated. A married woman could not sue even her own's husband once oppressed by this latter.

However, married women could be sued in justice but could never sue anybody. This structural injustice and violence lasted for 37 years letting many married women languishing under severe poverty and households' violence. Depriving married women with a job worsened their social standard of life and increased their vulnerability. The 1967 labor code favored discrimination against married women and promoted injustice. It weakened and forced them to permanent dependency vis-à-vis their husbands. From 1967 to 2002, Congolese women had two choices: either wed and become simple housewife totally subjugated to the husband or remain single woman and do the work of one's choice.

The suppression of the marital authorization was a landmark reform that inaugurated a serial of other legal reforms to redress the gender balance in the Congolese society. It empowered women and gave them the right to seek and secure a job without a marital authorization. The lack of financial resources is amongst the factors behind the low participation of women in various aspects of life. Women were hostages of their husbands and could not access any job nor resources. Women' life was subjugated to men. Before this reform, women could not even start a small trade business without their husband authorization. A comparative and sex-disaggregated quantitative study to determine how many women secured a job from 1967 to 2002 and how many of them have competed and accessed a job from 2002 to date would be helpful to understand the evolution of the gender situation in the Congolese labor market. Such a study would also facilitate new plannings.

2.2. *Gender equality in the Constitution of 2006 as revised in 2011*

The article 14, paragraph 4 of the Constitution of February 2006 provides that the state guarantees the gender parity in public institutions. It also foresees the commitment of the state to operationalized such a representation in public institutions. The representation of women should also be equitable the Constitution provides. Its article 15 commits the state to fight against gender based violence. The paragraph 2 of the same article also states that any gender based violence with the intention to destabilize, destroy a family or making a group of people to disappear is a crime against humanity and should be repressed by the law. This article gained further reality through the law n° 06/019 of July 20, 2006 modifying and supplementing the decree of January 30, 1940 on criminal code alongside the law n° 06/019 of July 20, 2006 modifying and supplementing the code of criminal proceedings.

2.3. *Law against sexual violence in July 2006*

Conflicts that sparked in DRC from 1996 to date created an atmosphere of violence against women and children. The rape became a weapon of war to fight an enemy. The war increased the vulnerability of women. To protect them, the DRC passed a new law against

sexual violence. This law revised the Congolese criminal code and the code of criminal proceedings. New offenses were created and several misconducts were also criminalized. Any romantic relation with a female under 18 years old became a rape despite the consent of the victim. The sexual majority was brought to 18 years old unlike the former Congolese criminal code that dropped it to 14. This legal reform was passed to fight against the impunity that covered perpetrators of gender based violence. This law became the instrument to implement *the zero tolerance policy* instated by the Congolese government. 17 years later on, a quantitative and a qualitative evaluation of the fight against impunity seems necessary to draw lessons for the future. In other words, it is time to know whether this new law increased the protection of women from gender based violence.

2.4. The ratification of the Maputo protocol in 2009

In its journey to further protect women rights, the country ratified in 2009 the protocol to the African charter on human and people's rights on the rights of women in Africa commonly known as *the Maputo protocol*. This human rights instrument is known to be most progressive legal instrument that effectively protect women rights across the African continent. Through this instrument, the African Union (AU) acknowledged the rights of women and girls to partake in the political process, to social and political equality with men. The protocol has the specificity of improving the autonomy of women in their reproductive health decisions. It also declares ending harmful traditional practices such as female genital mutilation. To date, the DRC is among the 44 out of 55 African Union member states that have ratified this protocol.

In July 2023, the AU kicked off the celebration of the 20th anniversary of the Maputo protocol under the theme: "Raising the Bar on Policies and Partnerships for African People."²⁸ This 20th anniversary celebration will continue till July 2024. It is the opportunity to assess how the protocol has positively impacted the African gender landscape for its 2063 agenda. For this 20th anniversary, the AU is focusing on policies, partnerships and people commonly known as 3Ps framework with promising practices. This framework brings to light three following tiers:

- Explore the Policies and legislative frameworks developed at a regional/macro level by the African Union, Regional Economic Communities (RECs) and related AU Organs and Specialized Agencies to set norms and standards on gender equality and women's empowerment, informed by global normative frameworks and the lived realities and needs of women and girls across the continent.²⁹
- Spotlight the role of strategic Partnerships and collaboration with development partners, civil society organisations (CSOs), private sector and other stakeholders and how these

28 See <https://au.int/en/newsevents/20230705/maputo-protocol-20-years> accessed in November 15, 2023.

29 *Ibid.*

partners serve as the bridge to decentralize and operationalize policies adopted at regional and national levels.³⁰

- Demonstrate the positive impact on the lives of the African People, in particular women and girls, to ensure sustainable and tangible benefits and overall improved livelihoods and development outcomes.³¹

In DRC, the ratification of this protocol generated controversies over its article 14 that recognize the right to abortion for sexually assaulted women and girls. Heavily marked by the patriarchy, it is as though the Congolese society was not ready enough to welcome this new progress. Demonstrations were held by some women rights organizations to openly call the DRC's government to not ratify this protocol. This was the case of several public demonstrations in Bukavu/South-Kivu province in August 2007 when people heard about the ratification project. The whole controversy was on the right to abort granted to victims of gender based violence.

Across the Congolese society, granting such right means that all pregnant teenagers under 18 years have got the right to access to medical abortion. This protocol has then given therapeutic dimension to the right to abortion while abortion is still considered as a crime in the Congolese culture dominated somewhat by conservative values. 14 years after ratifying the Maputo protocol, the DRC is struggling to implement this right. However, it is still difficult for a woman or a girl to ask for abortion at a given hospital because the medical personnel will hesitate. Outreach campaigns to the Congolese medical personnel would improve the situation.

2.5. *The parity law n° 15/013 of August 1, 2015*

In August 2015, the DRC promulgated the law n°15/013 of August 1, 2015 to implement the gender parity. This law determines the modalities of implementing women rights in all aspects of life in DRC. Amongst others innovations, the law commits the state to ensure the education of pregnant teenagers: being pregnant should no longer be considered as an obstacle to access schools provides the article 10 of this law. This innovation is crucial for millions of Congolese teenagers to pursue their studies despite falling pregnant. Usually in DRC, the pregnancy stops the schooling process for a girl and not curiously for a boy. In spite of such a legal reform, facts do not follow the law. Grassroots outreach would be helpful to bring back to school most of those unmarried mothers. Moreover, the article 30 of this law provides that political parties that not respect parity in composing their electoral rolls are not eligible to access public funds though public funds are not even provided to those that respect it. Nevertheless, let us take it as a legal progress. Such a provision is also a gender incentive to increase women participation in politics.

30 *Ibid.*

31 *Ibid.*

2.6. The revising of the family code in 2016

The Congolese family code dates back to 1987. This code replaced the *code civil livre I* inherited from the colonial times. This code was promulgated after a nationwide inquiry to understand all Congolese ethnic customs related to family issues. From the gender standpoint, this family code contained numerous discriminatory provisions against women such as the marital authorization for married women to either access a job or start a personal business, recognizing the exclusive role of administering family properties to men despite the matrimonial regime; considering married women as incapables at the same level as minors; etc. This code in its former version was enslaving and impoverishing women.

Nevertheless, the family code in its 1987 version did not discriminate women about the right to inherit even if several customs are still against it. It is only in 2016, 29 years later that the family code was finally revised. To name only a few, numerous gender innovations were made by the Congolese legislator. Following the labor law of 2002, the marital authorization was removed and women left the list of incapables. Married women are now considered as partners of their husbands instead of simple submissive people. There is now the obligation for the couple to take common decision to alienate the land and disburse more than 300\$ US as well as other things alike (article 499 of the Congolese family code).

2.7. The law n°18/035 of December 13, 2018 on fundamental principles related to public health

Women right to reproductive health has been legally recognized through this legislative reform. Several innovations were passed to protect the reproductive health of women. Before 2018, Congolese women were denied the right to decide on the family planning. The article 80 of this law introduces the medical assistance to procreation for infertile couples. The article 81 provides the right to reversible and irreversible contraception and women can freely choose which method they prefer. For legally married couple, they have to decide jointly. In case they disagree, the decision of the concerned person will prevail. Usually, all reproductive health issues are around women. They have now been granted the right to have the final decision. In article 84, married women have the final decision to determine the number of children and on the spacing period. Nevertheless, the voluntary interruption of pregnancy is prohibited by the article 85. It is not considered as a family planning. The therapeutical abortion has also been maintained once it aims at protecting mother's life at article 86, paragraph 1. The paragraph 2 of the same article introduces the eugenic abortion in case of congenital malformations of the fetus incompatible with life.

2.9. The Ordinance-law n°23/023 of September 11, 2023 modifying and supplementing the Criminal code

The Congolese criminal code has been recently modified once more in favor of women the last September 2023. This new legal reform focused on gender based violence. It explicitly

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