



19 November 2020

The Hon Peter Costello
Chairman, Board of Guardians
Future Fund
Locked Bag 20010
Melbourne VIC 3001

Re: Future Fund's investments in Adani Ports and Special Economic Zone Ltd

Dear Mr Costello,

Through a Freedom of Information request, we recently became aware of equity holdings held by the Future Fund in Adani Ports and Special Economic Zones Ltd (**Adani Ports**) valued at AUD\$3.2million. We write to express our serious concern that the Future Fund, Australia's sovereign wealth fund, holds equity in Adani Ports, despite grave human rights concerns regarding Adani Ports' business in Myanmar. This is in addition to its recently revealed role in the Carmichael coal project in Australia¹ and the associated environmental, ecological and climate impacts, which is also a major threat to the Traditional Owners of the land, the Wangan and Jagalingou people.

Introduction

The Myanmar military (known as the **Tatmadaw**) is credibly accused of committing serious violations of international humanitarian law (**IHL**) and international human rights law, including violations which amount to the commission of grave crimes under international law, crimes which are serious criminal offences against the Commonwealth of Australia.² These in particular include allegations of: war crimes; crimes against humanity; and genocide against the Rohingya minority in Myanmar. In August 2017, following decades of persecution, the Tatmadaw engaged in 'clearance operations' of entire villages across Arakan state, marked by mass killings of civilians, widespread and systematic torture, torching of whole villages, widespread rape and other forms of sexual violence, including against children, and forced mass displacement. In September 2019, the UN Human Rights Council's Fact-Finding Mission on Myanmar (**FFM**) concluded that the Rohingya people remain at serious risk of genocide under the terms of the Genocide Convention.³

The Rohingya community in Australia have suffered greatly through the actions of the Tatmadaw and the genocidal campaign against the Rohingya. Many in the Rohingya community have family members that are severely impacted by the violence of the Tatmadaw. Some managed to escape the horrors inflicted on them, and now live in

¹ Josh Robertson, 'Adani Launches Own Rail Company to Haul Coal from Carmichael Mine' *ABC* (10 September 2020) <<https://www.abc.net.au/news/2020-09-10/adani-coal-mine-abbot-point-terminal-rail-line-protests/12644432>>.

² *Criminal Code Act 1995* (Cth) sch 1, Divisions 268 and 274.

³ UN Human Rights Council, *Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, HRC, 42nd sess, Agenda Item 2, UN Doc A/HRC/42/CRP.5 (16 September 2019) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/20190916/A_HRC_42_CRP.5.pdf> [242].

desperate circumstances in refugee camps in Bangladesh. There is still ongoing violence against the Rohingya people in Myanmar by the Tatmadaw.⁴ Australia's Rohingya community is actively engaged in the coordinated international efforts to hold the Myanmar authorities accountable for the atrocity crimes committed against the Rohingya people and other ethnic minorities in Myanmar.

As you are no doubt aware, elements of this campaign of atrocity crimes is currently under investigation by the International Criminal Court⁵ (to which Australia is a State Party) and the genocidal nature of these crimes and States' obligations under the *Convention on the Prevention and Punishment of the Crime of Genocide* is the subject of proceedings by the International Court of Justice.⁶ Australia is a State Party to the *Genocide Convention* and it is therefore critical for Australia to ensure it is compliant with its duties and obligations under the Convention. Australia has stated publicly that pursuing accountability for the atrocities and human rights violations detailed by the FFM is essential and that it will support international efforts on accountability and justice in Myanmar.⁷ The Australian Government has imposed sanctions on five individuals that are senior ranking members of the Tatmadaw on the basis of the atrocities committed against the Rohingya people.⁸

Identification of Adani Ports relationship to the Myanmar military by the UN

The crimes of the Myanmar military are enabled by their business interests. We draw your attention to the report of independent experts which brought to focus Adani Ports' direct commercial relationship with Myanmar's military holding company, Myanmar Economic Corporation (**MEC**). The MEC is reportedly fully owned and controlled by the Ministry of Defence and as such, is a direct source of revenue for the military.⁹ The MEC is, according to reports, controlled by the Quartermaster General's Office¹⁰ of the Myanmar army. The MEC has a wholly owned private subsidiary, Myanmar Economic Corporation Ltd (**MEC Ltd**), and the Board of MEC Ltd is reported to include Chiefs of Staff of the Army, Navy and Air Force, with the implication that it is influenced by the Tatmadaw and its senior leaders, including Commander-in-Chief of the Armed Forces, Senior General Min Aung Hlaing, and the Deputy Commander-in-Chief of the Armed Forces and Commander-in-Chief of the Myanmar army, Vice Senior General Soe Win.¹¹ The UN Human Rights Council's Independent International Fact-Finding Mission on Myanmar reported in August 2019,¹² that Adani Ports entered into a build, operate and transfer contract with MEC for

⁴ Amnesty International, 'Myanmar: Villages Burned, Civilians Injured and Killed as Rakhine State Conflict Escalates' (12 October 2020) <<https://www.amnesty.org/en/latest/news/2020/10/myanmar-villages-burned-civilians-injured-rakhine-state-conflict/>>.

⁵ International Criminal Court, 'ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar' (14 November 2019) (Press Release) <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1495>>.

⁶ *Application on the Convention of the Prevention and Punishment of the Crime of genocide (The Gambia v Myanmar) (Provisional Measures)* [2020].

⁷ See, Foreign Minister of Australia Senator Marise Payne, *UN Fact-Finding Mission on Myanmar: Release of Summary Report* (Media Release) (29 August 2018) <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/un-fact-finding-mission-myanmar-release-summary-report>> and, Foreign Minister of Australia Senator Marise Payne, *UN Fact-Finding Mission on Myanmar: Release of Full Report* (Media Release) (19 September 2018) <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/un-fact-finding-mission-myanmar-release-full-report>>.

⁸ Department of Foreign Affairs and Trade, *Sanctions Regime, Myanmar* <<https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx>>.

⁹ UN Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar, The Economic Interests of the Myanmar Military* HRC, 42nd sess, Agenda Item 4, UN Doc A/HRC/42/CRP.3 (12 September 2019) <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Documents/A_HRC_42_CRP_3.docx> (**FFM Report**). Note: This is the updated version of the report initially released on 5 August 2019 [55].

¹⁰ *Ibid.* [55].

¹¹ *Ibid.* [6(a)].

¹² *Ibid.*

a commercial port, leasing land held by the MEC for 50 years. Adani Ports has committed to investing USD\$290 million for the project.¹³

UN Fact-Finding Mission recommendations

The UN Fact-Finding Mission stated of the likes of Adani Ports' commercial ties:

Those in commercial relationships with MEHL or MEC may find themselves complicit, in law, fact or the eyes of the broader public, in contributing to the resources available to the Tatmadaw to continue its involvement in gross violations of international human rights law and serious violations of international humanitarian law.¹⁴

The UN Mission further stated that:

No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into or remain in a business relationship of any kind with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them (including subsidiaries) or their individual members, until and unless they are re-structured and transformed as recommended by the Mission. These enterprises include in particular MEHL and MEC and all of their subsidiaries and business relationships. Relevant business relationships include granting loans to these companies or investing capital into their operations and procuring services from Tatmadaw related companies (including real estate rental).¹⁵

The UN Mission warned that companies involved with the Tatmadaw and its conglomerates, including MEC, should sever their relationships in order to fulfil their corporate responsibility to respect human rights and risk aiding and abetting the commission of war crimes and crimes against humanity should they continue commercial relationships with Myanmar military-owned companies.¹⁶

We are deeply concerned that any company would be engaging in commercial ties with the Tatmadaw and its military-owned companies and even more concerned that Australia's Future Fund would be investing and holding an equity stake with one such company.

Despite the extensive evidence summarised above, and the widespread international condemnation of the atrocities in Myanmar by the international community, including by the Australian Government, the Adani Group has denied any problems exist in the business relationship Adani Ports has with MEC.¹⁷ To the contrary, Adani Ports' relationship includes Senior General Min Aung Hlaing, who visited Adani Ports in Mundara during a state visit in July 2019, where Adani Ports' officials greeted him with an extensive tour of the port and facilities, and exchanged gifts with him.¹⁸

¹³ Ibid [144], and Annex V.B.

¹⁴ Ibid [146]

¹⁵ Ibid [188(a)].

¹⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, HRC, 39th sess, Agenda Item 4, UN Doc A/HRC/39/CRP.2 (17 September 2018) [1708], [1716]-[1717]; and FFM Report, [8].

¹⁷ Adani Australia, *Myanmar Investment Meets International Standards*, (Media Release) (13 May 2019) <<https://www.adaniaustralia.com/-/media/1890513%20OMS%20Myanmar%20Adani%20Group%20-%20website>>.

¹⁸ Senior General Min Aung Hlaing, 'Myanmar Tatmadaw Goodwill Delegation Visits Adani Ports and Logistics, SEZ & Solar Panel Manufacturing Unit in Mundra' (28 July 2019) <<https://www.seniorgeneralminaunghlaing.com.mm/en/14411/myanmar-tatmadaw-goodwill-delegation-visits-adani-ports-logistics-sez-solar-panel-manufacturing-unit-mundra/>>.

Environmental, social and governance risks

At a minimum, this is suggestive of Adani Ports' gross and systemic environmental, social and governance (**ESG**) failings. The Future Fund states that it incorporates ESG risks in an integrated approach into its investment function, including through any investments with external investment managers.¹⁹ This should have required appropriate due diligence and should not have resulted in any investment in Adani Ports given its commercial relationship with the MEC. The information now before the Future Fund must require divestment. Adani Ports' continuance of its relationship with the MEC shows a profound lack of regard for its human rights obligations and international law obligations under both the United Nations Guiding Principles on Business and Human Rights²⁰ and in line with the detailed recommendations of the UN Human Rights Council's Fact-Finding Mission. Moreover, Adani Ports' commercial relationship with the MEC is inconsistent with investing in the benefit of future generations of Australians broadly and the core constituencies of other funds that the Future Fund is managing, including the Aboriginal and Torres Straits Islanders Land and Sea Future Fund, Medical Research Future Fund, Future Drought Fund and DisabilityCare Australia Future Fund.

We note that the Future Fund believes in effective management of ESG risks to maximise returns and that there is a positive relationship between good governance and investment value. The Future Fund has already acknowledged that it takes ESG seriously in its investment approach. We look forward to engaging further with the Future Fund to ensure that going forward, evidence of business' serious human rights violations and the impact on the communities harmed is not rewarded by investments made by the Future Fund. The Future Fund's vision to invest in our future must consider that investing in companies involved in breaching human rights obligations greatly outweighs any short term returns, and is not a worthy investment.

In light of the above information, we strongly urge the Future Fund to take immediate steps and divest all holdings from Adani Ports and any other entities that maintain business ties with Myanmar military-owned companies.

We look forward to your response.

Yours sincerely,



Mahammed Junite
Public Relations Officer
Burmese Rohingya Community in Australia



Rawan Arraf
Principal Lawyer & Director
Australian Centre for International Justice

¹⁹ Future Fund Board Of Guardians, 'Statement of Investment Principles' (September 2020)

<https://www.futurefund.gov.au/-/media/future-fund---documents/investment-policies/202009---ffbg-statement-of-investment-policies.ashx?la=en&hash=A95FE47D98B7AD78C7F3D3C05FACAA51DCA48F65> [12.4].

²⁰ United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2011) ('Guiding Principles on Business and Human Rights'), see in particular Principles 5 and 7.