Promoting democracy – the Commonwealth's contribution

by Richard Nzerem



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Richard Nzerem, recently-retired Director of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat, outlines the Commonwealth's commitment to democratic principles and human rights and the practical support it lends to the democratic processes and institutions of its member states.

ncreasingly, since World War II, international standards for human rights and political rights have provided a model for Landomestic legislation and generated pressure for democratic developments. Article 21 (1) of the 1948 UN Universal Declaration of Human Rights expressly guarantees every individual the right to take part in the government of his country, directly or through chosen representatives. Article 25 of the International Covenant on Civil and Political Rights guarantees the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives, and the right to vote and to be a candidate in genuine periodic elections conducted according to universal and equal suffrage and by secret ballot (Ian Brownlea (ed), Basic Documents in International Law: International Covenants on Human Rights, Oxford, 1993, p. 281). However, international law is limited in its ability to codify specific rules because of the range of cultures and traditions in different countries and democratic structures. Nevertheless, limited though international law may be in this regard, the set of international standards just mentioned are universal principles and can be applied in any country.

The Commonwealth is a voluntary association of currently 54 sovereign independent states. The member states are committed to a set of fundamental values and common principles and a deeply-held belief in the promotion of international understanding and co-operation. For the record, the Commonwealth has no charter. Rather, it has a series of Declarations to which all member countries subscribe. The first of these, the eponymous Singapore Declaration agreed by Commonwealth Heads of Government when they met in Singapore in 1971, defines the voluntary character and consensual working methods of the Commonwealth and, foreshadowing its more elaborately-developed and perhaps now

much better known and more often cited stable-mate – the Harare Commonwealth Declaration, specifies the goals and objectives of the Commonwealth Association. Among these objectives, which underpin and inform all of the work of the Commonwealth Secretariat, are the belief in human liberty and democratic rights.

But the Commonwealth is nothing if it is not a community of many different cultures, and a unique example of international co-operation among peoples of different races from different backgrounds. The Commonwealth works towards building in each member state a society that offers equal opportunity and non-discrimination for all people, irrespective of race, colour or creed. The Commonwealth therefore encourages and expects all its members to apply democratic principles in a manner that will enable the people of different racial and cultural groups in each country to exist and develop as free and equal citizens.

The Commonwealth Secretariat, which is a visible symbol of the Commonwealth and its principal operational organisation, has always sought to adopt a consensus and multi-sectoral approach to the promotion of democracy and human rights, as reflected in its varied activities in the legal, political and economic fields. It is committed to the establishment of non-racial, democratic societies within the Commonwealth. One of its central priorities is extending the benefit of development within a framework of respect for human rights.

THE COMMONWEALTH'S GENERAL APPROACH TO DEMOCRACY

The Commonwealth has always been conscious of the fact that economic despair, and the lack of democratic means to effect change, if not promptly addressed in a transparent manner and if allowed to take root, would be likely to spark and have sparked violent and destructive impulses even within largely homogeneous societies. Civil conflict and strife arising from such situations have increasingly become threats to international peace and profound obstacles to development. Ethnic antagonism, religious intolerance and cultural separatism threaten the cohesion of societies and the integrity of states in all parts of the world. Alienated and insecure minorities, and even majorities, have increasingly turned to armed conflict as a means of addressing social and political grievances. It has been seen by the world community that democracy is the only long-term means of both arbitrating and regulating the many political, social, economic and ethnic tensions that constantly threaten to tear apart societies and destroy states. In the absence of democracy as a forum for competition and a vehicle for change, development remains fragile and consequently at risk. (United Nations General Assembly, 'Development and International Economic Co-operation', A/48/935, 6 May 1994, United Nations, p. 22.)

It is for these reasons that the Commonwealth, through the good offices of the Secretary-General, promotes dialogue between member states to resolve problems, consolidate democracy and make it durable in all countries. At their meeting in Harare in October 1991, Commonwealth leaders were clear about the merits of democracy as a system of government. They were equally clear that democracy was not a simple matter of making declarations and drawing up instruments. Democracy can take different forms in different countries to reflect national circumstances. They agreed, however, that whatever the national variation, a true democracy would be judged by the presence of a number of essential universal ingredients. These include the right of a people to choose and dismiss freely the men and women who would govern them; the primacy of the rule of law and the independence of the judiciary; freedom of expression and association; and transparency and accountability of government. Chief Emeka Anyaoku the Commonwealth Secretary-General pointed out that the electoral process is essential to the democratic system. In his view, democracy simply cannot function without credible elections. He further argued that it is through elections that choice is guaranteed, and that we are morally bound to do everything we can to value and protect that. (See the Report of the Conference of Commonwealth Chief Election Officers, Queen's College, Cambridge, 23-26 March 1998, Commonwealth Secretariat, p. 12.)

At Harare in 1991 the Heads of Government proposed measures in support of the processes and institutions that underpin the realisation of the Harare principles and called on the Commonwealth Secretariat to enhance its capacity to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values. Such assistance would include:

- assistance in creating and building the capacity of requisite institutions;
- assistance in constitutional and legal matters, including help with selecting models and initiating programmes of democratisation;
- (3) assistance in the electoral field, including the establishment or strengthening of independent electoral machineries,

- civic and voter education, the preparation of Codes of Conduct, and assistance with voter registration;
- (4) observation of elections, including by-elections or local elections where appropriate, at the request of the member government concerned;
- (5) strengthening the rule of law and promoting the independence of the judiciary through the promotion of exchanges among, and training of, the judiciary;
- (6) assistance in providing the necessary administrative support for good governance, particularly in the area of public services reform; and
- (7) other activities, in collaboration with the Commonwealth Parliamentary Association and other bodies, to strengthen the democratic culture and effective parliamentary practice.

(Commonwealth News Release, 12 November 1995, pp. 2–3)

An important role in this respect is played by the Human Rights Unit which was established in January 1985, initially within the then International Affairs Division (now titled the Political Affairs Division) of the Commonwealth Secretariat and later transferred to the Legal and Constitutional Affairs Division. It was given the mandate to promote human rights as part of the Commonwealth's fundamental political values by promoting awareness of human rights in member countries, and by creating and supporting representative institutions which work towards the promotion and protection of democracy, good governance and human rights. The Human Rights Unit also acts as a clearing house for the exchange of information, and assists member governments in acceding to international human rights instruments. The Human Rights Unit, however, does not have any investigatory powers or adjudicative functions. The mandate of the unit also includes ensuring that within the Secretariat itself due account is taken of human rights considerations in the work of all the divisions.

At their meeting in Cyprus in 1993 Commonwealth Heads of Government:

- pledged their commitment jointly and severally to combat discrimination in all forms in their countries, with emphasis on maintaining the rule of law and measures to promote the development of human rights institutions and other enduring strengths of pluralist society;
- strongly condemned terrorism as a threat to stability and to human rights;
- placed special emphasis on the universality, indivisibility, interdependence and interrelation of all human rights; and
- reaffirmed the right to development, women's rights, and the right of indigenous people as an integral part of human rights.

The Commonwealth's approach in the context of good governance is that:

'democracy is essentially about choice — choice of parties, choice of policies, and choice of personalities. This freedom of choice is meaningless without free elections. Free elections in turn entail freedom of speech and of association. Without freedom of speech, the appeal to reason, which is the basis of democracy, cannot be made. Without

freedom of association, meaningful political parties are practically inconceivable because in the absence of freedom of association it is difficult for people to band together into parties and formulate policies to achieve common ends. And none of these freedoms can be secured without the rule of law and the independence of the judiciary.'

(Chief Emeka Anyaoku, 'Democracy in Africa', Commonwealth Information, 29 October 1997, Commonwealth Secretariat, p. 3.)

A democratic system should therefore include, among others, the following elements:

- the right of substantially all of the adult population to vote and to be elected or re-elected for governments at regular or reasonable intervals, and where applicable, to vote on policy decisions in referenda or plebiscites to determine the nature of the constitutional arrangements in the state;
- a meaningful choice between a range of policies and individual candidates or political parties who represent those polices;
- the right to participate in the political process, which includes the freedom to found, join or work for political parties, and the right to be a candidate for elective offices;
- the freedom of political expression, particularly on the part of candidates, parties and the media;
- the right to campaign and vote free of intimidation or other undue influences;
- the freedom of political association or assembly;
- a process for tabulating votes which is efficient, credible, and protected from attempts to manipulate procedures or outcomes; and
- the right to governance in accordance with election results.

(British Institute for International and Comparative Law, Good Governance Project on Democratic and Constitutional Succession of Governments, 4 March 1996, London.)

The Commonwealth's commitment to democracy can also be seen in the measures it takes in response to violations of democratic principles and human rights. When a member country violates the Harare Principles, and in particular in the event of an unconstitutional overthrow of a democratically-elected

government, appropriate steps are taken to express the collective concern of the Commonwealth countries and to encourage the restoration of democracy within a reasonable time frame. These measures include:

- (1) the immediate public expression by the Secretary-General of the Commonwealth's collective disapproval of any such infringement of the Harare principles;
- (2) early contact by the Secretary-General with the de-facto government followed by continued good offices and appropriate technical assistance to facilitate an early restoration of democracy;
- encouragement of bilateral measures by member countries, especially those within the region, both to express disapproval and to support early restoration of democracy;
- (4) appointment of an envoy or a group of eminent

- Commonwealth representatives where, following the Secretary-General's contacts with the authorities concerned, such a mission would be beneficial in reenforcing the Commonwealth's good offices role;
- (5) stipulation of up to two years as the time frame for restoration of democracy where the institutions are not in place to permit the holding of elections within a maximum of six months afterwards;
- (6) pending restoration of democracy, exclusion of the government concerned from participation at ministeriallevel meetings of the Commonwealth, including CHOGMs;
- (7) suspension of participation at all Commonwealth meetings and of Commonwealth technical assistance if acceptable progress is not recorded after a period of two years; and
- (8) consideration of appropriate further bilateral and multilateral measures by all member states (such as limitation of government-to-government contacts and people-to-people measures; trade restrictions; and, in exceptional cases, suspension from the association), to reinforce the need for change in the event that the government concerned chooses to leave the Commonwealth and/or persists in violating the principles of the Harare Commonwealth Declaration even after two years.

(Ibid.)

The mechanisms for the implementation of these measures just listed, so far as the modern Commonwealth is concerned, could be said to trace their origins to more difficult and less complimentary periods in relatively recent Commonwealth history. At the 1991 Harare Meeting of Commonwealth Heads of Government, President Mugabe of Zimbabwe characterised Commonwealth processes in the following manner:

on the internet

http://www.thecommonwealth.org

Information about Commonwealth member countries, news, publications, etc. is available on this website.

"... the Commonwealth in the 1990's should be a torch-bearer of principles which so many expect us to uphold. These sacred principles were not conceived and left in Singapore in 1971, but are and should be a living and indestructible weapon whereby the Commonwealth continues to conquer and extend the frontiers of freedom and liberty from era to era."

(See Emeka Anyaoku, The Missing Headlines, 1997, p. xi.)

Yet, if there was one area where the Commonwealth was unfulfilled and had been mostly vulnerable and subject to criticism in the past, it was in the extension of the frontiers of freedom and liberty. The Commonwealth had been spectacularly successful in helping to end autocratic and racist minority rule in Southern Africa, but it had not been similarly successful in consolidating democracy and democratic processes. The reasons for the dramatic decline in democratic standards almost to the point of its complete extinction varied from country to country. Where it was not the deceptively attractive simplicity of the one-

party state undermining democracy, it was the crude military machine which extinguished it by bulldozing everything in its path. Such was the power, the triumph and, to some, the glory of the anti-democratic trend that by 1989 there were no more than four African countries which could legitimately claim to be functioning multi-party democracies.

There is little doubt that the Harare Declaration, and the supportive action taken by governments individually on their own and collectively through the Commonwealth Secretariat, has been a powerful factor in propelling the process of democratic change in several countries, and it is a measure of what has been achieved to observe that when the Harare Declaration was adopted in 1991, there were nine Commonwealth countries under military or one party dictatorship. Today, there are none.

It is truly a measure of the progress that has been made, though some may argue not soon enough, but it is in this context that it was decided in 1995, during the Auckland Commonwealth Heads of Government Meeting in the Millbrook Action Plan, to establish a Commonwealth Ministerial Action Group in order to deal with serious or persistent violations of the Harare Principles. This group, comprising the Foreign Ministers of eight countries, supplemented as appropriate by one or two additional ministerial representatives from the region concerned, is convened by the Secretary-General. It is the group's task to assess the nature of the infringement and recommend measures for collective Commonwealth action aimed at the speedy restoration of democracy and constitutional rule. The Commonwealth Ministerial Action Group has so far confined its remit to Commonwealth countries under military rule, specifically Nigeria, the Gambia and Sierra Leone. The Gambia and Sierra Leone both completed their transitions to democratic civilian rule within a few years, despite the widelycondemned interlude of military rule in Sierra Leone following the military coup of May 1997 and the civil war that followed. In the case of Nigeria its suspension from membership of the Commonwealth in 1995 following the execution of Ken Saro-Wiwa and his associates by the military government was seen by many friends within and outside of the Commonwealth as both a sad and at the same time hopeful sign. Sad in the sense that one of the major players in the Commonwealth arena was bound to cause the Association embarrassment that it could do without and hopeful in the sense that it would be seen as a sign that the Commonwealth meant business. (See Richard Bourne, 'The Commonwealth and human rights after Auckland', in John Gorden (cd), The Commonwealth Ministers Reference Book 1996/97, Kensington Publications Ltd, Commonwealth Secretariat, p. 96.) The suspension had to be maintained pending the completion of a credible transition to democratic civilian government and compliance with the Harare Declaration.

Then there were the beginnings of a sign at the end of what, in retrospect, seemed like a very distant horizon. But, to place the Commonwealth's role in this important field in its proper perspective, it would be missing an essential link not to briefly go back to 1962 when the Republic of South Africa left the Commonwealth, followed by the gradual and downward spiral down the slippery slope of one-party state or military dictatorships. However, the year 1990 may be taken as the most important point of reference in describing the Commonwealth Secretariat's activities in reviving the spirit of the

Commonwealth and in support of electoral democracy, because it was in that year that, following the Commonwealth Heads of Government Meeting held in Malaysia in 1989, the Malaysian Government decided to 'set an example' for other governments by inviting the Commonwealth Secretary General to' send a Commonwealth Observer Team to observe its Parliamentary elections of that year, to demonstrate to governments that they should have nothing to fear by conducting open and transparent elections. It would not be an overstatement to say that although those elections were not seen as controversial, this was a courageous act that gave the acceptance of open and transparent elections as a good indicator of democracy the necessary kick start that it needed. The significance of this can be estimated from the statistic of 27 other such Observer Missions from 1990 up to the 1999 presidential and parliamentary elections in South

DEMOCRACY AND DEVELOPMENT

It has been seen by the world community that democracy is the only long-term means of both arbitrating and regulating the many political, social, economic and ethnic tensions that constantly threaten to tear apart societies and destroy states. In the absence of democracy as a forum for competition and a vehicle for change, development remains fragile and consequently at risk.

Commitment to democracy is central to the preoccupations of the modern Commonwealth which, so far as international organisations are concerned, has reason to be proud of the role it has played and its overall record of achievement. It has played this role principally in two ways: firstly, through its advocacy of the democratic principle and secondly, through practical action on the ground to make that principle a reality.

The centrepiece of the democratic principle is the Harare Commonwealth Declaration of 1991, which subsumes and elaborates on the Singapore Declaration and was conceived and envisioned to chart the way forward for the Commonwealth for the 1990s and beyond. It addressed a number of issues but it was its commitment to a democratic culture in the Commonwealth that made it a landmark document and another, perhaps so far the most important, turning point for the Commonwealth, making it nothing less than a blueprint for converting the Commonwealth into a force for democracy and good governance. For our present purposes it is the seminal point of departure for any discussion of the Commonwealth and democracy for, in that Declaration, Commonwealth Heads of Government committed themselves to working 'with renewed vigour' for the protection and promotion of the fundamental political values of the Commonwealth.

It would not be too presumptuous to assert that the Harare Commonwealth Declaration quickly took firm root and that it has blossomed as part of the Commonwealth's armoury of responses to those who doubted the Commonwealth's capacity to make itself relevant to the needs of the present once the long-running issue of apartheid was resolved and out of the way. The Harare Declaration was a commitment to democracy and to a full range of democratic processes: the rule of law; the independence of the judiciary; just and honest government; and fundamental human rights, including equal rights and

opportunities for all citizens, regardless of race, colour, creed or political belief, accompanied by an affirmation of the rights of women as an essential component of human rights and as a result of which gender considerations now inform all the Commonwealth Secretariat's activities.

The Harare Commonwealth Declaration also speaks of democratic 'institutions which reflect national circumstances'. That was an important recognition that there is no one standard format for democracy, but at the same time it recognised that there are certain features which must be present in any democratic landscape, whatever the national circumstances.

In more practical terms, the Commonwealth Secretariat has organised, and continues to organise, on request, courses, seminars, workshops and meetings that bring together those who are engaged in making democracy in the Commonwealth work.

PRACTICAL SUPPORT

It is important to note that democratic structures cannot be imposed from outside. They must be sustained from within, and attention needs to be paid to the development of an indigenous democratic culture. This is a complicated process; hence the Commonwealth gives assistance at the request of the member states to assist in strengthening the capacity of the key democratic institutions, including parliaments, public service commissions, electoral commissions, judiciaries, statutory human rights bodies and gender bureaux, as well as other organisations which sustain democracy and civil society.

One of the most significant meetings in recent Commonwealth history is a meeting organised by the Commonwealth Secretariat that arose from an initiative by the Commonwealth Secretary-General and which bore fruit in 1997 in Botswana at a Round Table of Heads of Government from some 18 African Commonwealth countries to discuss democracy and good governance. Even more significantly, the Round Table itself was preceded by a meeting on the same theme of democracy and good governance which was attended by representatives of opposition and ruling parties from the same countries. It was an unique occasion in that, in the case of some countries, opposition and ruling party politicians sat together around the table for the first time, whether inside or outside their countries, to discuss their differences and common problems.

The Secretariat has provided financial and other assistance to enable other organisations which are involved in strengthening democracy, such as the Commonwealth Local Government Forum, to organise meetings of their own at the grassroots level. It also produces relevant publications to assist those working to develop and strengthen their democracies and to promote democratic best practices.

Equally importantly, the Commonwealth Secretariat, on request, has a mandate to and does provide practical assistance to help member countries to strengthen their democratic institutions and processes and often in their election management processes. In this respect, one activity that stands out most because of its high profile nature and which has already been referred to is when, at the request of a member country

(but only if there is a 'broad' political support for it in the requesting country), the Secretary-General sends a Commonwealth Observer Group to observe national elections.

PRACTICAL APPROACH AND CONTRIBUTIONS TO DEMOCRACY

In order to support governments in transition to democracy, the Commonwealth provides technical assistance in different forms. The Gambia, Lesotho, Malawi, the Seychelles, and Nigeria, for example, have all benefited from this assistance but the most significant assistance the Commonwealth has given to date was that provided to support the transition to a non-racial multi-party democracy in South Africa between 1992 and 1994. A Commonwealth Observer Mission played a considerable part alongside other groups from the UN, the OAU, and the EU, in helping to stem the violence in the Kwazulu-Natal region, which threatened to derail the negotiations. The Commonwealth also provided technical assistance for the training of electoral officers and the restructuring of the police force, as well as a National Peacekeeping Force for the elections.

Electoral Assistance

The Commonwealth believes that conducting free and fair elections is a vital part of the democratic process and it therefore gives assistance to its member states on electoral matters. It often begins with the provision of pre-election technical assistance to promote a sound electoral process. As already indicated, since October 1990 the Commonwealth Secretary-General has constituted 28 Commonwealth observer groups to monitor national elections in 18 different member countries. The Commonwealth has always stressed the importance of creating an environment conducive to the democratic process well ahead of polling day. To facilitate this, certain benchmarks have been identified which include: a constitution that makes for a representative and accountable government; electoral laws that ensure proper registration of voters; fair nomination procedures; conditions that allow a secret ballot; adequate access to publiclyowned media for contesting parties; and well-trained and vigilant political party agents whose work is complemented by national and international observers. In March 1998, the Commonwealth Secretariat brought together experts on elections to consider among other things the structure of the election management body, the role of political parties, the role and responsibilities of the media, voter education and the impact of cultural factors on the development of democracy.

National institution and capacity building

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which meet local needs and have local support. The assistance is essentially of a practical nature aimed at developing self-sustaining local institutions and processes.

For example, in December 1997, in response to a request from the Government of Lesotho to assist in the preparation for elections, the Commonwealth Secretariat organised a four-day workshop on democracy and human rights in Maseru. The objective of the workshop was to share the knowledge and recent experience of other member countries in the promotion of democracy and human rights. It also examined the essential ingredients of democracy and the relationship between civil society, human rights and democracy, as well as the challenges in building and sustaining democracy.

National human rights institutions

Another sign of the Commonwealth's commitment to democracy is its assistance in developing the work of the ombudsman offices and national human rights institutions as a necessary corollary to the democratic machinery of governments. In this respect, the Commonwealth has responded to many requests from governments. In November 1997, for instance, the Government of Uganda requested a workshop for the country's Human Rights Commission. The workshop was devoted to developing a plan of action for the promotion of human rights and to training the officers working in the Human Rights Commission. The Commonwealth Secretariat also plays a facilitating role by encouraging discussions between governments and non-governmental groups on national strategies aimed at identifying structures and mechanisms necessary for the effective promotion and protection of human rights and democracy.

Commonwealth support for sustainable development

The ability to change governments periodically and the assurance that a change will take place when it is needed is seen as a key element of good governance in developed countries. It is also seen as an important part of the transition towards good governance in developing countries, although some disagree and argue that social stability and economic development should take priority over political and legal succession mechanisms.

In Cyprus in 1993 the Heads of Government welcomed and supported the right to development as stated in the 1986 United Nations Declaration on the Right to Development. They placed special emphasis on the interdependence of democracy, development and human rights, and in view of that, placed greater attention on developing a project that reflects this fundamental linkage. Democracy, development and human rights are linked because democracy provides a long-term basis for managing the risk of violent internal conflicts which emanate from ethnic tensions, religious conflict or differing cultural interests. They are linked because democracy is inherently attached to the question of good governance, which has an impact on all aspects of development efforts. These links prove that development should be understood as a process designed progressively to create conditions in which every person can enjoy, exercise and utilise under the rule of law all human rights, whether economic, social, cultural, civil or political.

The Harare Declaration itself emphasised the Commonwealth's commitment to the promotion of sustainable

development and the alleviation of poverty in the countries of the Commonwealth. Poverty in any country affects the economic, social, and cultural rights as well as the civil and political rights of the people. Poverty is a complex, multidimensional problem with origins in both the national and international domains. The elimination of poverty requires democratic participation of the people in changing the economic structures to ensure access to the resources for all. The Harare Declaration called for the promotion of sustainable development and the alleviation of poverty through a stable international economic framework within which growth can be achieved, and sound economic management recognising the central role of the market economy.

As the Commonwealth's young democracies have matured, it has begun looking ahead to the key issues which commonly arise during any process of democratic consolidation. The Secretariat had recognised the need for it to broaden the scope of its efforts to promote the democratic ethic so that it can assist member countries to make democracy as real and as deep as possible. As part of these efforts, it has completed a series of workshops on administrative law followed by an on-going programme of workshops on access to justice. It has also commenced a programme of workshops and publications, the theme of which is 'Deepening Democracy'. This programme will cover such subjects as the role of money in democratic politics, the mechanisms for scrutiny, accountability and oversight of the Executive, the role of public broadcasters in a democratic society, and gender and democracy. The first of these workshops, on the role of the opposition in democratic politics, has already taken place.

The critical factor and the real challenge is that of ensuring that there is a genuinely participatory culture; a culture based on tolerance, mutual respect and national consensus; a culture in which the concepts of consent, legitimacy and accountability are real and meaningful; and most of all a culture which encourages a diverse and vigorous civil society and values its role as a counterweight to government.

In conclusion, it is appropriate to emphasise the Commonwealth's continued commitment to democratic principles whilst recognising the different backgrounds of its member states. Based on this commitment, the Commonwealth Secretariat supports efforts to promote democracy, human rights, gender equality, the rule of law, and just and good governance by providing practical assistance with the aim of strengthening democratic processes and institutions.

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