

# **Submission of Information to the UN Special Rapporteur on Adequate Housing**

**Ms. Raquel Rolnik**

## **Concerning violations of the Right to Adequate Housing of the Irish Travellers and Romani Gypsies of Dale Farm, Essex, United Kingdom**

The **Human Rights Clinic of the University of Essex**, in support of the **Romani Gypsy and Irish Traveller community of Dale Farm** and the **Dale Farm Housing Association**, hereby requires the UN Special Rapporteur on Adequate Housing, Ms. Raquel Rolnik, to issue an *URGENT APPEAL* to the Government of the United Kingdom to halt the eviction of the Gypsy and Traveller community of Dale Farm. The eminent human rights violations that would result from the implementation of such eviction are time-sensitive in terms of involving eminent damage of a very grave nature to the Dale Farm residents.

Access to adequate housing is a precondition for the enjoyment of a wide range of other human rights, such as the rights to work, health, social security, vote, privacy and education. In this way, accommodation is a key to understanding the inequalities and barriers to service access experienced by Gypsies and Travellers. When the planned eviction is carried out, it will further impair the ability of the Gypsies and Travellers residents of Dale Farm to earn a living and without proof of residency, the residents may not be able to vote, enjoy social services or receive health care. The already disadvantageous position of the Gypsies and Traveller residents with regard to health and education will deteriorate when the eviction is carried out. A particular vulnerable group are the children. Their right to education will be seriously undermined when the evictions will be carried out. First of all, the trauma experienced following a forced eviction might negatively influence their capacity to attend classes. Besides that, if the eviction took place, an entire school, Crays Hill Primary School, where all the children but one are from Dale Farm, would close.

Dale Farm is the largest Romani and Irish Traveller community in the UK, comprising of approximately 1000 residents. The settlement extends onto land owned by the community, which does not have planning permission. Part of this land was previously a licensed scrapyard, from 1978-2001, located within the Green Belt land. Basildon District Council (the Council) and the Secretary of State for Communities and Local Government have refused to grant planning permission for this portion of the settlement, on the basis of harm that may be caused to the Green Belt. The Council argues that it has refused to rezone the area as the negative impact upon the Green Belt by reason of the development outweighs the case for permitting the Dale Farm community to continue, albeit that it has existed already for more than eight years. The Council has served a number of enforcement notices ordering the removal of the chalets, mobile-homes and caravans from the land they occupy. These enforcement notices concern some 90 families, comprising of approximately 300 people, including many children, elderly and infirm. As the

enforcement notices have not been complied with, Basildon District Council decided to pursue direct action to evict the community in 2005.

The decision by the Council to take direct action and evict Dale Farm has been challenged by the residents. On 05 May 2008, the High Court of Justice quashed the respective order by Basildon District Council. However, the judgment was overturned and the decision to evict, conditional upon fulfilment of certain undertakings by the Council, upheld by the Court of Appeal on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009.

On 10 December 2009, Basildon District Council selected the private bailiff company Constant and Co. (Bedford) Ltd to undertake planning enforcement action. This company is the UK's most notorious anti-Gypsy security firm, responsible for the brutal Twin Oaks eviction, in Hertfordshire in 2004, when chalets and private property was needlessly burned. It also acted as the agent for Chelmsford Borough Council, not far from Basildon, at the Meadowlands eviction in severe weather the same year, during which caravans were burned and much racial abuse used against the residents. These actions drew criticism from the High Court, which condemned the employment of Constant and Co. as inappropriate and called for a review of the employment of such companies in this field of work.

The Dale Farm community is thus now facing an eviction which is likely to be carried out in a brutal and inhumane manner. As such, the case requires immediate action to (a) prevent the eviction and (b) limit serious violation of the right to housing/accommodation, possible harm to physical and psychological integrity, dignity and security of the community as well as damage to property that would occur in the course of the eviction and (c) to prevent further violations of other rights of the community (such as their right to education and right to health, as well as housing/accommodation).

## **I. Executive Summary**

### **1.1. Identification of the alleged victims**

The largest Gypsy and Traveller community in the United Kingdom, comprising approximately 1000 residents currently residing at Dale Farm Crays Hill, Essex, United Kingdom.

### **1.2. Identification of the alleged perpetrators of the violation**

#### The United Kingdom

In January 2009 the Court of Appeal overturned the judgment given by the High Court of Justice on 08 May 2008 which quashed the decision by Basildon District Council to take direct action to evict the residents of Dale Farm. An application for permission to appeal to the House of Lords was also refused on 14 May 2009.

Since the approval of the Criminal Justice and Public Order Act (CJPOA) of 1994 there is no longer an enforceable legal duty on local authorities to provide caravan sites for Gypsies' and Travellers' caravans. Hence, it has been government policy since 1994 that Gypsy and Traveller sites are to be provided through private endeavour by such communities themselves. As a result of the introduction of the CJPOA 1994, Gypsies and Travellers have been facing major difficulties in trying to obtain planning permission to develop their sites. In the instant case, it

was established by the courts that there is indirect discrimination in the granting of planning permission.

#### The Basildon District Council

The Basildon District Council's decision to evict the part of the Dale Farm community which does not have planning permission is disproportionate and discriminates against Gypsies and Travellers. It prioritises eviction measures over alternative and mutually acceptable solutions despite the seriously damaging effects of such a decision. After extensive research into the needs of Travellers and Gypsies in the UK, on 20 July 2009 the Department for Communities and Local Government required the Council to provide sufficient land for 62 (sixty two) additional pitches. By adopting such a measure, the Council could have fulfilled this duty at no cost to the tax payer by simply granting planning permission for the 52 (fifty two) unauthorised pitches already in existence at Dale Farm. Basildon Council, however, decided on 10 December 2009 to select the private bailiff company Constant and Co. (Bedford) Ltd to undertake planning enforcement action against the residents of Dale Farm. The community is thus now facing an imminent eviction, which is likely to be carried out in a brutal and inhumane manner.

### **1.3. Identification of the organization(s) submitting the communication**

The Essex Human Rights Clinic of the Human Rights Centre of the University of Essex, located at Wivenhoe Park, Colchester, CO4 3SQ, United Kingdom, in support of the Dale Farm community and the Dale Farm Housing Association.

### **1.4. Identification of the date, place and description of the circumstances of the incidents or violation and legal remedies**

The Gypsy and Traveller community at Dale Farm own the land from which they are to be evicted, however the land was designated as Green Belt and they were therefore refused planning permission for their caravans. Contrary to its stated policy, the Government has failed to provide adequate alternative caravan sites for the community.

In 2005, Basildon Council voted to take direct action, setting aside three million pounds for an eviction operation. On 5 May 2008, the High Court of Justice quashed the order. However, the judgment was overturned and the decision was upheld by the Court of Appeal on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009. The residents are currently proceeding with homelessness applications. However the housing options that have been offered by the Council, basically Council apartments and brick and mortar housing, are unsatisfactory and fail to meet their specific cultural needs, as set out in more detail below.

If the planned eviction is implemented it will result in irreparable harm to the Dale Farm community, particular given the private bailiff that is due to conduct the eviction. Such irreparable harm includes, *inter alia*, the loss of housing and other personal belongings, the dangers associated with lack of shelter due to resulting homelessness, and the loss of social networks and cultural integrity. The eviction will particularly affect the right to adequate housing (Article 11 (1) ICESCR; General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights) and the right to take part in cultural life (Article 15 (1) ICESCR).

## II. Legal obligations

The authors of the petition require the Special Rapporteur to issue an urgent appeal to the government of the UK in order to remind the authorities of their obligations under international human rights law regarding the right to adequate housing. The International Covenant on Economic Social and Cultural Rights (ICESCR) was ratified by the United Kingdom on 20 May 1976; thus the State Party is bound to Article 11(1) which guarantees the right of everyone to an adequate standard of living including adequate housing, and to the continuous improvement of living conditions.

### 2.1. Right to adequate housing

The Committee on Economic, Social and Cultural Rights identified certain aspects of the right to adequate housing. Those particularly relevant to the Dale Farm community include:

*(a) Legal security of tenure:* All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

*(b) Location:* Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in the immediate vicinity of pollution sources that could threaten the right to health of the inhabitants.

*(c) Cultural adequacy:* The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.<sup>1</sup>

### 2.2. Guarantees in cases of eviction and provision of alternative accommodation

In case an eviction is carried out appropriate procedural safeguards and due process guarantees should be in place. According to the Committee on Economic, Social and Cultural Rights they include, but are not limited to:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, General Comment 4 on the Right to Adequate Housing, para. 8, (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

(c) information on the proposed evictions to be made available in reasonable time to all those affected.<sup>2</sup>

Furthermore, the Dale Farm residents are entitled to be accorded alternative housing/accommodation in case of eviction. Indeed, General Comment No. 7 of the Committee on Economic, Social and Cultural Rights requires that evictions “not result in rendering individuals homeless or vulnerable to the violation of other human rights” and “where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>3</sup>

The provision of such alternative accommodation will have to take into consideration the cultural adequacy component described in detail below. This refers to the way housing/accommodation is constructed or provided. Thus, when relocation is unavoidable, the physical, environmental, and socio-economic conditions of the new location cannot render evictees worse off than before the resettlement. It is, therefore, crucial that Gypsies and Travellers are given the chance to partake in the planning of the alternative relocation project to ensure a reflection of their collective identity.

The UK Homelessness Code of Guidance (July 2006) states that “some Gypsies and Travellers may have a cultural aversion to the prospect of ‘bricks and mortar’ accommodation. In such cases, the authorities should seek to provide an alternative solution and give consideration to the needs and lifestyle of Gypsies and Travellers when considering their application [of homelessness]...” (para.16.38)

Non-compliance with the abovementioned requirements of international law will turn the removal of the residents into a practice of forced eviction, which represents a gross human rights violation, particularly affecting the right to adequate housing<sup>4</sup>. As a State party to the ICESCR, the UK is bound to comply with the State party obligations contained within this international treaty.

### **2.3. Discriminatory legislation and policies in respect of provision of caravan sites**

As a result of the Criminal Justice and Public Order Act (CJPOA) of 1994 there is no longer an enforceable legal duty on local authorities to provide caravan sites for Gypsies’ and Travellers’ caravans. Whilst the powers provided under the Caravan Sites and Control of Development Act (CSCDA) of 1960 to provide temporary or permanent sites have remained in place, since 1994 they are rarely, if ever, used. Instead it is and has been government policy since 1994 that Gypsy and Traveller sites are to be sought and planning permission obtained through private endeavour by such communities themselves. Due to the CJPOA Act, Gypsies and Travellers have been facing major difficulties in finding adequate sites and obtaining planning permission to develop the sites however. They are thus facing indirect discrimination in the failure to provide sites or grant planning permission.

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<sup>2</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, para. 17, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

<sup>3</sup> Ibid. para. 17.

<sup>4</sup> Ibid. para. 2.

A new Circular adopted in 2006 (Circular 1/06) gives local authorities guidance as to their positive duties in relation to planning applications. However, it does not provide an enforceable legal duty to provide accommodation for Gypsy and Travellers, it only requires accommodation needs to be assessed and suitable locations to be identified. The Housing Act of 2004 requires local authorities to provide sites for Gypsies and Travellers where a need has been established.

However, few local authorities have a policy on providing permanent or transit sites. In the instant case, after extensive research into the needs of Gypsies and Travellers in the UK, the Department for Communities and Local Government held on 20 July 2009 that the Council was required to provide sufficient land for 62 additional pitches. A great deal of public money and effort could be avoided in the fulfillment of this duty by simply granting planning permission for the 52 unauthorised pitches already in existence at Dale Farm. By adopting such a remedy, the Council would meet the necessary provision at no cost to the tax payer, and with less difficulty than might be encountered in finding other locations in or outside the district.

### **III. Traditions and cultural background**

Gypsies and Travellers are a nomadic people with a rich history of cultural traditions that stretch from India to Egypt, Romania and across Europe. Unfortunately, this community has been discriminated against for centuries. The 2004 Housing Act defines Gypsies and Travellers as "persons with a cultural tradition of nomadism or of living in a caravan; and all other persons of a nomadic habit of life, whatever their race or origin, including: (i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently."

Although, the Gypsies and Travellers of Dale Farm are unable to travel in their nomadic lifestyle because of age, illness and a lack of site provision, the right to their identity as gypsies should not be taken away. Consequently, as a result of the eviction from their caravans, they would lose a sense of their identity and cultural heritage that is reinforced by close ties to family and community. The breakup of this foundational structure to their unique way of life would violate their right to practice and enjoy their culture as outlined in the ICESCR's.

These families desire to stay together and the separation of them into brick and mortar settlements would have devastating consequences not only on their family life but on their identity, Roma language and cultural traditions. Thus, the Right to Adequate Housing needs to take into account the communities cultural rights, which are intrinsically tied to their right to life.

The Dale Farm community members all look after each other, with the young taking care of the old and the bonds of family are unbreakable. Indeed, it is to be expected that, like Roma across Europe, they will cling tenaciously to their own ways and customs. The eviction, which will likely render large members homeless, will further traumatize the elderly and young children who have already suffered sustained discrimination and psychological abuse from the Basildon community. Furthermore, the Council's offer of alternative housing to this community has proven to be insufficient. The housing options are inadequate in size and incompatible with the Traveller culture and lifestyle. This housing offered – mainly Council apartments and brick and mortar housing - is culturally insensitive as it does not accommodate their unique lifestyle, and would result in the unacceptable separation of extended families. Additionally, Dale Farm residents have visited the houses offered and found them to be run down and inappropriate for their individual circumstances. For example, one housing option placed an elderly lady who struggles to walk in a

1<sup>st</sup> floor flat which can only be reached by stairs. In another situation, a pregnant mom with 3 children was offered a single bedroom flat.

In this century, the marginalisation and discrimination against minorities is unjustifiable. Threatening a group's culture will only produce mass inequalities and cause conflict. By denying Gypsies and Travellers their right to practice their culture, we are denying them a host of other rights that conflict with their economic, social, civil and political rights. We must protect these communities by not allowing them to be forced out of their homes and further marginalised by society.

## IV. International Concerns

The case of the Dale Farm community is just one example of a pattern of discrimination against Gypsies and Travellers in the United Kingdom, which is already of major concern to international and regional treaty and monitoring bodies. Set out below is a short overview of the main points of concern raised by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women as well as of the European Commission against Racism and Intolerance.

### 4.1. UN Committee on Economic, Social and Cultural Rights

In its Concluding Observations in 2002, the Committee on Economic, Social and Cultural Rights expressed its concern about the “persistence of de facto discrimination in relation to some marginalised and vulnerable groups in society, especially ethnic minorities ...”<sup>5</sup> Therefore, it urged the United Kingdom to “take more effective steps to combat discrimination, in particular against ethnic minorities [...], especially in relation to employment, housing and education.”<sup>6</sup> Concerning the specific needs of Gypsies and Travellers, it strongly recommended in its Concluding Observations in 2009, to “ensure the provision of sufficient, adequate and secure stopping sites for Roma/Gypsies and Irish Travellers”.<sup>7</sup>

### 4.2. UN Committee on the Elimination of Racial Discrimination

In 2003, the Committee on the Elimination of Racial Discrimination highlighted its “concern about the discrimination faced by Roma/Gypsies/Travellers that is reflected, *inter alia*, in their higher child mortality rate, exclusion from schools, shorter life expectancy, poor housing conditions, lack of available camping sites, high unemployment rate and limited access to health services.”<sup>8</sup> In order to take appropriate steps, the Committee suggested to the state party to

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<sup>5</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland – Dependent Territories. 05/06/2002. E/C.12/1/Add.79, para 14.

<sup>6</sup> Ibid, para 31.

<sup>7</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories. 22/05/2009. E/C.12/GBR/CO/5, para 30.

<sup>8</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland. 10/12/2003. CERD/C/63/CO/11, para 23.

“develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities.”<sup>9</sup>

#### 4.3. UN Committee on the Rights of the Child

Similarly, discrimination of children belonging to minority groups was observed in the Concluding Observations by the Committee on the Rights of the Child in 2008, noticing “that in practice certain groups of children, such as: Roma and Irish Travellers’ children [...] and children belonging minority groups continue to experience discrimination and social stigmatization.”<sup>10</sup> In addition, the Committee pointed out the poor standard of living of especially Traveller children which, so far, has not sufficiently been addressed by the government.<sup>11</sup> It recommended accordingly that the United Kingdom “reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers”<sup>12</sup>. The Committee also acknowledged the fact that children from Gypsy and Traveller communities are particularly hindered in enjoying their right to education fully, and that more effort has to be undertaken to mitigate the effects of the social background of these children in their access and achievement in school.<sup>13</sup> With the imminent eviction, the education of the children at Dale Farm will be compromised even further, if not neglected altogether.

#### 4.4. UN Committee on the Elimination of Discrimination Against Women

Referring to the Committee of CEDAW, women from ethnic and minority groups are highly vulnerable to suffering multiple discrimination, especially with regard to “access to education, employment and health care”.<sup>14</sup> The Committee therefore urged the state party to “take concrete measures to address the high maternal mortality rate in Traveller communities, including the allocation of adequate resources to increase access to affordable health services, particularly pre-natal, post-natal and obstetric services, as well as other medical and emergency assistance”.<sup>15</sup>

#### 4.5. European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI) emphasized in its fourth report on the United Kingdom that “Gypsies and Travellers are still among the most disadvantaged minority ethnic groups in the United Kingdom and likely to face discrimination, and that they experience some of the most serious levels of hostility and prejudice.”<sup>16</sup> Furthermore, the ECRI expressed deep concern about the fact that the issue of housing “is frequently at the crux of escalating tensions within communities, as the lack of pitches forces Gypsies and Travellers into unauthorized encampments or developments.”<sup>17</sup> Therefore, the

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<sup>9</sup> Ibid.

<sup>10</sup> Concluding Observations of the Committee on Rights of the Child: United Kingdom of Great Britain and Northern Ireland. 20/10/2008. CRC/C/GBR/CO/4, para 24.

<sup>11</sup> Ibid, para 64.

<sup>12</sup> Ibid, para 65.

<sup>13</sup> Ibid, para 66-67.

<sup>14</sup> Concluding Observations of the Committee on Elimination of Discrimination Against Women: United Kingdom of Great Britain and Northern Ireland. 18/07/2008. CEDAW/C/GBR/CO/6., para 45.

<sup>15</sup> Ibid, para 46.

<sup>16</sup> European Commission against Racism and Intolerance Report on the United Kingdom. Fourth monitoring cycle. Directorate General of Human Rights and Legal Affairs. Council of Europe. 02/03/2010. CRI(2010)4, para 151.

<sup>17</sup> Ibid, para 153.

ECRI “recommends that the United Kingdom authorities step up their efforts to ensure that a sufficient number of pitches are in place to accommodate the needs of Gypsies and Travellers.”<sup>18</sup> Concerning evictions of Gypsies and Travellers, the ECRI urged the United Kingdom:

“that the United Kingdom authorities encourage local authorities to treat enforcement measures – legitimate though they are – as a last resort, and to privilege wherever possible an approach aimed at bridging gaps between communities and at finding mutually acceptable solutions, rather than approaches that will inevitably place groups in opposition to each other.”<sup>19</sup>

## V. Urgent Appeal and Request for Measures

The petitioners urge the Special Rapporteur to consider the imminent forced eviction of the Dale Farm Gypsy and Traveller community and issue an urgent appeal to the UK on the basis of the information made available herein. We require the Special Rapporteur to write to the UK reminding the Government of its obligations under international law and requesting information on steps being taken by the competent authorities to address the situation in question, including:

- (1) Halting the planning eviction until an adequate solution is achieved to meet the housing needs, including suitable and cultural adequate accommodation, of the Dale Farm community;
- (2) Taking all possible measures to reach a peaceful and viable solution in agreement with the Dale Farm community with an eye to fulfilling the Government’s obligations under international law;
- (3) Engaging at all times in meaningful consultation and meetings with the affected residents of Dale Farm and their representatives to ensure their participation in accordance with the Government’s obligations under international human rights law;
- (4) Revising the decision of denying planning permission to the community;
- (5) Complying with the requirement placed on Basildon District Council by the Secretary of State for Communities and Local Government to allocate land sufficient for a minimum of 62 pitches. Compliance can be achieved by the granting of planning permission to the permanent residents of Dale Farm;
- (6) Suspending the contract with the bailiff company Constant & Co. until an adequate solution is reached with the community and carrying out a risk impact assessment to identify the impacts over the community and the precautionary and compensatory measures to be taken into account in the event that the Council proceeds with the eviction;
- (7) Should the UK authorities disregard (1), (2), (4) and (5) and proceed with the eviction, the Special Rapporteur is required to urge the Government of the UK to:

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<sup>18</sup> Ibid, para 155.

<sup>19</sup> Ibid, para 156.

- (i) Carry out the eviction in accordance with the guarantees provided in international human rights law;
- (ii) Designate alternative suitable sites for the relocation of the evictees, taking into consideration that under international human rights law minorities, low-income and/or vulnerable individuals or groups who are the target of eviction have a strong claim to be re-settled in alternative accommodation compatible with their culture and traditions and with the requirements of an adequate housing;
- (iii) Fulfil its duties in respect of any vulnerable, disabled, poor, and disadvantaged persons affected by the eviction of Dale Farm, who may be rendered homeless through the imminent enforcement;
- (iv) Urge the Government to take affirmative measures to ensure equal opportunities for the full enjoyment of the economic, social and cultural rights of Gypsies and Travellers.

Colchester, 1 April 2010.



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