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Editorial

From the COHRE Americas Programme – CAP



The COHRE Americas Programme launches the publication of this bimonthly bulletin, which is dedicated to matters relating to the right to housing and the right to the city in Latin America. The purpose is to provide a space for opinion and participatory reflection, involving all those communities concerned with defending these rights.

A fundamental part of this undertaking is to contribute to the integral defense of human rights, offering a useful tool for students, lawyers, foundations, NGO's, international organisations, governments and those responsible for caring for justice and civil society in general. The intention is that each edition should provide a solid platform for interaction

and debate, so that our readers and collaborators can be ready to act against violations of these rights – the defense of which we are committed.

This first edition opens with an article on the concept of the right to the city, entitled, "What is the Right to the City?" Not much is known about it, and as this is a publication dedicated to publicising and defending the concept, we introduce the subject with a review of past contributions and a summary of the legal antecedents.

Following this, the article "Ecuador heading towards a new Charter of Rights" offers a reflection on the importance of incorporating the right to housing, to the city, and to water

and sanitation in the Constitution. Furthermore, a noteworthy process for our region: is the constitutional reform in Ecuador and the inclusion of the abovementioned rights in its text.

We then include reports and analyses of other important events in countries in our region, including: a presentation of a report on the housing crisis that is affecting the City of Buenos Aires in an article entitled "The *Instituto de la Vivienda de la Ciudad –IVC–* and the slums of Buenos Aires: not much going right and plenty of official discretionary action", as well as a revealing section of **Cases to watch** on the political oscillations in the implementation of a policy towards realising the right to housing by the Municipal Government

of Buenos Aires, which is intended to regularise the situation in the *Villas 31 and 31 bis slums*.

Another interesting article included in this edition is "Land restitution for internally displaced persons in Colombia" which discusses the judgement handed down by the Constitutional Court of Colombia accepting the use of the *Pinheiro Principles* in a process of land restitution for displaced persons in Colombia.

We warmly invite you to send your comments, presentations of new cases, articles and information about events related to housing rights and the right to the city in Latin America to our electronic address: boletin@cohre.org

What is the Right to the City?

Sebastián Tedeschi*

When in the name of beautifying our cities, urban renovation plans are made that expel the poor to the outskirts of the city; when the plans to regularise informal settlements make progress only in the outlying areas but not in the better-serviced urban areas; when public investment in urban infrastructure and transportation is better in the wealthier neighbourhoods, many people may well ask: do we have the right to live in this city? Do we have the right to participate in the decisions on how to reconstruct the city in which we live?

Efforts to think of urban spaces as environments that guarantee rights and specific necessities for all the inhabitants have led to a series of initiatives, both local and international, that have generated a number of principles defining the concept of the Right to the City. The legal antecedents of this right are detailed in the following documents:

- > General Comment nº 4, 7 and 15 of the CESCR of the UN;
- > Articles 34.1 and 45 f) of the OAS Charter;
- > European Charter for the Safeguarding of Human Rights in the City (Saint Denis, 2000)

- > Statute of the City (Brazil 2001);
- > Montreal Charter of Rights and Responsibilities (Montreal 2004);
- > Some articles of the Constitution of the Autonomous City of Buenos Aires (1996, Argentina);
- > Article 65 of the Constitution of Portugal (1976);
- > Article 47 of the Constitution of Spain (1978);
- > Articles 182 and 183 of the Constitution of Brazil (1988);
- > Action Program of the XVII Ibero-American Meeting of Heads of State and Government (2007) Point 29.

Within civil society, various organisations – including COHRE – have been promoting the **World Charter on the Right to the City** for some time. The objective of this Charter is to establish the legal basis of the right to the city to be understood as an integral part of human rights.

Of the rights and duties that should be considered from an “urban perspective” and that only a generous interpretation could extract from existing international human rights instruments, the following can be included:

- > the principle of the social and ecological function of the city;

- > the right to remain in the city without being expelled or dislocated in an arbitrary manner;
- > the right to participate in the preparation of the municipal budget of cities;
- > the socially just and ecologically balanced use of urban spaces and land;
- > recognition of informal markets;
- > the right to participate in the planning, supervision and urban-environmental management in such a way as to prevent segregation and territorial exclusion;
- > the right to participate in the control and evaluation of the security forces;
- > the right to management and supervision of the public services using administrative instruments directly linked to the population;
- > the right to mobility and circulation in the city in accordance with the urban and interurban transport plan, and by means of an accessible public transport system at reasonable prices;
- > the right to the elimination of architectural barriers, the installation of the equipment necessary for the system of mobility and circulation, and the adaptation of all public buildings, as well as the places of work and play for easy access by disabled persons;
- > the right of homeless persons to access lodgings providing a bed and

breakfast without prejudice to the obligation to provide long-term housing solutions.

Many of these rights can be found in fragmented forms in laws, local ordinances, constitutions and declarations of human rights or they may form part of local government programmes. However, consolidation into an easily accessible document could greatly contribute to the demonstration of the interdependency and indivisibility of these rights in such a way as to continue instigating and defending respect for all of them before all the citizens. On the other hand, it is worth pointing out that the creation of adequate guarantees for the defense of these rights could be a valuable instrument for excluded persons in all cities.

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Ecuador heading towards a new Charter of Rights

Claudia Acosta and Fernanda Levenzon*

During the last six months, there have been intense debates in the City of Montecristi in Ecuador where the National Constitutional Assembly is meeting to produce a new constitutional text, expected by the end of July. This moment of constitutional change represents an opportunity for increasing the constitutional guarantees of the right to housing, to the city, and to water and sanitation for the population of the country. Therefore, we emphasise here the undoubted importance of including these rights in the new Constitution.

Constitutionally recognizing the right to housing, to the city, and to water and to sanitation signifies, above all else, the creation of a legal basis on which people can depend for support when demanding implementation of their rights, and also to present claims before human rights organizations and courts when rights fulfilment is not otherwise obtainable.

Writing into the national political charter the fundamental contents of these rights for all persons ensures, on the one hand that Ecuador will bring its national human rights legislation into line with the international obligations it has assumed. On the other hand, –



obligations it has assumed. On the other hand, – and in practical terms – it also implies a greater degree of legitimacy and accountability, given that all of the policies and laws henceforth adopted in Equator will have to observe and incorporate this constitutional base. Another possible consequence of the inclusion of these rights in the new constitutional text will be to attribute greater responsibility to public administrators and politicians who will have to account for actions and omissions due to the non-observance of these rights.

The acceptance of principle of the Right to the City is, at the same time, a recognition that cities are places of marginalization, segregation and exclusion of the poorer majorities, and that require the promotion and implementation of public policies that guarantee access to land, to an adequate and dignified home, to infrastructure (including water and sanitation), and to sources of finance sufficient to guarantee sustainability.

The recognition of the right to housing encompasses a number of determining aspects, such as: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure;

(c) affordability; (d) habitability; (e) accessibility (access by less advantaged groups in society); (f) location; and (g) cultural adequacy. In this way, the guarantee of the right to housing represents much more than just a roof over one's head and is much more than can be assured to each individual by the rules of the marketplace. When it is a question of a right, the above-mentioned aspects must be incorporated, as well as the recognition and right to demand the accountability for their fulfilment.

Furthermore, a constitutional text that assures the right to water and sanitation is essential for the orientation of public policies regarding water supply and sanitation services. The adoption of a rights-based perspective in the constitution signifies that the service provider, whether public or private, is legally obliged to give quality service to the entire population at all times and without discrimination of any kind. This is to say, all persons, including those who live in informal settlements, have the right to be supplied with a quantity of potable water sufficient for consumption, hygiene and subsistence, as well as adequate sanitation systems.

In the case of the indigeneous peoples, the recognition of the right to water signifies that neither the State nor third parties can interfere with traditional forms of access to water, as the State itself is responsible for ensuring access.

In the framework of writing the new Constitutional text, various social organisations have been working for the recognition of these rights. COHRE has been participating with the *Urban Forum*, the *Fundación Terranueva* and the *Contrato Social por la Vivienda* – all Equatorian organisations – in the definition of and preparation of proposals for Constitutional Articles on Housing, the City, Water, Public Services, territorial structuring and participative planning.

During the process of consultation and debate, draft texts were sent to the editors in the General Assembly and to the individual experts responsible for writing the new Constitutional document. In all of these approaches, we emphasised the right to housing, the right to regularisation of informal settlements, the prohibition of forced evictions, the social function of property, the right to water and basic sanitation and the Right to the City.

The social organisations will also request that national and international institutions provide letters of support and promote activities with the constituent communities and for the Assembly Members so that the proposal are widely known and understood.

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The *Instituto de la Vivienda de la Ciudad (IVC)* and the slums of Buenos Aires: not much going right and plenty of official discretionary action

Victoria Ricciardi*

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Bulletin
Housing Rights and the Right
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COHRE, together with the *Asociación Civil por la Igualdad y la Justicia (ACIJ)* and with the participation of the *Servicio Ecuménico de Apoyo y Orientación a Migrantes, Refugiados y Desplazados (CAREF)*, produced a report on how the public body responsible for regularisation of informal settlements in Buenos Aires –the Housing Institute of the City (*Instituto de la Vivienda de la Ciudad*)– is performing its duties in relation to the housing deficit in the Municipality.

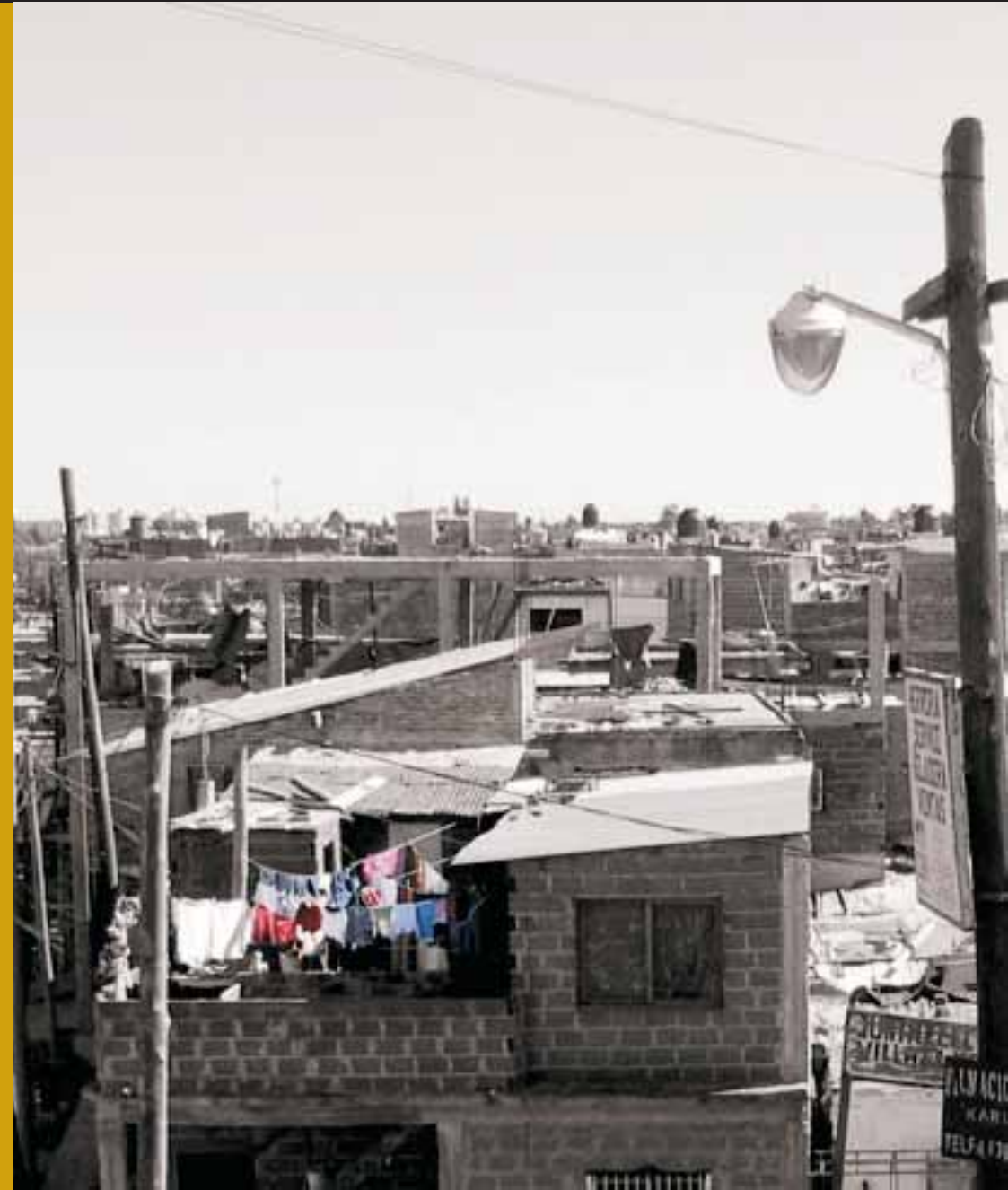
The City of Buenos Aires is experiencing an acute housing crisis that is getting worse daily, affecting thousands of people. Although one of the richest cities in Latin America, Buenos Aires suffers from drastic problems in relation to access to housing and inadequate housing conditions in general. The numbers speak for themselves: according to official statistics provided by the IVC, 129,929 persons live in slums, low-income neighbourhoods or transitional housing. Currently, there are more than 20 slums and 24 informal settlements in the city.

In light of this, the investigative report “*The Instituto de la Vivienda (IVC) and the slums of Buenos Aires: not much going right and plenty of official dis-*

cretionary action” analyses the public policies implemented by the IVC, the body charged with planning and executing the City’s housing policies.

The report finds, first of all, that international standards on the right to adequate housing are not being respected. Secondly, the report reveals problems in the structure and functioning of the IVC through an analysis of the budgetary planning and the inefficient administration of funds. Furthermore, the report describes the precarious housing conditions in the slums and the inadequate provision of public services, placing directly responsibility for this situation on the IVC .

Moreover, the report provides a description of the international and local normative framework on the right to adequate housing, and proposes a number of recommendations that emphasise the necessity of implementation of public policies capable of offering a definitive, integrated and planned solution for the more than 200,000 people who live in the slums of Buenos Aires. The report further proposes that these policies should be defined by the existing normative framework, in order to guarantee the participation of residents in the planning of the proposals



and to provide legal assurances that the programs are not just discretionary actions by the authorities but are subject to the relevant regulatory mechanisms.

In fact, there is a proposal for a law to limit the powers of the IVC, transferring the responsibility for upgrading and formalising the slums of Buenos Aires to the *Corporación Sur* (a public company created by the local government and operating as a trustee). However, there are many concerns about such an inconsistent change. Among these is a concern over a lack of information about the benefits of this decision and over what policies this new body would institute for the settlements in the north and south – as their policies might not address integrated solutions for all the slums in the City.

In this context the head of the City Government presented a proposal to hold a referendum to decide the future of the slums of Buenos Aires. This is just one more of the senseless political actions that has sidetracked attempts to resolve the City's housing problems.

In this regard, it should be noted that convoking a referendum on this particular subject is illegal because the human right to adequate housing is a

right inherent to all residents and therefore is not subject to discrimination based on the place where one lives. The right to adequate housing is recognised in international treaties on human rights that have been incorporated into the Constitution of Argentina. This imposes obligations on the State and precludes the supposition that the enjoyment of such a right can be subject to the spontaneous opinion of the citizens. Governments may not submit other fundamental rights to a referendum that might result, for example, in the closure of the tribunals of justice in order to reduce taxes. Similarly, the Government may not call a referendum to place limitations on the enjoyment of the right to adequate housing.

Those interested can request the Bulletin by sending an e-mail to: boletin@cohre.org

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Cases to watch

Por Julián Bardelli*

Villas 31 and 31 bis in Buenos Aires: Caught between the incompatibility of the real estate business and a policy of realising the right to adequate housing.

The slums called *Villas 31 and 31 bis* are informal human settlements, without urban services, where the residents have no legal security of tenure. Located in the north-centre of the city, these settlements house at least 20,000 inhabitants.

For over a decade, a consortium of entities managed by the Federal Government and the Government of the Municipality of Buenos Aires has been promoting a large-scale urban development project for this area, designed to include commercial and green areas, as well as luxury hotels. Although this mega-project could involve the areas where *Villas 31 and 31 bis* are situated, authorities have not provided information as to what will be the extent of the project and the manner in which it will affect the residents of the slums.

Since last year, the authorities of the present Municipal Government have been stating in the press that they intend to “relocate” the families, maintaining that it would be “impossible” to undertake in situ upgrading of the settlements. However, they have not explained what makes such construction work “impossible”. In reality, it has become clear that the impossibility of the case is due to the incompatibility between the desire to construct lucrative real estate in the area and a policy to realise the right to adequate



housing for the marginalised residents who live in the area. This situation is aggravated by changes announced to land regularisation policies in Buenos Aires, and further worsened by the housing deficit and the operational problems and decreasing effectiveness of the Housing Institute of the City (*Instituto de la Vivienda de la Ciudad*). For more information on this topic, see the article "*Instituto de la Vivienda de la Ciudad and the slums of Buenos Aires: not much going right and plenty of official discretionary action*".

However, residents and the representatives of both communities are calling for the definitive formalisation of the settlements, using various legal and technical arguments in support of their rights (including, among others, an in situ upgrading project designed by the Faculty of Architecture, Design and Urbanism of the University of Buenos Aires, which the local Legislature recognised as being "of interest to the City"). COHRE has been supporting these efforts since the end of 2005, by providing legal assistance, capacity building activities and public actions.

* **Julián Bardelli** is a lawyer with wide experience in human rights issues at the international level and has been working closely with human rights NGO's in Argentina. He is a professor of Philosophy of Law at the University of Buenos Aires and is presently finishing his Doctorate at that University. Julián is also a consultant for the COHRE Americas Programme, focusing on housing concerns in Argentina.



Land restitution for internally displaced persons in Colombia

Daniel Manrique*

The Office of the United Nations High Commissioner for Refugees (UNHCR) recently issued its annual report on the occasion of World Refugee Day. Sadly, the number of internally displaced persons in Colombia is the second highest in the world, following Sudan. Based on official statistics, there are approximately three million internally displaced Colombians. However, independent sources estimate that in reality there are more than four million displaced persons, without including the half million who require international protection, having fled to neighbouring countries.

The forced displacements carried out in Colombia have been recognised as a strategy of war that has been utilised by all the armed stakeholders involved in the conflict, as well as the economic and political elites who benefit from the war. Forced displacements have also been used as a means of social, political, economic and territorial control.

Existing behind the armed conflict in Colombia is a controversial problem concerning the possession and use of the best and most productive land. About eight million hectares of land have been confiscated illegally, mainly



from indigenous and afro-descendent peoples. The dimensions of the illicit appropriation of land and the concentration of this land in the hands of a few are clear proof of this problem. According to the World Bank, the Gini coefficient – used to measure the concentration of land – is 0.85 in Colombia.

This state of affairs is one of the major causes for the prevalence of internal displacement in the country, and for the consequent hunger and misery afflicting a large portion of the population. This is in direct violation of the principle that all human beings are born with equal rights and dignity. As a result of the concentration of land in the country, less than one percent of the landowners hold 70 percent of the best land in the country, while 70 percent of the owners or land holders have only five percent of the agricultural land in Colombia. Inevitably, this has resulted in an increase in poverty and indigency in rural areas.

COHRE maintains that restitution of land taken from the victims of forced displacement is necessary and urgent in order to contribute to lasting peace and to ensure that these criminal actions are not repeated. The Colombian

Constitutional Court has established an important precedent by basing judgments on the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, often referred to as the *Pinheiro Principles*. In the judgement of Tutelage T-821 of 2007 (M.P. Catalina Botero), the Constitutional Court protected the fundamental rights of a rural female worker who had been obliged to abandon her farm because her father had been killed and her husband could not be found following an attack by paramilitary groups. However, she had not been recognised as a displaced person nor had she received any protection or humanitarian assistance from the responsible public entities. By defining the State obligations which are designed to protect the rights to truth, justice and full restitution, the Court ruled within a perspective of restorative justice and indicated that the victims of forced displacement hold the fundamental right to have their right of ownership or possession of property to be preserved by the State and therefore to have the usage, enjoyment and free disposal of this property re-established.

According to the Constitutional Court of Colombia, the rights of displaced

persons to restitution of their confiscated property take on the character of fundamental rights. The UN Principles on the Right to Restitution and the Guiding Principles on Internal Displacements form part of Colombian national legislation, and therefore the national enforcement authorities are obliged to ensure their fulfilment.

Joint Actions

The campaign for the right to land restitution for displaced persons in Colombia.

Against the background of armed conflict now afflicting Colombia, and with the hope of contributing to the promotion of the right to land restitution, COHRE, together with ILSA¹ (*Instituto Latinoamericano de Servicios Legales Alternativos*) and CND² (*Coordinación Nacional de Desplazados*) have been carrying out a campaign in several Colombian cities to raise awareness about the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (*Pinheiro Principles*). This project is supported by the European Commission.

The campaign activities centre on conducting forums to present information on the content of these Principles and the normative progress made in Colombia towards their application. As a result, proposals will be presented to the legislature and a general meeting will be held on the applicability of the *Pinheiro Principles* in the country.

1. ILSA is a space of convergence of the social organizations of displaced persons located all over the country, an institute which struggles for the implementation of public policies which may guarantee the fulfilment of rights to the displaced populations.

2. CND is a meeting place for displaced persons' organizations located all over Colombia which are working for the rights of such populations and for the realization of public guarantee policies.

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COHRE – the Centre on Housing Rights and Evictions – is an independent non-governmental organisation acting internationally to promote and protect the right to adequate housing for everyone, everywhere. Since 1994, the organisation has promoted the search for, and the implementation of solutions to problems such as the lack of housing and inadequate housing conditions. For this purpose, COHRE supports entities that work with human rights and itself acts with various intergovernmental departments in its registered consulta-

tive status with the United Nations (UN) and the Organisation of American States (OAS). COHRE also holds observer status with the African Commission on Human and Peoples' Rights.

To implement its actions, COHRE is organised by thematic programmes (the Right to Water Programme, the Litigation Programme, the Women and Housing Rights Programme, the Housing and Property Restitution Programme and the Global Forced Evictions Programme) as well as regional programmes. These latter

are divided into: the Africa Programme (COHRE-CA), the Asia and the Pacific Programme (COHRE-CAPP), Europe (with special projects), and the COHRE Americas Programme (COHRE-CAP).

Since 2004 the COHRE Americas Programme has been working in defense of the right to adequate housing in the region through capacity building programmes, legal assistance and promoting the right to land of minority groups and low income communities in informal settlements. CAP also carries out activities

at the national and international level, including fact-finding missions, litigation, monitoring and the promotion of campaigns against the practice of forced evictions.

The COHRE Americas Programme organises these and other activities in certain target countries where it works jointly with local entities. The countries where these activities are being conducted currently are Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico and Honduras.

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