# **DEVELOPMENT FOR WHOM?**

SAFEGUARD POLICIES AND PROJECTS OF INTERNATIONAL FINANCIAL INSTITUTIONS AFFECTING INDIGENOUS PEOPLES IN ASIA



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# **DEVELOPMENT FOR WHOM?**

#### SAFEGUARD POLICIES AND PROJECTS OF INTERNATIONAL FINANCIAL INSTITUTIONS AFFECTING INDIGENOUS PEOPLES IN ASIA

With the Asia region becoming the new investment and economic development hub, indigenous peoples face increasing marginalization and violations to their individual and collective rights. Asia is home to around 2/3 of the world's 370 million indigenous peoples and they share a common situation as other indigenous peoples in other parts of the world – they are part of the most marginalized and at the bottom rung of the development ladder. Even with this, indigenous peoples have been maintaining and sustaining their culture, traditions, and their strong connections to their lands and territories for their sustenance and continuity of their ways of life.

Historically, indigenous peoples in Asia have been dominated through colonization and/or through nation-state building and subsequent globalization. Based on human development indicators, they are overrepresented among the poor, illiterate, malnourished and stunted. This is further compounded by the continuing non-recognition of States of their collective rights as indigenous peoples and the expropriation of their lands and resources for state-sponsored development and corporate investments. These impositions are leading to gross and wide-scale violations of their individual and collective rights. This is despite the fact that majority of Asian governments voted in favor of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

The international financial institutions (IFI) such as the World Bank (WB) and Asian Development Bank (ADB) have been the key partners of governments in addressing poverty and for national economic development through technical and financial assistance. However, the development interventions of IFIs have mixed outcomes. While there are progresses in some areas, it also resulted to wider gaps between the rich and the poor and environmental problems among others. Some projects assisted/funded by international financial institutions (IFIs) have been contributing to the worsening situation of indigenous peoples in the region which goes against their aim of reducing poverty rate. Certain projects of these IFIs such as large dams, land concessions and commercial agriculture have led to forced displacements, destruction of sacred sites and loss of traditional livelihoods of indigenous peoples. Although IFIs have their own safeguard policies aimed to prevent harm to affected communities, there are still some gaps in substance and the implementation is weak. Further, mechanisms for redress remain inaccessible and difficult for many indigenous peoples.

Below are some recent cases demonstrating the need for stronger safeguards consistent with recognizing and respecting the rights of indigenous peoples as well as better implementation of safeguard policies on the ground.

# CASE 1: SARAWAK DAMS AND THE WEST KALIMANTAN POWER GRID STRENGTHENING PROJECT OF THE ADB

With the rich water resources of Sarawak, indigenous peoples have been confronted with plans to build 12 large hydropower dams as part of the "Sarawak Corridor of Renewable Energy" (SCORE) which will result to the forced displacement of thousands of families and loss of thousands of hectares of agricultural lands. The indigenous peoples in the area have never granted their consent to the Sarawak Energy Berhad (SEB), the dam proponent which is state-owned, and the Sarawak government to proceed with the project. Already, thousands of indigenous peoples displaced by the Bakun and Murum Dams in Sarawak have been resettled in areas with substandard housing and limited access to land, and are unable to continue their sources of livelihood.



Now, the Sarawak Energy Berhad, (SEB) is proposing to build the Baram Dam on a section of the Baram River between the villages of Long Na'ah and Long Kesah. Approximately twenty-six longhouses belonging to Kenyah, Kayan and Penan Indigenous Peoples would be directly affected, and as a result, between 6000 and 8000 people would be forcibly displaced from their ancestral lands. SEB has specifically identified this project as key to generating energy for SCORE-related industries and as a source of energy for potential export to Indonesia, once cross-border transmission lines are built. Coercive tactics, including distribution of 'Christmas bonuses' worth thousands of US dollars, are being used to pressure indigenous leaders at the area and village level to accept the plans for the dam, regardless of the implications on their people are among the violations experienced by the indigenous leaders in the Baram area. This also includes interference in the appointment of village headmen and community chiefs by ruling political parties.



The indigenous peoples in Sarawak have submitted petitions to their government and are currently conducting blockades in the area to express their opposition to the said dam projects which will adversely affect them.

As experienced by other indigenous communities affected by dam projects, the indigenous peoples in the Baram dam area anticipate the following impacts if the construction of the dam continues:

- 1. Destruction and irreparable or irreplaceable loss of areas and or sites of cultural, spiritual and historical significance, old and existing burial grounds of their ancestors and kins.
- 2. Loss of traditional fishing and hunting grounds and other forest resources collection grounds and loss of riverine resources that are closely tied up to their daily and ceremonial activities.
- 3. Loss of traditional lands, territory and resources will result in the loss of cultural knowledge, values, practices, affiliation and language.
- 4. Forced or involuntary resettlement leading to cultural disorientation and eventual loss of culture and traditions.
- 5. Loss of farmlands, cash crops small holdings, fruit and vegetable gardens, loss of traditional and natural resource base (fishing and hunting grounds), jungle produce and other vital resources will adversely affect the socio-economic well-being of the affected villagers.

The West Kalimantan Power Grid project of the ADB is meant to help fast track SCORE and the trade of energy between Sarawak and Kalimantan. Accordingly, it "is perfectly aligned with ADB's Energy Sector Assessment Strategy and Roadmap, which supports investment in strategic transmission assets that connects regions or countries across seas or international boundaries to optimize power networks by reducing the overall need for reserve capacity, improving system reliability, removing transmission bottlenecks, and transmitting cheaper power from one area to the other, addressing overall regional socio-economic and environmental improvement."1

This project through the Perusahaan Listrik Negara – PLN (State Electricity Company), the state owned power utility in Indonesia, specifically aims to reduce the cost of power generation in West Kalimantan, Sumatera by importing hydropower generated electricity from neighboring Sarawak, Malaysia by building about 83 km 275 kV transmission line from its Bengkayang substation to the border with Sarawak, Malaysia. In Sarawak, Sarawak Energy Supply Corporation (SESCO), state owned power utility in Sarawak, will build 42 km 275 kV transmission lines form Mambong substation to the border with West Kalimantan. These transmission lines will form the first regional Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA) flagship project and the first leg of the Trans Borneo Power Grid that aims to connect West Kalimantan across Sarawak, and Brunei, to Sabah (Malaysia) enabling power trading between BIMP-EAGA countries.<sup>2</sup>

This project is categorized as B<sup>3</sup> in the indigenous peoples safeguard categories and project documents states that indigenous peoples in West Kalimantan are included in the resettlement plan of the project. The ADB 2009 Safeguard Policy on the Environment identifies that 'associated facilitates' should be subject to compliance with the social and environmental standards outlined in the safeguards. In this case, the affected communities of Baram along with human rights and environmental groups in Malaysia and internationally, assert that it is absolutely indisputable that viability of the transmission line project depend on the dams planned in Sarawak, and thus the dams are by definition 'associated facilitates'.

<sup>&</sup>lt;sup>1</sup>Asian Development Bank, 41074-013: West Kalimantan Power Grid Strengthening Project, http://www.adb.org/projects/41074-013/details (Accessed May 7, 2014) <sup>2</sup> Ibid.

<sup>&</sup>lt;sup>3</sup> Category B. A proposed project is likely to have limited impacts on indigenous peoples. An Indigenous Peoples Plan (IPP), including assessment of social impacts, is required.

### CASE 2: KHIMTI-DHALKEBAR 220 kV TRANSMISSION LINE PROJECT WORLD BANK PROJECT IN NEPAL

In July 10, 2013, affected Tamang indigenous peoples (Tamang, Newar, Magar, Danuwar, Bhujel, Majhi, Gurung etc.) and local people of the Khimti-Dhalkebar 220 kV Transmission Line Project filed a complaint to the Inspection Panel of the World Bank citing violations in relation to the conduct of consultations with affected communities and possible adverse impacts of the project in their area. The affected communities felt ignored by the World Bank (WB)/Nepal Electric Authority (NEA) who only told them that there will be no negative impacts of the project but failed to provide any concrete assurances.



The Government of Nepal has declared this as a national pride project and is part of the Nepal Power Development Project funded by the World Bank. The project plans to build a 75 km high capacity electricity transmission line (220 kV) which will run north to south through 5 districts (Dolakha, Ramechhap, Sindhuli, Mahottari and Dhanusha) in central Nepal. The World Bank (WB) disbursed the last of its funding to the project in end 2013.

Protestors calling for free prior and informed consent (FPIC) during a September 2013 protest in Sindhuli Bazar, Nepal. Photo by Shankar Limbu

"In particular, the project was designed without informing or consulting the affected indigenous and local peoples in Sindhuli District, its planned route over schools, homes, and historical sites is likely to result in involuntary displacement and damage to cultural property; and its 30-meter right of way ("RoW") threatens to make the already poverty-stricken communities more vulnerable by harming agricultural production and dividing communities. The Project has caused severe tumult in the region -- security forces have violently repressed peaceful protests against the Project, employing torture, detention, and violent attacks on unarmed women."<sup>4</sup> Likewise, media propaganda has misstated the demands and position of the affected communities. In particular, the media falsely reported that locals are demanding an exorbitant amount of compensation for their land.

Affected Tamang indigenous peoples in Sindhuli had been conducting various advocacy activities at the local, national and international levels. The primary demand of the communities is to re-route the Line away from human settlements in order to avoid adverse impacts to affected communities as mentioned above as well as to stop security forces from intimidating community leaders and members, and be made accountable to human rights violations. The sustained protests and advocacy actions of affected communities have resulted to the crafting of an Action Plan by the management of the World Bank to address the community's concerns. The Nepal Electricity Authority (NEA), under the supervision of WB, has made poor efforts though in communicating and consulting the affected communities as per the Action Plan. The Government likewise have not responded to the various memorandums submitted by the affected community.

Among the standing concerns of the community to date are:

- Communities still have not received key project documents and information about the project
- Conduct of constructive and good faith dialogues and engagements by the World Bank represen tatives and NEA with affected communities towards the resolution of their concerns and respect for their rights. Affected communities are open to consider being resettled under certain conditions and with a clear assurance and agreement for just, fair and equitable compensation and provision for sustainable livelihoods
- The government / NEA and World Bank Management are creating indirect pressure to the commu nities accept the project which is currently in status quo.

Sources: Complaint letter of the citizens of the Sindhuli District, Nepal to the Inspection Panel, July 10, 2013; memorandums of affected communities and interviews with key leaders of affected communities

# CASE 3: ECONOMIC LAND CONCESSIONS INVESTMENT OF THE INTER-NATIONAL FINANCIAL CORPORATION (IFC) IN CAMBODIA

Economic land concessions primarily for rubber plantations is a primary concern of many indigenous peoples in Cambodia. One in particular is the economic land concessions of the Hoang Anh Gia Lai (HAGL) through a number of subsidiaries in Ratanakiri province affecting the Jarai, Kahok Tampuon, Cham, and Kreung indigenous peoples and other local peoples. Among HAGL's investors is Dragon Capital Group Ltd (DCGL), which invests in HAGL through Vietnamese Enterprise Investments Ltd (VEIL), a closed-end fund dedicated to Vietnam that invests in a balanced portfolio of Vietnamese companies. According to the Summary Project Information (SPI), IFC invested in DCGL/VEIL in 2002 and again in 2003. IFC has confirmed an additional investment in VEIL through participation in a rights issue in 2006.

As a result of HAGL's operations, the affected communities have experienced loss of both communal and household nature. Communal losses include collectively-held and used lands, including community forests, grazing lands, reserved lands for future generations and shifting cultivation, spirit forests and burial grounds; access to resin and other non-timber forest products (NTFP), and wildlife: and access to and pollution of water sources and fish resources. Household losses include rice fields and orchard/farming land (chamka) and crops including rice, cashew, cassava and a variety of fruit trees. In at least two cases, houses or other shelters have been destroyed by the company.

No compensation has been provided for communal losses. In some cases, households received compensation for lost rice field and farming land, but in all such cases the amount of compensation received was inadequate and accepted under duress after being told they would otherwise receive nothing.

Spiritual and cultural practices of the complainants have been impeded by the loss of spirit forests and burial grounds. These losses have affected some communities' ability to conduct ceremonies, including those that facilitate intra-community dispute resolution, and this in turn affects community cohesion. Some complainants believe that the destruction of forest and natural resources has angered the spirits, causing them considerable anxiety. The cultural identity of communities has been further jeopardized by the rapid and mass introduction of migrant workers of Khmer ethnicity with a starkly different culture, which has begun to influence their own behaviour in a negative



Complaint letter from LAHURNIP sent to the Inspection Panel of the World Bank, July 10, 2013.

With this, 17 indigenous communities in Ratanakiri affected by the concessions filed a complaint to the IFC through the Compliance Advisor Ombudsman (CAO) in February 2014 with the following demands:

- 1. The communities (complainants) want their lands, wrongly seized by HAGL, to be returned to them. Complainants that have not yet been impacted want to protect their land and forests and secure their customary tenure rights for future generations. Communities are willing to participate in a process of independently facilitated boundary demarcation of their lands that accord with their rights under the Land Law.
- 2. Affected communities will not provide a payment of any kind to HAGL for rubber trees already planted on land wrongly taken from them. Lands should be returned without any conditions ad verse to the complainants.
- 3. Complainants "do not want cash compensation [for their land] because it cannot be inherited by the next generation." They say that while land can continue to feed them and their children forever, if they receive money "soon it will be gone."
- 4. Complainants, however, do want cash compensation for losses of crops, structures, livestock and other chattels. They also want compensation for the income they have lost since their crops, resin trees and other NTFPs were destroyed by the company.
- 5. The complainants also wish to make clear that a dispute resolution process with the company cannot proceed while the company continues to clear their forests. They want the destruction of their natural resources to cease immediately.
- 6. IFC and DCGL/VEIL should step up its efforts, and bring to bear all resources at its disposal, to ensure the severe harms suffered by communities are redressed in accordance with the out comes sought by communities. Divestiture prior to remedial action would leave affected communities in a dire situation and would not address adverse human rights impacts that have materialized while IFC, through its Financial Intermediary client, held investments in the responsible business entity.

On April 28, 2014, HAGL suspended part of its operations in Ratanakkiri province from May 1- November 30, 2014 while the investigation of the CAO is ongoing.<sup>5</sup>

Source: Complaint concerning IFC investment in Dragon Capital Group and VEIL (Project no. 10740 and 20926), February 10, 2014.

These three were among the cases shared by the participants of the Training on IFI Safeguard Policies and Grievance Mechanisms conducted by Asia Indigenous Peoples Pact (AIPP) in collaboration with the Bank Information Center (BIC) and Forest Peoples Programme (FPP) last April 18-20, 2014 in the Philippines. The training resulted to the statement below reflecting the experiences and recommendations of the training participants on the implementation of the safeguard policies on indigenous peoples of IFIs and their grievance mechanisms.

#### **Recommendations for the revision of World Bank Group and Asian Development Bank safe**guard policies on Indigenous Peoples

Twenty-seven (27) participants from 20 indigenous organizations in 8 countries in Asia and two (2) civil society organizations gathered for the REGIONAL TRAINING ON SAFEGUARD POLI-CIES AND GRIEVANCE MECHANISMS OF INTERNATIONAL FINANCIAL INSTITUTIONS in Sagada, Philippines.

We have studied and discussed the safeguard policies and grievance mechanisms of international finance institutions and have reflected on the experiences of our communities and peoples with projects funded by these institutions.

<sup>5</sup> The Phnom Penh Post. Rubber Projects on Hold.

We recognise that the policies of the World Bank (WB) and the Asian Development Bank (ADB) are now, or soon to, undergo review and we wish to provide our perspectives into the review process.

We note at the outset that the primary purpose of the safeguard policies is to 'do no harm' yet our experiences show that the current safeguards is insufficient to stop human rights violations, including the destruction of our lands, our livelihoods and damage to our cultures and identities. We also re-iterate that national laws respecting the rights of indigenous peoples especially to land tenure shall be respected and safeguards by IFIs should further strengthen and not weaken the implementation of these laws and measures on indigenous peoples' rights.

We identify, based on the experiences of our communities, our organisations and our peoples, the following problems with the current safeguard frameworks, policies and procedures of the main international finance institutions:

#### Policy level concerns

- 1. The safeguard policies are not in line with international human rights instruments which governments have to respect and protect, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 2. Customary land rights are not sufficiently recognized or protected by the current language of the safeguards and therefore risk being damaged or lost
- 3. Traditional or customary governance systems and management systems are not sufficiently protected and respected by the current language of the safeguards and therefore risk being undermined
- 4. The World Bank (WB) and ADB prioritize economic growth and market driven development over equitable, self determined and sustainable development for the people resulting to increasing gaps between the rich and the poor and resulting to human rights violations including the collective rights of indigenous peoples over their lands, territories and resources among others.
- 5. There are no appropriate or effective sanctions provided by the safeguards to be applied in cases of non-compliance and as a result we see violations in our communities left unresolved
- 6. We reject the WB's requirement for 'free, prior and informed consultation', instituted in place of free, prior and informed consent. Experience since the adoption of this requirement in 2004 shows that it has failed to secure our full and effective involvement or support for projects impacting on us. The World Bank's own internal Learning Review highlighted extremely low levels of evidence provided for broad community support and low levels of effective consultation.
- 7. The policy as currently formulated does not require our participation in decision making at an appropriate level, including by failing to require our involvement in the conduct and validation of social impact assessments and failing to require clear indicators and monitoring plans in the implementation of indigenous peoples' plans and other agreed planning and implementation frameworks.

#### Implementation level concerns

- 1. The information and protections contained in the safeguards are inaccessible to communities for the following reasons
  - a. The language is complex and difficult to interpret
  - b. It is often not known in communities affected by a project funded by a particular institution that safeguards exist.
- 2. There is lack of adequate and accurate information provided to communities regarding the safeguard protections, including through lack of appropriate and transparent forms of wide consultations with community members and not only with selected leaders; limited time periods provided for consultations and information sharing; and lack of effort put into awareness raising among affected indigenous peoples on the project and related guidelines

http://www.phnompenhpost.com/business/rubber-projects-hold (Accessed May 8, 2014)

- 3. The limited available sanctions, including stopping funding, withdrawal of future funding, or blacklisting implementation agencies for future high risk funding, are rarely exercised
- 4. Monitoring of the implementation of the policy at the World Bank and at the borrower level is poorly done. Among others, the conduct of consultations, information provided to communities, process and implementation of the Indigenous Peoples Plans with key indicators are not properly undertaken.
- 5. There is little or no transparency and information on the different roles of stakeholders and key actors such as government agencies, project proponents, consultants and others.
- 6. Some governments continue to fail to comply with the safeguards or implement their require ments, sometimes due to a lack of political will and sometimes due to a lack of knowledge and coordination between government agencies and with WB officials.

Based on these problems and the experiences that we have the following recommendations for the international finance institutions in the review and reformulation of their policies:

#### Policy level changes needed

- 1. Indigenous peoples' own concept of self-determined development shall be explicitly recognized and supported in the safeguard policies
- 2. Safeguards shall incorporate human-rights based approach at all levels, including appropriately assessing risks to our individual and collective rights
- 3. Customary and collective land rights shall be respected explicitly and projects dependent on formalizing recognition of such rights
- 4. The indigenous peoples' policy be retained as a stand-alone policy in the World Bank
- 5. The safeguards shall be guided by, and provide reference to, international human rights law, in cluding the UN Declaration on the Rights of Indigenous Peoples, to strengthen the protections for indigenous peoples
- 6. Additional provisions are required to ensure that Indigenous peoples' plans are formulated by the community members in ways consistent with their independent decision making process; and key indicators for its appropriate and timely implementation are identified for strict monitoring with the effective participation of community members.
- 7. Appropriate enforcement mechanisms and sanctions to be used in cases of non-compliance shall be designed to strengthen implementation of the safeguards

#### Implementation level changes needed

- 1. Transparency shall be ensured, in part by requiring awareness raising on the safeguards for affected communities and providing the safeguards in local languages
- 2. The language of the safeguards shall be simplified for community level understanding
- 3. The safeguards shall ensure the full, effective and meaningful participation of indigenous peo ples in the planning and implementation of projects. In particular, the full and effective participation of affected indigenous peoples, including but not solely through their representative authorities, shall be ensured in the following among others:
  - In the conduct of social and environmental impact assessments;
  - In the validation of the results of impact assessments;
  - In the formulation and in any adaptation of the indigenous peoples' plan
  - (or similar document) including appropriate results indicators;
  - Monitoring and evaluation of the projects
- 4. The safeguards shall respect indigenous system of decision making and customary laws on resource management and shall not be driven solely by local governments or other agencies

- 5. Appropriate enforcement mechanisms and sanctions should be strictly enforced to strengthen implementation of the safeguards. Projects linked with serious human rights violations such as the criminalization of community actions against development projects or violations to the collective rights of indigenous such as the lack of Free, Prior and Informed Consent (FPIC) should be immediately suspended for investigation and appropriate sanctions applied.
- 6. Projects unnecessarily utilizing State military forces and paramilitaries to protect or implement projects should be carefully monitored and reviewed as this can and does create a sense of insecurity and intimidation, preventing the full and effective participation of communities as well as constraining them from raising their concerns freely. A case in point is the implementation of some KALAHI CIDSS projects funded by the WB in Tineg, Abra and in Kalinga Province in the Philippines. There is a high probability that similar intimidation will attend projects implemented in Myanmar. Investments there are now pouring into the territories of ethnic nationalities in a his torical context in which the military is implicated directly in land grabbing and in activities opposed by ethnic minorities, including mining and dams.

#### World Bank

We take note of the series of consultations conducted with indigenous peoples. We hereby reiterate earlier recommendations made by indigenous peoples including in submission and letters sent to the World Bank. We strongly recommend that further consultations with indigenous peoples include feedback and actions in response to these earlier recommendations. We refer, in part, to the following: The Indigenous Peoples Policy shall be maintained as a standalone policy with the incorporation of the following elements:

- 1. The right to Free Prior Informed Consent (FPIC) in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169, along with the recognition and respect of the rights of indigenous peoples.
- 2. The recognition of pastoralism as a livelihood and a lifestyle and the inclusion of pastoralist peo ple as indigenous peoples in World Bank policies, in particular in the Indigenous Peoples Policy.
- 3. The recognition and respect of the rights of Indigenous Peoples in voluntary isolation. In particular, no project shall take place in their territories.
- 4. The effective and immediate solution of the gaps and shortcomings of the implementation of OP4.10 based on the World Bank Learning Review (2011).

#### Asian Development Bank

Specific to the Asia Development Bank we provide the following recommendations:

- 1. Share the any reports and reviews on the implementation of the Safeguard Policy Statement in projects affecting indigenous peoples
- 2. Conduct an independent evaluation on the implementation of the Safeguard Policy Requirements for Indigenous Peoples
- 3. Ensure the participation of indigenous peoples' representatives in the selection of members of the independent evaluation team and in defining their Terms of Reference.

Affirmed this 20th day of April 2014 in Sagada, Philippines.

\*\*\*This statement was adopted by 27 training participants from 20 indigenous organizations in 8 countries in Asia and two (2) civil society organizations. This was further endorsed by 31 indigenous and civil society organizations in Asia and in the United Kingdom.



The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights; sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/ networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Asia Indigenous Peoples Pact (AIPP) 108 Moo 5, Tambon Sanpranate, Amphur Sansai Chiang Mai 50210, Thailand Tel: +66(0)53380168 Fax: +66(0)53380752 Email: aippmail@aippnet.org Website: www.aippnet.org www.iphrdefenders.com

> www.iva.aippnet.org www.ccmin.aippnet.org

The Asia Indigenous Peoples Pact (AIPP) established the AIPP Printing Press to generate resources to support the Indigenous Peoples Human Rights Defenders Network and those facing serious threats due to their human rights work.



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