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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the human right to safe drinking water and sanitation; and the Special Rapporteur on the rights of indigenous peoples.

REFERENCE:
AL Housing (2000-9) Poverty (1998-11) Food (2000-9) G/SO 214 (67-17) Assembly & Association (2010-1) Indigenous (2001-8) Water (2008-1)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the human right to safe drinking water and sanitation; and Special Rapporteur on the rights of indigenous peoples pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/8, 17/13, 13/4, 16/4, 15/21, 16/2 and 15/14.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding the **potential impact that a proposed domestic policy permitting open-pit coal mining in Bangladesh may have on the enjoyment of various human rights of the affected communities**. In particular, we wish to draw attention to information regarding plans for the establishment of an open-pit coal mine in the township of Phulbari, if said policy is adopted. We also wish to draw attention to information received about the treatment of individuals protesting the construction of the mine, and the possible violation of their civil and political rights.

According to the information received:

The Phulbari Coal Mine project has been stalled pending the adoption of a national coal policy. Early drafts of the policy reportedly indicate that the Government of Bangladesh does not intend to place a ban on open-pit coal mining. The recommendation by the Parliamentary Standing Committee on Power

and Energy in November of this year to construct a pilot project for open-pit coal mining in Barapukuria, just ten miles from Phulbari, is seen by many as an indication that open-pit mining will not be banned. Reports suggest further, that foreign investors allegedly are exerting pressure on the Government to not institute such a ban.

If the policy permitting open-pit coal mining is adopted, investors will go ahead with their plans for the Phulbari Coal Mine. The Phulbari Coal Mine project is the result of a contract entered into between the Government of Bangladesh and Global Coal Management Resources (previously known as Asia Energy Corporation) for exploration and mining of coal. The Phulbari Coal Mine project will construct a large open-pit coal mine to the east of the Little Januma River in the township of Phulbari, located in the district of Dinajpur in northwest Bangladesh. The project plans call for the mine to extract 572 million tonnes of coal over the next 36 years, and possibly longer, at a maximum production rate of 16 million tonnes per annum. The mines and accompanying infrastructure will occupy approximately 5,933 hectares of land, of which 2,180 hectares will be the mine footprint. In addition to the mine, the project will construct at least one 500 Mega Watt coal-fired power plant, one new rail corridor and one new road, will realign an existing portion of railway and two existing roads, and will divert two rivers. The extracted coal is intended primarily for export with only one-fifth intended for domestic energy consumption.

The land where the mine will be placed is currently occupied, with the majority of this land used for subsistence agriculture and human settlements. The construction of the mine allegedly will destroy close to 12,000 acres of productive agricultural land and displace tens of thousands of people, and possibly hundreds of thousands over time. The agricultural lands and grazing lands, fruit trees, ponds, rivers and mangrove forests threatened by the Phulbari Coal Mine project each constitute a vital source of food in Bangladesh.

Agricultural Production. The allegations received claim that, if built, the open-pit mine will have a significant impact on agricultural production in Bangladesh and, thus, will affect access to food of those residing in Phulbari as well as those across the country. First, the land scheduled for the mine is located in Bangladesh's most fertile and productive agricultural region. The farmers in this region cultivate multiple crops per year (including wheat, potatoes, maize, sugarcane, vegetables, fruits and multiple varieties of rice, the country's staple crop). These rice fields and farmlands reportedly serve as the nation's granary and are vital to its food security. Destruction of these farmlands allegedly will reduce national food production. Second, the building of the open-pit mine reportedly will be responsible for the destruction of other vital food sources including poultry farms, livestock grazing lands, a network of waterways that support over one thousand fisheries and nearly 50,000 fruit trees. In addition, due to the elevation and location of the region, Phulbari's land and food crops are uniquely protected from the annual flooding that regularly destroys crops elsewhere in the lowland

nation. Destruction of Phulbari agricultural lands thus would threaten food security as well as food supply.

Livelihoods and access to food. Reports indicate that the open-pit mine will affect the ability of local populations to meet their food needs. Approximately 11,500 households, or more than 50,000 people, reportedly would be directly affected by the building of the mine, either through resettlement or the mine's economic impact. A majority of the small-holders in this region has land holdings of less than one hectare, and most of the families that would be reportedly displaced by the mine would lose their entire landholdings, since all of their current holdings are located within the mine footprint. Reportedly 80 per cent of all households within the project area currently derive their livelihoods from subsistence farming based on rice cultivation, and over a thousand households cultivate fish in local ponds, and report these fish sales as an income source. In addition, a high percentage of households own fruits trees and an even greater percentage have livestock that serve as a vital source of meat, milk, eggs and cash income. Should these populations be displaced they not only would lose their food sources but also their livelihoods.

Access to water. The Phulbari Coal Mine project allegedly would have severe adverse impact on rivers and groundwater vital for household and agricultural use within the township of Phulbari, surrounding villages and local farming communities, in a region that reportedly already lacks sufficient water for the needs of the population. Concerns regarding potential desertification of the region and an alleged reduction in access to water or water quality have been raised. The project plans suggest that pumps will be drawing water continuously over the life span of the mine, lowering the water table by 15 to 25 metres (affecting a region of land extending over ten kilometres beyond the mine's footprint) and reducing access to water for 220,000 people. In addition, there are reports signalling a high risk of acid mine drainage contaminating networks of rivers beyond the project area; that emissions and coal dust generated by the project will pollute water sources, as well as the soil and air with mercury, lead and other heavy metals and toxins; and that the diversion of two rivers and dredging of a third will threaten these river eco-systems and the communities that rely on them.

Displacement. Allegedly, an estimated 50,500 (figure cited in the October 2007 Resettlement Plan for Asia Energy's Phulbari Coal Mine) to 130,000 people will be directly affected, the majority by displacement, and up to 220,000 people displaced over time as wells and irrigation channels run dry. It is further suggested that the number at the lower end of this estimate fails to take into account several communities residing in the area and the different ways that people can be displaced. Accordingly, the draft Resettlement Policy for Asian Energy's Phulbari Coal Mine, drafted by Asian Energy Corporation (now Global Coal Management Recourses), allegedly fails to adequately account for the displacement that would occur.

Furthermore, according to information received, the Resettlement Plan contains provision for cash compensation for loss of land and housing, but does not include provision for resettlement and replacement of cultivation land.

Additional concern was raised that families with no formal legal title to land (estimated at 10.2 per cent of indigenous households) will not be entitled to any compensation for loss of housing and land.

Environmental impacts. The allegations received also suggest that if built, the mine will have negative environmental consequences. For example, according to various reports, the plans for the mine call for coal to be transported through the Sundarbans Reserve Forest to reach an offshore reloading facility. These transportation plans allegedly threaten the delicate ecology of the mangrove forest and put at risk the extraordinary range of biodiversity supported by the forest. This forest is a UNESCO-protected wetlands habitat and is the largest remaining mangrove forest in the world. Damage to the Sundarbans allegedly poses a grave risk to people in Bangladesh, where the forest serves as a buffer during tropical storms. Mangrove forests shield coastlines, prevent erosion and absorb carbon dioxide in their sediments. In this way, they help dampen the effects of climate change. The Environmental and Social Impact Assessment (ESIA) for the project published by Asia Energy in 2006 concluded that there is an “extremely high risk” that barge fuel could contaminate the Sundarbans, and identifies potential damage to this UNESCO-protected reserve as “one of the most significant issues associated with the project.”

Rights of indigenous peoples. The land to be acquired for the Phulbari Coal Mine reportedly includes entire villages of indigenous households belonging to the Santal, Munda, Mahili and Pahan groups, who are considered to be the descendants of the oldest inhabitants of the South Asian sub-continent. Allegedly, up to 50,000 indigenous people belonging to 23 different tribal groups could be evicted or impoverished by the mine. Allegations have been also raised regarding efforts to push the Phulbari Coal Mine project forward without consulting with affected indigenous peoples, and without obtaining their free, prior and informed consent in relation to possible evictions.

Lack of adequate consultation and access to information. According to reports received, the affected communities have not been adequately consulted regarding the project’s various aspects. Moreover, members of the affected population reported that information about the project has been either inaccessible or inadequate. For instance, the Resettlement Program, the Environmental Impact Assessment and the Indigenous People’s Development Plan have not been circulated in the Bangla language or in Santal. In addition, no adequate provisions have been made to disseminate information about the project to non-literate community members, who make up about 60 per cent of the population in the region. Allegedly, the information distributed to the public has been limited and does not include information about environmental and social impacts of the project.

Arbitrary arrest and violence against human rights defenders. Finally, allegations have been raised regarding continued efforts to stop human rights defenders from protesting the Phulbari Coal Mine and other energy sector developments. According to the allegations received, these efforts to stop protestors have left many fearful of voicing opposition or concern regarding the Phulbari Coal Mine project. Most recently, between 05:30 a.m. and 12:00 noon. on 3 July 2011, riot police in Dhaka reportedly carried out a mass arrest of more than 100 peaceful and unarmed protesters to prevent a half-day protest and strike about the recent contract between the Government and ConocoPhillips for gas exploration and extraction in the Bay of Bengal. The police allegedly used excessive force prior to and during the arrest including beating protestors. The protest was organized by the National Committee to Protect Oil, Gas, Mineral Resources and Ports, which has played a prominent role in supporting people resisting the Phulbari Coal Mine project. This incident reportedly has followed a number of other violent incidents targeting the National Committee and villagers fighting the Phulbari Coal Mine project. One such incident was on 26 August 2006, when the Bangladeshi Rifles, a paramilitary force, allegedly opened fire on 70,000 to 100,000 people marching in Phulbari to protest the proposed coal mine, killing 3 individuals and injuring many more.

Concerns are expressed that the policy permitting open-pit coal mining will be adopted and will lead to the construction of the Phulbari coal mine. Further, concerns are expressed that the construction of the mine will affect the ability of local populations to feed themselves, and to feed the entire population of Bangladesh that relies on agricultural outputs from the region, which is worrying, as nearly half of the population is food insecure, and nearly one quarter is severely food insecure. Moreover, concerns have also been expressed about the long term effects on access to water for both agricultural and personal use, the environmental impact of the open-pit mine, the rights of indigenous populations and alleged violent tactics used against those who voice opposition to the mine. Finally, concerns are expressed that the mass arrest of peaceful protesters, and the alleged excessive use of force by law enforcement authorities against them, are related to the exercise of their rights to freedom of expression and peaceful assembly.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, to article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which Bangladesh acceded to on 5 October 1998 – which states that “the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires States parties to “take appropriate steps to ensure the realization of this right.”

With respect to the right to food, article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.”

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

The right to adequate food is recognized also in the Convention on the Rights of the Child – ratified by Bangladesh on 3 August 1990 – in article 24.2(c) and article 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

Regarding the right to safe drinking water and sanitation, we wish to remind your Excellency's Government that the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child entail human rights obligations attached to the access to safe drinking water and sanitation. The UN Committee on Economic, Social and Cultural Rights has asserted that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The Committee further clarified that “the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health”. On 28 July 2010, the General Assembly adopted a resolution explicitly recognizing safe and clean drinking water and sanitation as a fundamental human right, essential for the full enjoyment of life and all human rights. The Government of Bangladesh voted in favour of this resolution. This resolution was reaffirmed on two instances by the UN Human Rights Council, which stated that the right to water and sanitation is derived from the right to an adequate standard of living as contained in article 11 of the ICESCR. Furthermore, the Bangladesh National Water Policy (1998) and the National Sanitation Strategy (2005) recognize water and sanitation as human rights. Bangladesh has also recognized that water and sanitation are human

rights at the regional level when it signed the Delhi Declaration of the third South Asian Conference on Sanitation.

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavorable conditions," the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that "the right to housing should be ensured to all persons irrespective of income or access to economic resources."

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7 of the Committee on Economic, Social and Cultural Rights:

"15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (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; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts."

"16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. 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."

In view of this, we wish to recall the existence of the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18) that aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency's Government may find

useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions.

In addition, in the case of indigenous peoples who have strong cultural and material connections to their traditional lands, relocations or evictions are understood to implicate threats to a range of human rights. Accordingly, the establishment of natural resources extraction projects should avoid resulting in the relocation or eviction of indigenous peoples from their traditional lands. However, if relocation is considered an option, that option should only be realized with adequate mitigation measures and with the consent of the indigenous peoples that are being resettled. In this regard, the United Nations Declaration on the Rights of Indigenous Peoples states that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” (article 10).

We would also like to draw the attention of your Excellency’s Government to the provisions of article 2(1) of the ICESCR, which states that States parties must devote the “maximum available resources” to ensure the “progressive realization” of all economic, social and cultural rights. In General Comment 3 (para. 9), the Committee on Economic, Social and Culture Rights stressed the existence of a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of the State’s obligation under article 2(1). In adopting retrogressive measures, States must demonstrate that they have been introduced after “the most careful consideration” of all alternatives and that they are “fully justified by reference to the totality of the rights provided for in the Covenant”.

Furthermore, article 2(1) obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic sustenance, essential primary health care, basic shelter and housing and basic forms of education, for all members of society (General Comment 3, para. 10).

Concerning the participation of affected individuals and communities in decisions which are likely to affect their lives, we would like to refer to article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a State party, which ensures the right of every individual to take part in the conduct of public affairs. In the same context, we would also like to refer to articles 7 and 8 of the Convention in the Elimination of All Forms of Violence against Women which state that States should ensure participation of women in the formulation of government policy and to article 13 of the Convention on the Rights of the Child that ensures the right of children to seek, receive and impart information. Furthermore, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States [...] to refrain from imposing restrictions which are not consistent with paragraph 3 of article 19, including on discussion of government policies and political debate. In this regard we would like to call your Excellency’s Government to take all necessary measures to secure the right to freedom of opinion and expression in accordance with

fundamental principles as set forth in article 19 of the ICCPR which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In addition, we recall principle 10 of the Rio Declaration on Environment and Development, which recognizes that “each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes...”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

Furthermore, we would like to draw the attention of your Excellency's Government's attention to Human Rights Council's resolution 15/21, in which the Council “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law” (OP1).

Finally, private actors – including mining companies – also have responsibilities in the realization of the human rights guaranteed under international law. The UDHR itself proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance.

In this context we would also like to recall the existence of the Guiding Principles on Business and Human rights (contained in document A/HRC/17/31), on the effective prevention of, and remedy for, business-related human rights harm.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. Have complaints been lodged by local communities, including indigenous communities, in Phulbari?

3. Has a human rights impact assessment been carried out regarding the Phulbari Coal Mine project? If so, who undertook such an assessment and could you please provide us with the conclusions of the assessment?
4. Have the potential human rights, social and environmental impacts been considered in drafting the national coal mining policy? If so, could you please provide us with information of how they were considered?
5. If the Phulbari Coal Mine is constructed, what measures will be put in place to ensure that the local population will be able to exercise their right to food?
6. If the Phulbari Coal Mine is constructed, what measures will be taken to ensure that the open-mine project does not have disproportionate negative impacts on the livelihoods of displaced and neighbouring communities?
7. If the Phulbari Coal Mine is constructed, what measures will be taken to ensure that water resources will be protected from risks of leakages, and pollution as a result of the transportation of coal, and to ensure that mining wastes will be disposed of appropriately?
8. To what extent have the concerned communities been allowed to participate in the drafting of the domestic policy and the planning of the mine? What mechanisms have been put in place to ensure their effective and meaningful participation?
9. To what extent has the land and housing subject to potential expropriation been duly evaluated? To what extent have measures of compensation been put in place for all concerned persons, with a due assessment of the loss of their farming activity? What measures have been taken to ensure that those who may be losing their land are offered alternative sustainable means to access sufficient and adequate food?
10. Is there any on-going consultation with the persons threatened with eviction? If so, please give the details, date and outcome of these consultations.
11. What mechanisms have been put in place to ensure transparency and access to information by those potentially affected as well as civil society in general? We would be grateful to receive details of the information provided to the local communities about the Phulbari Coal Mine project, including the means of distribution of the information and the languages in which the information was distributed.
12. What measures have been put into place to ensure access to information and participation for non-literate persons?

13. What measures have been foreseen to ensure that the persons threatened with eviction will not become homeless? What has been foreseen in terms of relocation? If locations have been designated for the relocation, please provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources. If indigenous peoples will be relocated, please describe any measures to obtain their consent prior to such relocation.
14. What has been foreseen in terms of compensation for the persons threatened with eviction? Will any affected indigenous peoples be provided with the option to return to the lands from which they may be evicted?

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency's Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency's Government's consideration pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency's Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Raquel Rolnik

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Maria Magdalena Sepúlveda Carmona

Special Rapporteur on extreme poverty and human rights

Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Olivier De Schutter

Special Rapporteur on the right to food

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Catarina de Albuquerque

Special Rapporteur on the human right to safe drinking water and sanitation

James Anaya

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