

The Legal Basis for Sustainable Development as a Human Right

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The Legal Basis for Sustainable Development as a Human Right

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Abstract: Concern for sustainable development, but human rights are considered the most important issues that concern the world, and our dear country has witnessed many transformations in all fields and at different levels in the country, especially those that have a large majority in human rights, and we all know that Iraq has witnessed many challenges. After the events of 2003 until now, because the human being is the subject of the right and the rights, and the international community and the international and local organizations all insist on the activation, investigation and development of this right and the human rights. Where we have not seen any mechanism of operational and investigative mechanisms, I must focus on the effects of the activation and non-activation of this right, and from this point of view, pay attention to the statement of what is meant by sustainable development and developments, and do not forget the role of the United Nations in promoting the cycle of sustainable development, with the basic statement Legal and comprehensive human rights, stating the position of the Iraqi legislator for the year 2005.

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Keywords: human rights, sustainable development, human rights and sustainable development.

1. INTRODUCTION

Attention to sustainable development has become, at the present time, one of the important issues that concerns the entire world, as Iraq and the rest of the countries of the world have witnessed a very large number of important transformations that take place in all fields: economic, social, cultural and political, considering that this right represents for us a bond and link between individuals. Society, and that the human being is the subject of the right, which made it the centre of international and local attention and work on it from all international organizations to activate, achieve and work to develop it, because this is a human right.

We see ambiguity in the legal status of this right, due to the absence of mechanisms capable of activating it. Through this research, we are trying to emphasize the activation of the role of human rights, including sustainable development. The study focused on the concept of sustainable development as a basic human right. The research will be divided into two requirements: In the first requirement, we address the concept of sustainable development and an explanation of the concept of human rights, and in the second requirement, we address the nature and legal basis for it, i.e. law and sustainable development, while explaining the position of the Iraqi constitutional legislator.

First: Study Problem

The right to development is considered as a fundamental right recognized in international law. However, legislative shortcomings and ambiguity still plague this principle, which has closed its legal status, and we have not seen states obligating it. The important question must be answered, which is to clarify the legal basis as a human right through a statement. The legal texts and principles that recognized this right, especially with regard to the Iraqi legislator?

Second: Research Objectives

The research aims to shed light on the nature of sustainable development in human rights within the rules of law, while explaining the reasons that we see that may prevent the full establishment of the legal system. It is necessary to identify the party to activate human rights in sustainable development, while diagnosing the constitutional and legal obstacles facing the process of the right to Sustainable development in Iraq.

Third: Study Hypothesis

Sustainable development has many and multiple dimensions that were addressed in the Iraqi Constitution of 2005 in various legal texts, although there is no explicit and direct text on it.

Fourth: Study Methodology

The analytical approach will be adopted for the constitutional and legal texts related to the research topic.

Fifth: Significance of Study

The primary goal of determining the legal status of sustainable development as a human right is to oblige all countries to develop and activate this right. Solutions and oversight mechanisms must be found to demonstrate the extent to which they can be applied in a manner consistent with the concept of this right.

In this research, we will focus on explaining the concept of sustainable development, the importance of legitimate human rights, explaining the role of the Universal Declaration of Human Rights in them, and the position of the Iraqi constitutional legislator on them.

The concept of sustainable development is one of the basic concepts that we should see developing permanently and continuously, through the renewed problems facing society, and looking at what is dealt with in international summits and global conferences, as well as international conventions and reports related to the topic of sustainable development.

We must not forget the world's awakening with its consensus on the problems existing in societies, problems that constantly threaten human life, and alternatives to resources must be found. Because the future of humanity depends on the extent of its efficiency and suitability, as the interest of human societies in the concept of sustainable development has grown steadily, and at the national level we notice that Iraq has suffered from the effects of the heavy legacies left by the previous regime until now, and the problems that followed after the occupation of Iraq in 2003 AD, as it entered The country is in a spiral of violence and fighting that has caused the situation to become very clearly unstable in all areas, and the accompanying tragedies and events that have hurt the people and the country.

Sustainable development is considered a comprehensive philosophy and outlook, and it requires a correct infrastructure that includes all legal, political, administrative, economic and cultural aspects. Among the things that should be taken into account are the new challenges that arise to this concept and human rights, and they must be confronted in an effective manner, especially in the field of maintaining security and stability, and consolidating National unity and building state institutions (1).

(1) Dr. Abdul Aziz Ahmed Shukri, *Sustainable Development between Concept and Application*, Dar Al-Nahda Al-Arabiya, 2014, p. 22.

This research is divided into two sections, which are as follows:

- o First Requirement: The nature of sustainable development and its elements.
- o Second Requirement: The legal basis for sustainable development "Law and Development".

First Requirement: The Nature of Sustainable Development and its Elements

Development is concerned with the advancement of society and how to move it from a fixed situation to a higher and better situation. Development is an economic, social, cultural, political and administrative process. Rather, it is something necessary and important for every human society, aiming to achieve the society's aspirations and hopes for decent living, and on top of this is achieving a better level of livelihood and a stable life in implementation of human rights principles (2).

Development is one of the basic elements that emphasize stability and human and social development. Because it is a comprehensive development process, it takes different forms that we see, the aim of which is to improve the social situation in a way that is consistent with general human aspirations.

Through the above, we will divide this requirement into two sections. In the first section, we address the definition of development linguistically and reform, with a statement

of the definition of human rights, and in the second section, we address the elements of sustainable development.

(2) Medhat Muhammad Abu Al-Nasr, *Effective Communication Skills with Others*, Cairo, Arab Group for Training, Research and Marketing, 2014, p. 62.

Section One: Definition of Sustainable Development

Development in language comes from the verb grow, meaning it increased from growth, meaning goodness and reform. In terminology, sustainable development has many definitions, and its definition is linked to the scientific background and political theory. The concept of sustainable development was first introduced in the report of the World Commission on Environment and Development in 1987, which defined sustainable development as "Development that meets the needs of the present without compromising the ability of future generations to meet their needs" (3).

It was also known by the World Commission in 1983, and it is the most famous definition when the United Nations published the report completed by it, which emphasized that it is "development that meets the needs of the present without diminishing the capabilities of future generations to meet their needs." It is considered the most acceptable to all Institutions (4), and the World Bank defines it as "the process concerned with achieving continuous parity that ensures the availability of current development opportunities for future generations, which is by guaranteeing comprehensive capital, or increasing it over time, as comprehensive capital includes industrial capital, equipment and methods..."(5).

While sociologists defined it as "intentional and planned social change aimed at changing behaviours and cultures so that they are positive, open, flexible, and productive," while political scientists defined it as "the process of establishing political institutions, their commitment to the democratic approach, and making them available for citizen participation in decision-making."

It is clear to us from the above definitions that they reflect the characteristic of stability, and their goal is to advance the land and its natural and human resources, as well as meeting the humanitarian needs of the population and improving their livelihood, by eliminating poverty and preserving human rights on an ongoing basis, with the necessity of sound management through the activation of legislation and laws that This principle is regulated with the need to preserve it.

(3) Muhammad Othman Abu Zant, *Sustainable Development: Its Philosophy, Planning Methods, and Measurement Tools*, Amman, 2007, Dar Safaa for Publishing and Distribution, 1st edition.

¹⁴
(4) Abdul Rahman Nawzad, *Sustainable Development, the General Framework and Applications*, the United Arab Emirates as a Model, Abu Dhabi, Emirates Center for Strategic Studies and Research, 1st edition, 2009, p. 41.

¹
(5) Samir Ibrahim Hajim, *International Legal Mechanisms to Protect the Environment within the Framework of Sustainable Development*, Lebanon, Beirut, Al-Halabi Legal Publications, 1st edition, 2014.

The meaning of right must be clarified linguistically and idiomatically, as the meaning of right can be explained at the linguistic level as “achieved, the truth, which is the opposite of falsehood, and the combination of rights and facts, where the meanings of validity, obligation, rulings, correction, certainty, and truthfulness revolve” (6), and in the intermediate dictionary, “right” is a noun. It is one of the most beautiful names of God, and it means steadfastness and truthfulness, without a doubt.” (7). From the terminological point of view, the right has several indications, sometimes indicating the truth and its meaning, and at other times indicating the meaning of installment or share, and the modern meaning, meaning protected by law, with the emphasis that the right to development is nothing but a connection between it and human rights (8).

²⁷
Human rights can be defined as “the rights that a human being enjoys simply because he is a human being, that is, a human being. They are rights assigned to him regardless of his nationality, religion, ethnic origin, social or economic status, or job position. These rights precede the existence of the state, and even transcend it. In reality, these rights are not exclusively defined in law (9).

¹⁹
(6) Ibn Manzur, *Lisan al-Arab*, vol. 1, Beirut, Dar Sader, 1st edition, pp. 349 et seq.

(7) *Dictionary of Meanings*, published via the electronic link WWW.almaany.com, date of last visit on 1/17/2024.

(8) Saeed Ali Ghafel, *The Right to Development*, Journal of the Islamic University College, No. 17, 2012, p. 486.

(9) Dr. Ammar Abbas Al-Husseini, *Human Rights and their Impact on Criminal Law in Light of the Digital World*, printed lectures given to master’s students, Department of Criminal Law, College of Law, University of Babylon, 2015-2016, p. 5.

It is also defined as “those rights that a person possesses simply because he is a human being, and they are a specific type of social practice based on the concept of human dignity, or they are those rights that devolve on an individual simply because he is a human being.”

Through the above: Human rights confirm to us that they are the rights assigned to the human being as a human being, that is, as human beings, and that sustainable development is

an integral part of human rights because of its great and great importance for achieving the basic principles affirmed by the Universal Declaration of Human Rights, because the right to development, as we have affirmed it is a human right, apart from being one of the people's basic rights, and this is what Article (1) of the Declaration of Rights states in the Development Act of 1986 (10), while development facilitates the enjoyment of human rights, because the lack of development may not be taken as an excuse to justify the derogation from internationally recognized human rights (11).

Therefore, sustainable development is considered multi-dimensional, and what it requires to embody the goals that it seeks to achieve, through international and internal cooperation, and these goals cannot be achieved except according to legal mechanisms that work to transfer ideas and visions into their tangible reality, and to the extent that the need of the law seeks, because sustainable development Its basic role requires the embodiment and activation of the provisions of the law and their implementation on the ground, and this is what we will explain through the second section.

Section Two: Dimensions of Sustainable Development

Sustainable development - as a human right - has three basic dimensions that are in the interest of individuals within society, and they take the economic dimension, the social dimension, and the environmental dimension, because sustainable development is considered the fulcrum, which is derived from the important foundations that were mentioned at the Earth Summit in Rio de Janeiro in Brazil in 1996 (12), which are as follows:

- Economic Dimension

The economic dimension confirms to us that it is a fundamental pillar of sustainable development because it aims to achieve a large number of goals that confirm the optimal and rational exploitation of all economic and natural resources, and thus reduce the waste of natural resources in order to guarantee the rights of next generations In the future, there must be fair equality of resources to reduce inequality and incomes, and the most important pillar is to work to reduce poverty levels in poor countries and to determine the share of individual consumption of natural resources.

(10) *Declaration on the Right to Development* proclaimed by the United Nations General Assembly 128/41 on 12/4/1986.

(11) Enas Abdullah Abu Hamira, *The Right to Development as a Human Right - Scope and Difficulties*, Journal of Legal Research, No. 11, 2020, Tripoli, Libya, p. 4, via the website [https://jli.misuratau.edu.ly/upload /file/R-19](https://jli.misuratau.edu.ly/upload/file/R-19) .

(12) Ahmed T., Lakhdar Bin Omar and Sarah Bin Mahoub, *Sustainable Development, its Dimensions and Measurement Indicators, An Economic Reading*, Intervention at the First National Forum on Quality of Life and Sustainable Development in Algeria, Dimensions and Challenges, University of the Valley, 2020, p. 283.

- Social Dimension

³ The social dimension of sustainable development is achieved, and through it, the fight against unemployment is confirmed, and the individual's livelihood is improved within society, and in the ways drawn up and determined by the law, by constantly upgrading health, annex, and educational services in a way that is compatible with the needs of individuals. Women must be given the main and sovereign role, and legitimate rights must be established for the population distribution by solving the problem of demographic growth, achieving and supporting rational government mechanisms in all state institutions in a way that guarantees the principle of equality, investing in human resources by betting on people towards implementing sustainable development, clarifying the mechanism for exploiting resources according to the foundations of justice and equality to achieve fairness between members of one generation and future generations.

- Environmental Dimension

The environmental dimension is one of the most important foundations for sustainable development, and this is done by necessarily exploiting natural resources to achieve development in every agricultural or industrial activity, even if it has harmful effects on the environment. For this matter, environmental limits must be taken into account, that is, every ecosystem has certain limits that may not be exceeded. These limits have been drawn, whether for consumption or depletion, and if these limits are exceeded, it will lead to the deterioration of the ecosystem, and it must be taken into account that there must be protection of natural resources and reduction of pollution. It is also important to develop plans in order to protect the climate from the phenomenon of global warming, reduce the phenomenon of soil damage and the use of pesticides, and through this there is a destruction of vegetation cover. Clean and renewable energy sources must be searched and there must be immediate treatments and solutions to reduce gas emissions and preserve the ozone layer.

Through the above, sustainable development confirms to us that it is one of the important, most likely and basic requirements for building and developing countries, and it also confirms their prosperity. This matter, especially sustainable development, cannot be achieved except through legislating laws, through which it is preserved, because legislation and law are The indivisible pillar through their effective and prominent role in embodying and establishing

the application of the principles of sustainable development, and through them the economic, social and environmental aspects are activated because it is an effective contributor to achieving the aspect of sustainable development, and this is what we will explain in the second requirement.

The Second Requirement: Law and Sustainable Development

Sustainable development we always see as reflecting the truth of the matter, which is the characteristic of stability, because of its ability to communicate and stabilize, and it can be considered progress through which the needs of the present are met, without disturbing or causing harm to any human right, including the rights of future generations (13).

It emphasizes the fact that international cooperation is considered a legal basis for sustainable development, especially international law, because it is the first pillar of the United Nations in formulating its development strategy. If we look closely at the text of Article (31), it emphasizes “the necessity of all countries participating in economic and global progress, and that Prosperity will not be achieved except through the cooperation of countries among themselves” (14).

The right to sustainable development as a human right was implicitly stated in the Declaration of Philadelphia issued on 10/5/1944, as it affirmed the right of human beings in a comprehensive manner, and this is the time during which the Human Rights Committee explicitly recognized the right to development as a human right. Emphasizing the duty of Member States to create the necessary conditions for the right to development.

On 12/4/1986, the Declaration on the Right to Development was adopted by a majority of (146) countries, through which it affirmed that “the right to development is an inalienable human right, and that equal opportunities for development are a right for all nations who constitute nations alike.”

The essential elements of the new development thought are the transparency of public decisions, the availability of information, and the exposure of others, i.e. officials, to responsibility in order to respect human rights, duties, and values. This matter can only be done within a solid and strong legal organization through which the needs and aspirations of the peoples are fulfilled and the legal framework is provided for them in order to Implementing public policies through which development is achieved, and this is what we will explain through the two branches and as follows:

(13) Qadri Muhammad Al-Taher, *Sustainable Development in Arab Countries between Theory and Practice*, Beirut, Hassan Al-Asriya Library for Printing, Publishing and Distribution, 1st edition, 2013, pp. 73 et seq.

¹
(14) Text of Article (31) of the *Charter of Economic Rights and Duties* issued on December 12, 1974.

Section One: International Law and Sustainable Development

Sustainable development has become prominent at the international level for a long time, and in fact it has become a core concern of governments, member states and global organizations alike. For its sake, conferences have been held and treaties concluded, and it has become a common basic demand for all countries, and through it joint bodies have been established. Through which the goals were achieved.

The modern, contemporary international law that arose initially to regulate international relations among themselves, to consolidate the values of security and peace, to work to resolve armed conflicts, and to put an end to all methods of colonialism, guardianship, and aggression. With the development of the international community, by overcoming the colonial stages and the consequences of armed wars, it became necessary. There must be a pace with changes in various fields, so that the idea of violence and war in international relations is rejected, and most countries have achieved complete independence and their needs have emerged through achieving development for all their countries.

From the above, we notice the emergence of a large number of studies that we see have emerged in interest in solutions and obstacles to development and have become important issues that concern every researcher ³⁴ in the field of international law for the purpose of activating sustainable development.

⁴ The United Nations is considered the most prominent global organization working to achieve development through its basic organs and specialized agencies in accordance with what was approved by the United Nations Charter. There is a fundamental and pioneering role for international organizations and their work to achieve sustainable development, whether in the economic, cultural or social field, and their work is confirmed by Developing the system of laws and legislation and defining the relationships between them and various types of governments, in a way that ensures their independence and transparency and in order to develop their resources (15).

⁴ International human rights law is one of the legal principles that determines ⁴ the rights of peoples, regions and states towards other countries, and through legal, judicial and political means to ensure their application ⁴ at the international and internal levels and through specialized ³ international institutions (16), and by it development is considered one of the components of international human rights law, ³ to provide them with all The conditions and legislative guarantees that we see guarantee them a decent life, which includes a set of basic rights and

¹⁸ principles such as respect for “human life and dignity, the principle of equality,” without which individuals cannot live, and after the entry of international conventions and the beginning of ²⁴ the Universal Declaration of Human Rights issued on December 10, 1948, for every International human rights conventions (17).

One of the basic components of human rights is the right to development, through which ¹⁶ the food, health and housing situation must be improved. The United Nations resolutions and its international human rights conferences included recognition of “the right to sustainable development as a human right,” and this was confirmed by the Declaration of the Right to Development issued In 1986, he contributed greatly to the theoretical development of the ³⁰ concept of development, and with it the relationship between the right to development and human rights became an integral part and linked it to the human being as it is the focus of development (18). The decision was issued because it was the first declaration that legally embodied the process of development as a human right, and considered its enjoyment and realization Among the implementation of all human rights and other fundamental freedoms (19).

⁸ The preamble to this Declaration stated that “sustainable development is a comprehensive economic, social, cultural and political process aimed at the continuous improvement of the well-being of the entire population and all individuals on the basis of their active and free participation.” It demonstrated the integrated and mutual sacrifice of human rights as well as the difficulty of the challenges, until the idea of sustainable human development was crystallized, which puts Man is a goal and a means to the development process.

(15) Ahmed Si Ali, working paper, *Participant in the Fourth International Conference of the Faculty of Law on Achieving Security and Development*, Aleppo, Syria, published on the electronic link www.jamahir.alwehda.gov.sy.

(16) Hisham bin Issa Al Shehhi, *The Right to Sustainable Development in the Rules of International Human Rights Law*, Master’s Thesis, Middle East University, Amman, Jordan, December 2017, p. 5.

(17) *The United Nations General Assembly*, which adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

(18) Saqni Fakia, *Sustainable Human Development*, Master’s Thesis, Setif University, 2010.

Section Two: Position of the Iraqi Constitution of 2005 on Sustainable Development

If we browse through the Iraqi constitution, we will find many constitutional texts that emphasize the administration's commitment to achieving and implementing sustainable development, and by them the general principles are determined, which the public authorities must follow, but not in an explicit way of the principles and provisions related to achieving sustainable development, as the constitution Iraqi 2005 was not limited to merely establishing these authorities whose powers are defined, but rather the basic rights of citizens must be guaranteed, which is the human right to life, in addition to the rest of the other rights. In fact, we see the beginning of the matter, as many contemporary constitutions intended to guarantee the right to sustainable development, even if the constitutions differed in the mechanism or method of stipulating the individual's right to development (20).

The legal texts complementary to the Constitution were not specified in accordance with the principle of gradation of legal rules that enshrined the right to sustainable development as a human right. The Iraqi Constitution of 2005 emphasizes the issue of sustainable development through the presence of recognition of "the individual's right to a healthy environment," and through it the state guaranteed the entity that would guarantee its protection. It stipulates: "Every individual has the right to live in peaceful environmental conditions, and the state guarantees the protection and preservation of the environment and biodiversity" (21).

¹⁹ The decision was issued on 12/4/1986, No. 128/41.

²⁰ The arrival of Lafta Mutair, the role of administrative law rules in achieving sustainable development in Iraq, research published in the Journal of Kirkuk University for Administrative and Economic Sciences, date of last visit 1/26/2023.

²¹ Article (33/First and Second) of the Iraqi Constitution of 2005.

Based on the above constitutional text, it confirms that the right to a healthy environment is a constitutional right in addition to the rest of the other rights, and that the numerous laws that have been issued in the field of sustainable development have given wide attention to the field of the environment and its great interest, which is represented by the law of the Ministry of Environment (22), and accordingly it aims to Protecting and improving the environment in various fields and preventing its deterioration or pollution. The damage must be removed and treated in order to preserve it.

From the above, we note that the position of the Iraqi legislator was successful in taking legal measures that stipulate the role of administration and its control in preventing environmental damage, even if they were in separate, indirect texts, in addition to joining international agreements related to environmental protection, which achieve sustainable

development. It requires each state party to the agreement to preserve the safety of the environment.

The decision was issued on 12/4/1986, No. 128/41.

(19) The arrival of Lafta Mutair, the role of administrative law rules in achieving sustainable development in Iraq, research published in the Journal of Kirkuk University for Administrative and Economic Sciences, date of last visit 1/26/2023.

(20) Article (33/First and Second) of the Iraqi Constitution of 2005.

(21) Article (33/First and Second) of the Iraqi Constitution of 2005.

(22) Ministry of Environment Law No. 37 of 2008.

2. CONCLUSION

After we reached the end of our research, in which we focused on serious facts in the study, including the interest of the international community in human rights, and what real awareness requires in order to preserve them, because the earth was created for man, and sustainable development aims to achieve economic, social, and environmental growth alike, despite The matter is not without obstacles that prevent this right from being fully implemented, as we have explained the legal basis for sustainable development as a human right. We have reached a number of conclusions and recommendations, which are as follows:

First - Conclusions

1- The concept of sustainable development is one of the most important modern concepts, as it uses natural, human and industrial capabilities in a way that contributes to the protection of current and future generations, without there being a depletion of the natural resource base necessary to support development.

2- The Iraqi Constitution of 2005 included an explicit text requiring the state to achieve sustainable development and protect human rights in a clean and healthy environment. It is one of the basic rights that has been recognized at the international and national levels, whether the text is in international agreements and declarations or in domestic legislation.

3- There is a legislative deficiency in the laws related to sustainable development in Iraq.

4- The presence of constitutional and legal obstacles facing the wheel of sustainable development, which leads to a very clear decline in sustainable development standards, knowing that this decline has very dangerous repercussions, especially with the emergence of unemployment, poverty, weak investment, severe stagnation in the economy, and others.

Second - Recommendations:

1- We call on the Iraqi legislator to legislate a law that emphasizes achieving sustainable development, which aims to protect the environment and natural resources, and they must be improved in various fields, including the Environmental Protection Law.

2- We call on the Iraqi legislator to expand the scope of application of the principle of sustainable development in a way that requires the concerned parties to protect the environment and biodiversity in order to get rid of waste and its residues.

3- We call on the authorities concerned with the supervisory role to oblige the concerned authorities to activate their supervisory role over the large number of violations of the provisions of legislation in the Environmental Protection and Improvement Law No. 27 of 2009.

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Enas Abdullah Abu Hamira, *The right to development as a human right - scope and difficulties*, Journal of Legal Research, No. 11, 2020, Tripoli, Libya, p. 4, via the website [https://jli.misuratau.edu.ly/upload /file/R-19](https://jli.misuratau.edu.ly/upload/file/R-19).

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¹¹ Muhammad Othman Abu Zant, *Sustainable Development: Its Philosophy, Planning Methods, and Measurement Tools*, Amman, 2007, Safaa Publishing and Distribution House, 1st edition.

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¹² *The Declaration on the Right to Development* proclaimed by the United Nations General Assembly 128/41 on 12/4/1986.

¹ The text of Article (31) of the Charter of Economic Rights and Duties issued on December 12, 1974.

⁵ The United Nations General Assembly, which adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

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