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# A Legal Reading of the Rights of Persons with Disabilities in Light of the International Convention

Mushtaq Talib Mhana Awadh

Al-Furat Al-Awsat Technical University, Babylon Technical Institute, Iraq

**Abstract:** Persons with disabilities represent a segment of society whose circumstances are shaped by disabilities that limit their ability to fulfill social roles in the same manner as their peers. This group has the right, like all other segments of society, to be treated with respect and to receive protection. They hold an important position and have garnered significant attention from communities worldwide, as their inclusion is integral to the advancement of human rights. However, it is essential to develop their capabilities and address their needs, as disabilities impose unique social, psychological, educational, medical, and economic challenges that can only be met through comprehensive rehabilitation and efforts to mitigate the barriers that hinder their integration into society. Given the significant status of persons with disabilities in society, due to their educational and economic dimensions, countries and international organizations have been committed to providing legal protection for these individuals. Most legislation and texts stipulate the necessity for them to enjoy and exercise all their rights, on an equal footing with ordinary people, including healthcare, medical care, employment, education, and grants to assist them in managing their affairs. Among the declarations that stipulate the rights of these persons is the Declaration on the Rights of Persons with Disabilities. Among the most important pieces of legislation that stipulate their rights is Iraqi legislation, which enacted a special law specifically for them: Law No. 38 of 2013 on the Care of Persons with Disabilities and Special Needs.

**Introduction:** The importance of studying this segment of society lies in exploring the legal protections afforded to individuals with special needs under international conventions and Iraqi legislation. This analysis aims to understand how these rights are represented in

international agreements, their status within Iraqi law, and the extent to which Iraqi legislation addresses the rights of these individuals.

The focus of this study is to examine the extent to which international conventions and Iraqi legislation address the concerns of individuals with disabilities, provide them with legal protection, safeguard their rights, and ensure a dignified life. The structure of the study is organized into two main sections, each divided into two subsections. The first section discusses the legal framework surrounding the concept of individuals with disabilities, while the second section explores the protection of the rights of individuals with disabilities as outlined in international agreements and Iraqi legislation.

## Chapter One

### The Legal Framework for the Concept of Persons with Disabilities

The concept of disability has garnered significant attention in both linguistic and legal contexts due to the unique status of individuals within this group. Both international and national Iraqi legislation have addressed this concept. Their circumstances have been analyzed through a comprehensive framework, leading to the enactment of laws and international legal instruments designed to ensure a dignified life for individuals with disabilities by recognizing their rights and safeguarding them against discrimination compared to the general population.

### The Legal Framework for Individuals with Disabilities

Persons with disabilities have been a significant concern for societies, both in the past and present, particularly at the international and domestic levels. Specific definitions for this group have been established in international agreements, global organizations, and both Arab and foreign legislation, including Iraqi law.

Among the first international organizations to focus on individuals with disabilities was the United Nations General Assembly, which adopted the 1975 Declaration on the Rights of Disabled Persons. This declaration defined a person with a disability as "any individual unable to ensure, wholly or partially, the necessities of normal individual or social life due to a deficiency in their physical or mental capabilities, whether congenital or acquired." ( )

The World Health Organization defined disability in 1980 as the inability to perform certain functions due to physical or mental impairments resulting from illness, accidents, violence, or genetic factors. This definition highlights how such impairments can lead to a reduction in life functions or performance levels,

which in turn limits opportunities for progress in self-care, learning, work, and other human activities." ( )

It is well-known that the 14th International Rehabilitation Congress, held in Canada in 1980, defined disability as "a condition that limits an individual's ability to perform one or more essential functions of daily life, such as self-care, social relationships, and economic activities, within limits that are considered to be of a physiological or psychological nature or related to the structural makeup of the body." Additionally, the 1983 Vocational Rehabilitation and Employment Convention defines a disabled person as "an individual whose prospects of securing, retaining, and advancing in suitable employment are significantly diminished due to a legally recognized physical or mental impairment.." ( )

According to the 2006 Convention on the Rights of Persons with Disabilities, Article 1 defines persons with disabilities as "every person with a disability who has long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others."" ( )

Article 3 of the Convention emphasizes the importance of respecting the inherent dignity and autonomy of individuals. This includes the freedom to make personal choices, the right to independence, and the principle of non-discrimination. It also mandates the full and effective participation and inclusion of persons with disabilities in society, promotes respect for differences, and acknowledges individuals with disabilities as integral to human diversity and nature. Furthermore, it advocates for equal opportunities, accessibility, gender equality, respect for the evolving capacities of children with disabilities, and the right of these children to preserve their identity.. ( )

The International Convention on the Rights of Persons with Disabilities, established in 2008, defines persons with disabilities as "individuals who have long-term physical, mental, intellectual, or sensory impairments that, when interacting with various barriers, may hinder their full and effective participation in society on an equal basis with others."" ( )

Iraq has demonstrated a commitment to supporting individuals with special needs through several key legislative measures, including the Permanent Constitution of Iraq (2005), its accession to the Convention on the Rights of Persons with Disabilities (2006), ratified in 2012, and the enactment of Law No. 38 of 2013 concerning the Care of Persons with Disabilities and Special Needs. The establishment of this law is crucial, as it fulfills one of the fundamental obligations arising from Iraq's accession to the Convention on the Rights of Persons with Disabilities.

Additionally, it complements the scattered provisions found in other relevant laws. The legal protections afforded to individuals with special needs in Iraq are essential, given that they represent a significant portion of the population. This demographic has been affected by various factors, including the consequences of war, the use of harmful weapons, environmental pollutants, and ongoing health risks. Furthermore, the population has faced prolonged exposure to these dangers over several decades, alongside rising traffic accidents, inadequate healthcare, genetic predispositions, and other substandard services available to citizens. Reason: Improved clarity, vocabulary, and technical accuracy while maintaining the original meaning.

As a result, the Iraqi legislator defined disability in the Social Welfare Law of 1980 as “any individual whose ability to work, secure employment, or maintain stability in their job is diminished or absent due to a deficiency or disturbance in their mental, psychological, or physical capabilities.” The law classifies disabled individuals based on the nature of their disability—whether physical, psychological, or mental—and their capacity to work. In contrast, the Law on the Care of Persons with Special Needs of 2013 defines individuals with disabilities as “any restriction or lack of a person’s ability to interact with their environment due to a disability or defect, within the limits that are considered normal for human beings.” ( )

The Iraqi legislator defines disability as “any individual who has lost, either partially or completely, the ability to participate in societal life on an equal basis with others due to a physical, mental, or sensory impairment that has resulted in a deficiency in their functional performance.” ( )

We conclude from the previous definitions in international agreements and Iraqi legislation that both sources define disability as a physical or mental impairment of the disabled person and his inability to secure daily necessities and limits their movements in the usual manner like the rest of the normal people. These international agreements and national laws serve as a safeguard for people with disabilities, ensuring they are treated with special consideration. They establish specific rights and provide various forms of material assistance and to help individuals continue their lives. This includes supplying tools tailored to each person's needs based on the varying degrees of their disabilities.

### **The Second Requirement**

Recognizing the Rights of Persons with Disabilities in International Conventions

The international community has made efforts to integrate individuals with disabilities into society, recognizing the valuable contributions they can make by harnessing their potential. This integration helps break the cycle of isolation and fosters a more inclusive society, benefiting both the individuals and the community as a whole.

Many countries and international organizations have played a significant role in identifying the needs of individuals with disabilities and subsequently enshrining these needs in international conventions and national laws. These laws serve as a vital guarantee for this important segment of society. The declarations and conventions, for instance, extend beyond the initial documents that sparked the movement and legislative efforts adopted by numerous national legislatures. The first of these is the Universal Declaration of Human Rights, established in 1948.

The Universal Declaration of Human Rights is a pivotal historical document in the realm of human rights. It was drafted by representatives from diverse legal and cultural backgrounds across the globe. The General Assembly adopted the Universal Declaration of Human Rights in Paris on December 10, 1948, in accordance with Resolution 217 A. Article 2 of the Declaration affirms that all individuals are entitled to the rights outlined in this document without any distinction based on race, sex, or religion. Although this article does not specifically address the rights of persons with disabilities, it acknowledges the rights of all individuals without exception.

### **The International Covenant on Economic, Social, and Cultural Rights of 1966**

This covenant is a multilateral treaty adopted by the United Nations General Assembly in December 1966 and entered into force on January 3, 1976. The treaty recognizes numerous individual rights without discrimination among different segments and groups of society. It affirms the rights of individuals to social security and social insurance, while Article 12 specifically acknowledges the right to physical and mental health, as well as access to medical assistance in the event of illness. Additionally, it asserts the right to education, which contributes to the full development of human personality and the enhancement of individual dignity. Importantly, this treaty does not exclude persons with disabilities or differentiate them from others. Therefore, all of its provisions apply equally to individuals with disabilities, including the right to education. Furthermore, it is essential to note the International Covenant on Civil and Political Rights, adopted in 1966.

The International Covenant on Civil and Political Rights

is regarded as one of the most significant international documents governing human rights globally. It is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and it entered into force on March 23, 1976. This covenant is considered a fundamental component of the international human rights framework and outlines numerous rights, including the right to life, physical integrity, personal integrity, and personal security. Article 7 of the covenant states, one shall be subjected to cruel or inhuman treatment or to compulsion to undergo medical or scientific experimentation." It also guarantees the right to freedom of expression, movement, religion, and access to public office. All individuals shall enjoy these rights without discrimination.

#### **Fourth: The Universal Declaration of the Rights of Persons with Disabilities, 1975**

This declaration emphasizes that individuals with disabilities are integral members of society and possess the right to enjoy all rights without discrimination based on any grounds or status. It underscores the inherent right of individuals with disabilities to respect for their human dignity, irrespective of the cause or nature of their disability, and to enjoy all the fundamental rights afforded to citizens of the same age, enabling them to lead a decent and dignified life. Furthermore, individuals with disabilities have the right to be included in measures that promote their self-reliance to the greatest extent possible. Conversely, this declaration highlights the right of individuals with disabilities to protection from any systems or treatments that are discriminatory or that involve arbitrariness or degradation of human dignity. Additionally, individuals with disabilities must be empowered to access legal assistance when needed, and their physical and mental conditions should be fully considered if a lawsuit is filed against them.. ( )

#### **Fifth: International Labor Convention No. 159 of 1993 concerning Vocational Rehabilitation and Employment of Disabled Persons.**

The concept of this convention is founded on the assertion that the purpose of vocational rehabilitation is to empower individuals with disabilities to secure, retain, or advance in suitable employment, while also facilitating their integration into society. This convention outlines several policies that must be adhered to when employing individuals with disabilities, as well as the principles that underpin their vocational rehabilitation. Sixth: The International Convention on the Rights of Persons with Disabilities, established in 2007.

The United Nations General Assembly, in its resolution No. 56/168 dated December 19, 2001, established an ad hoc committee tasked with drafting a comprehensive and integral international convention for the protection and promotion of the rights and dignity of persons with disabilities. Over the course of five years, the committee developed the International Convention on the Protection, Promotion, and Dignity of Persons with Disabilities, which was unanimously adopted by the United Nations General Assembly on December 13, 2006. The Convention was opened for signature and ratification by states on March 30, 2007, and it entered into force in 2008.

This Convention comprises 50 articles that address several key aspects of the rights of persons with disabilities, including personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, equality, and non-discrimination. It signifies a shift in the perception of disability from a social welfare issue to a matter of human rights, acknowledging that barriers and societal prejudices are fundamental obstacles in themselves. The Convention urges countries to implement measures that enable individuals with disabilities to utilize public transportation and access educational and learning opportunities. This necessitates that signatory countries enact laws and regulations aimed at enhancing the rights of people with disabilities while abolishing legislation, customs, and practices that discriminate against them. Furthermore, the Convention emphasizes the need for signatory countries to change the prevailing attitudes towards individuals with disabilities, combat prejudice, and promote awareness within society regarding the capabilities and contributions of people with disabilities. Signatory countries are committed to ensuring that individuals with disabilities have the right to live on an equal footing with others and to improving transportation, public spaces, and buildings to accommodate their needs. ( )

#### **Protecting the Rights of Persons with Disabilities in the International Convention and Iraqi Legislation**

The international community has attempted to establish numerous rights for persons with disabilities, but their fundamental rights have not been clearly defined. These rights are among the most important human rights that every country seeks to enshrine in laws to guarantee its citizens' rights. This category of persons has also received international attention through international conventions specifically for persons with disabilities.

#### **The Rights of Persons with Disabilities in International Conventions**

International conventions have not overlooked the



rights of persons with disabilities, like all other normal persons. Their full rights have been recognized at all levels, including livelihood, education, and employment. However, among the most important rights discussed in this study are the rights to education, work, and healthcare, as these rights are considered among the most important for enabling them to continue living and secure their personal and family needs.

### **First: The Right of Persons with Disabilities to Education**

The right to education is considered one of the most fundamental human rights, which every person must enjoy without discrimination. This has been affirmed in international covenants, declarations, and national legislation. Article 26 of the Universal Declaration of Human Rights issued by the United Nations in 1948 states that "the right to education shall be exercised without discrimination, and everyone has the right to the same opportunities as others to access educational facilities." ( )

To enshrine this right, UNESCO, the United Nations Educational, Scientific and Cultural Organization (UNESCO), adopted the Convention against Discrimination in Education in Paris in 1960. This convention considers discrimination in education a violation of the rights enshrined in the Universal Declaration of Human Rights. Article 3 stipulates that states parties to this convention must "repeal any legislative provisions or administrative instructions which constitute discrimination in education and, where necessary, ensure that there is no discrimination in the admission of pupils to educational institutions." This obligation, in one way or another, includes specific groups, including persons with disabilities, or the preference or discrimination of one pupil over another. Article 4 of the convention also states that "States Parties undertake to promote equal opportunities and equality in educational matters. This includes, for persons with disabilities, ensuring equal access to education at the same level and equal conditions relating to the quality of education provided." Among the international agreements that have recognized the rights of persons with disabilities to education is the United Nations International Convention on the Rights of Persons with Disabilities of 2006, in Article 24 on education: "States Parties recognize the right of persons with disabilities to education. To realize this right without discrimination based on equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to the development of human potential and the strengthening of respect for human rights and fundamental freedoms and human diversity,

while developing the personality, talents, creativity and participation of persons with disabilities in all aspects of life." The Convention also emphasized that persons with disabilities should not be excluded from education at all levels, and called for States to provide for individual needs to facilitate learning, the parabolic method and alternative forms of writing, facilitate sign language, and encourage the linguistic identity of the deaf. The Convention stipulated that persons with disabilities should have access to general higher education, vocational training, adult education, and lifelong learning without discrimination.

Education is a global challenge and a development goal that provides every child with the opportunity to complete their primary education. Children living in third-class countries, especially those with disabilities, cannot attend school regularly. They face both moral and material barriers to learning, including the cost of education, varying abilities, and health conditions. This makes the right to education subject to the principle of equality and equal opportunity. Therefore, every country must recognize free education at all levels and exempt citizens from any financial obligations related to it.

### **Second: The right of persons with disabilities to work.**

The right to work is considered one of the most important basic rights to enhance the individual's ability to qualify his professional talents and secure his daily life necessities. Through work, the individual can ensure the continuity of life for his family in safety and security, because work for the individual is considered a livelihood. The United Nations International Convention on the Rights of Persons with Disabilities of 2006 confirmed in Article 27 that "the right to work on an equal basis with others includes the opportunity to earn a living by work they freely choose or accept in the labour market and in a work environment that is open to and inclusive of persons with disabilities and facilitates their integration into it. States Parties shall protect and promote the right to work, including the right of persons who acquire disabilities through their work, by taking appropriate steps, including the enactment of legislation to achieve objectives, the most important of which is prohibiting discrimination based on disability about the terms of employment and safe and healthy working conditions, protecting them to a situation of fair and appropriate working conditions with equality and equal opportunities, receiving equal remuneration for equal value, protecting them from harassment and seeking redress for grievances, and ensuring that they exercise their labour and trade union rights on an equal footing." Equality with others, as well as promoting employment opportunities for persons with disabilities in the labor market, access to public

technical and vocational guidance programs, access to employment services and continuing vocational training, promoting self-employment opportunities and starting businesses, employing persons with disabilities in the public sector and encouraging them to work in the private sector. States Parties shall also ensure that persons with disabilities are not subjected to slavery or servitude and are protected, on an equal basis with others, from forced or compulsory labor.

Among international efforts that supported the right of persons with disabilities to work was the 1992 Arab Labor Conference, which prioritized women with disabilities, as Article 20 stipulated that "qualified women with disabilities shall be given the same opportunity as qualified men of equal ability, to prevent any discrimination against women with disabilities in employment." ( )

The United Nations Convention on the Rights of Persons with Disabilities affirms that there is no need to discriminate even between people with disabilities, especially in terms of gender or qualifications, and guarantees the most comprehensive protection for people with disabilities, without limiting the distinction between people with disabilities and normal, healthy people. Third: The Right of Persons with Disabilities to Access Health Care

Health care has become one of the most important issues and necessities sought by every country and every health-related organization, in addition to providing medical and health care and services to persons with disabilities. Health care is an integrated set of basic health services provided by specialized health centers. One of the first organizations to address health care for persons with disabilities was the United Nations General Assembly, by Resolution No. 46/119 of December 17, 1991. This declaration included the UN General Assembly's recognition of the rights of persons with mental disabilities. Its first principle states that "all persons shall have the right to the best possible mental health care, and that persons with mental illness shall be treated with humanity."

The third principle of this declaration stipulates the right of persons with mental illness to live and work as much as possible in the community. The seventh principle stipulates the patient's right to treatment when treatment is in a mental health facility. The eighth principle of this declaration stipulates the right of persons with mental illness to receive health and social care appropriate to their health needs.

This right is also affirmed in the 1991 Convention on the Protection of the Rights of Persons with Disabilities. Article 25 of the 2006 Constitution stipulates that "free or affordable health care and

programs for persons with disabilities are provided equivalent in scope, quality, and standards to those provided to other persons, including sexual and reproductive health services and general population health programs."

## Second Requirement

### Protection of Persons with Disabilities in Iraqi Law

Under Iraqi law, Iraq has enshrined the protection of the rights of persons with disabilities in legislation and the constitution, and is committed to international agreements that protect the rights of these persons. Iraq acceded to the Convention on the Rights of Persons with Disabilities in 2012, thereby obligating itself to respect their rights, ensure their protection, and implement their provisions. In addition to Iraq's accession to the Convention on the Rights of Persons with Disabilities,

The Iraqi Constitution is dedicated to protecting this right. It is well known that the constitutional document includes general rules that apply to all individuals in society, with no specific provision about a particular group or minority. This means that the constitutional rules relating to human rights apply to every individual or citizen in society, whether they are natural persons or disabled. Persons with disabilities do not enjoy all the rights and freedoms stipulated in the Iraqi Constitution of 2005. The Iraqi Constitution derived the protection of the rights of persons with disabilities from international agreements. The International Covenant on Civil and Political Rights stipulates that each state and each party to this Covenant undertakes to respect expatriates without discrimination based on race, color, or language.

Chapter Two of the Covenant stipulates equality and non-discrimination based on disability. The Constitution stipulates that "Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color, or economic or social status.." ( )The Iraqi Constitution enumerates the grounds for non-discrimination, but does not explicitly state non-discrimination on the basis of disability. However, it can be inferred from these grounds, as these grounds are not exhaustive, but rather exemplary.

The Iraqi Constitution attempts to emphasize the grounds for non-discrimination in its general form, so that the legislative authority has a negative duty not to discriminate based on disability. Furthermore, it would be preferable for the Constitution to explicitly state a positive duty, obligating the legislative authority to take the necessary measures and actions for persons with disabilities. The Iraqi Constitution enshrines the protection of persons with disabilities through the regulation of Law No. 38 of 2013 for the Care of Persons

with Disabilities and Special Needs, which undertakes to rehabilitate them to integrate them into society. This law is considered one of the fundamental obligations that led to Iraq's accession to the United Nations Convention on the Rights of Persons with Disabilities. It aims to rehabilitate and integrate these individuals into society, raise awareness of disability and its prevention, contribute to providing a decent lifestyle for those covered by the law, and coordinate work and tasks between relevant ministries to achieve this. The law, enshrined in Iraqi legislation, consists of 29 legal articles regulating the rights of persons with disabilities under international law. This law is considered one of the most important guarantees, as reflected in its provisions. The Iraqi legislator has expanded the concept of persons with disabilities and special needs to include all those who suffer from discrimination, exclusion, or restrictions, so that these causes do not lead in any way to their deprivation of protection. This law aims to care for persons with disabilities and special needs, achieving a set of objectives:

- A. Caring for persons with disabilities and special needs, and eliminating discrimination based on disability and special needs.
- B. Providing the requirements for integrating persons with disabilities and special needs into society.
- C. Ensuring a decent life for persons with disabilities and special needs.
- D- Respecting disability and accepting disability as part of human diversity and human nature.
- E- Creating job opportunities for people with disabilities and special needs in government departments, the public, private, and mixed sectors.

The Iraqi legislature has sought to achieve these goals by developing plans and methods, including:

1. Developing special plans and programs to guarantee the rights of persons with disabilities and special needs, by the provisions of the law and international agreements and conventions to which the Republic of Iraq is a party.
2. Joining agreements and conventions related to the care of persons with disabilities and special needs.
3. Developing plans and programs to prevent the causes of disability and make them available to raise awareness.
4. Providing treatment requirements, social services, and psychological and vocational rehabilitation for persons with disabilities and special needs, in cooperation and coordination with relevant authorities inside and outside Iraq.

5. Providing opportunities for public and private education, vocational education, and higher education for persons with disabilities and special needs who are capable of attending.

6. Developing the general staff of the Care of Persons with Disabilities and Special Needs and creating a database for them.

7. Utilizing the assistance of experienced and specialized personnel, keeping abreast of scientific developments in all matters related to disability and special needs, and liaising with relevant authorities inside and outside Iraq to enhance performance in this field.

The Iraqi legislator has approved the principle of empowerment by adopting special and targeted incentive measures to enable them to adapt to the requirements of their natural and social environment and develop their abilities to depend on themselves and make them productive members of society.. ( )

This guarantees effective equality of treatment between persons with disabilities and other individuals. The Iraqi legislator, in Article 15 of the Law on the Care of Persons with Disabilities and Special Needs, stipulates the right to train families of persons with disabilities and special needs on how to properly deal with them, and to care for them in a manner that does not violate their dignity and humanity. The same law also stipulates privileges and exemptions, and requires ministries, non-ministerial entities, and public sector companies to allocate jobs or work for persons with disabilities and special needs. The rights stipulated by the Iraqi legislator in the Law on the Care of Persons with Disabilities and Special Needs enable these persons to be self-reliant and make them productive members of society, enabling them to live independently. It also removes obstacles, trends, and stereotypical behaviors throughout society and in institutions that classify marginalized groups and place them in lower ranks. This law is distinguished by its significant advancement of people's rights, consistent with the essence and provisions of the principles enshrined in the International Convention on the Promotion, Protection, and Ensuring the Full and Equal Enjoyment of All Persons with Disabilities, and by promoting respect for their inherent dignity in the development of special plans and programs to guarantee their rights. By the provisions of the law and international agreements to which Iraq is a party.

## CONCLUSION

We have reached the end of our study and found that countries' approach to persons with disabilities focuses on facilitating their integration into society and preparing them for productive work. The goal is to preserve their remaining abilities, talents, and potential

for self-reliance. Promoting and protecting the rights of persons with disabilities involves identifying and removing social barriers and attitudes that prevent them from enjoying their human and fundamental rights on an equal basis with others.

1- We conclude that international declarations and conventions embody international protection for persons with disabilities. However, the United Nations Convention on the Rights of Persons with Disabilities strengthened their protection, affirmed fundamental principles for persons with disabilities, and established substantive protection to regulate their rights. 2- We conclude that the embodiment of the protection of the rights of persons with disabilities in Iraqi legislation was a result of Iraq's accession to the 2006 International Convention on the Protection of Persons with Disabilities.

### **RECOMMENDATIONS**

We can diversify the relevant authorities to work on the rehabilitation of persons with disabilities and rely on their integration into society by providing various services and care, ensuring prompt implementation of their demands, and providing the tools that enable them to lead normal lives.

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