



PORT OF COMPLICITY:

Adani Ports in Myanmar

AUSTRALIAN
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MYANMAR

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The Australian Centre for International Justice is an independent and not-for-profit legal centre working to develop Australia's domestic investigations and prosecutions of the international crimes offences in the Commonwealth Criminal Code. The ACIJ employs strategies to combat the impunity of the perpetrators of these crimes to seek justice, redress and accountability for the survivors.

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Justice For Myanmar, a group of covert activists campaigning for justice and accountability for the people of Myanmar, is calling for an end to military business and for federal democracy and a sustainable peace.

justiceformyanmar.org

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Authors: Rawan Arraf and Justice For Myanmar. Design: Reem Abdalla

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Cover image

A tour of Mundra Port in July 2019. Senior General Min Aung Hlaing (centre) at Adani Ports' Mundra Port, India with Karan Adani, CEO of Adani Ports and Special Economic Zone Limited(far right).

Source: CINCDS.gov.mm/Office of the Commander-in-Chief of Defence Services

About this paper

The content of this report is the expression and opinion of the Australian Centre for International Justice and Justice For Myanmar. Readers should use this report as a starting point to form an independent view of the issues discussed within. This report does not seek to suggest that the Adani Group is directly involved in the conduct of the Myanmar military.

Contents

Introduction	4
Myanmar	5
Economic interests of the Myanmar military	8
MEC corporate structure	10
Adani Ports' commercial ties with the MEC	12
Adani's response to allegations of complicity	17
Adani's response to the Myanmar military coup	20
Adani Group policy on human rights	22
Adani Ports' commercial operations in Australia	23
Adani Ports' failure to respect human rights	26
Risk of complicity in violations of international law	28
Conclusion	30
Recommendations	31

Introduction

Justice For Myanmar and the Australian Centre for International Justice issue this report to continue our work in highlighting the role of foreign corporations involved in commercial relationships with companies that are owned and controlled by Myanmar's military. In this report, we examine Adani Ports and Special Economic Zone Ltd (**Adani Ports** or **APSEZ**), an India-based subsidiary of the Adani Group of companies.

Adani Ports is the largest private port operator in India managing several ports with a view to expanding in Asia and around the world. In fact, its investment in Myanmar was heralded as its 'first voyage to South East Asia'. It markets itself as building '#PortsOfProsperity' with the objective of fulfilling the Adani Group's vision to 'help build critical infrastructure for nations across key markets and help in propelling economic development and social impacts'.

Adani Ports was listed in a report by the UN Independent International Fact-Finding Mission on Myanmar in 2019 because of its commercial ties with a Myanmar military conglomerate, the Myanmar Economic Corporation (**MEC**). The UN Mission's 2019 report follows extensive documentation of atrocities committed by Myanmar's security forces. The UN Mission in 2018 called for the top generals to be investigated and prosecuted for allegations of war crimes and crimes against humanity against ethnic people in Arakan (Rakhine), Kachin and Shan states and for allegations of genocide against the Rohingya people in Arakan state.

In 2019, the UN Mission released its report on the economic interests of the Myanmar military and detailed the structure and network of the military's two main holding companies: Myanma Economic Holdings Limited (**MEHL**); and the MEC. The companies are led by current and former senior level military officials, including the Commander-in-Chief, Senior General Min Aung Hlaing. MEHL and MEC are able to generate enormous revenues, insulating themselves from effective civilian oversight. In turn they benefit from unrestricted profits and influence allowing them to continue funding their serious human rights abuses with impunity. The UN, academic experts, activists and civil society groups have long called for the financial isolation of the military and its business partners. Foreign corporations have been put on notice publicly several times for any engagements in Myanmar that are linked to the military and the resulting reputational, legal and operational risks of these commercial relationships. They have been warned that they may find themselves complicit in law, fact or the eyes of the broader public, with the military's crimes.

Adani Ports is one of those corporations that has at various times either avoided answering questions about its role or defended its role in Myanmar by denying any problems with its relationship with the MEC.

Foreign corporations involved in relationships with the Myanmar military are contributing to the devastating damage the military has inflicted on Myanmar and its path to democratic recovery and growth.

Myanmar



Myanmar, a country with a population of 53 million people, began a democratic transition following nearly half a century of military rule with the formation of a semi-civilian government in 2011. It followed the passage of a new constitution in 2008 that was drafted by the Myanmar military. This led to renewed engagement with the international community after decades of isolation under a socialist regime and a brutal military dictatorship. The democratic transition has involved reforms to the military's ruthless controls on freedom of assembly and freedom of expression, although these have since been overturned by the unlawful and violent military coup that took place on 1 February 2021.

Before the coup, the military, also known as the **Tatmadaw**, tightly managed the political transition to maintain total impunity and protect its political and economic interests. Myanmar's Constitution places the military outside of civilian oversight. The Constitution reserves a quota of 25% of the seats in parliament for military appointees, which also prevents the super-majority needed for constitutional reform without military approval. Under the Constitution, the military also directly appoints the Ministers of Defence, Home Affairs and Border Affairs, as well as a Vice-President.¹ Informally, the military maintained a hold on the civilian institutions of government through the transferring of former military officials to civilian positions, while demanding loyalty and distributing patronage from their business interests.²

Military's atrocities

In August 2017, following decades of persecution, the Myanmar military launched a military offensive known as 'clearance operations' against the Rohingya and entire villages across Arakan State, driving 700,000 people to seek refuge in Bangladesh. The offensive was marked by mass killings of civilians, widespread and systematic torture, torching of whole villages, widespread rape, sexual slavery

and other forms of gender and sexual-based violence, including against children, persecution, enslavement and forced mass displacement.³

This followed decades of continuing military offensives in ethnic areas in which the Myanmar military has committed grave human rights violations with impunity. Military violence continues in Arakan, Kachin and Shan areas, where the Myanmar military is responsible for serious violations of international humanitarian law and human rights law which may amount to the commission of war crimes, crimes against humanity and genocide, as defined by the Rome Statute of the International Criminal Court (ICC).

MASS KILLINGS OF CIVILIANS, WIDESPREAD AND SYSTEMATIC TORTURE, TORCHING OF WHOLE VILLAGES, WIDESPREAD RAPE, SEXUAL SLAVERY AND OTHER FORMS OF GENDER AND SEXUAL-BASED VIOLENCE, INCLUDING AGAINST CHILDREN, PERSECUTION, ENSLAVEMENT AND FORCED MASS DISPLACEMENT

Criminal investigations at the International Criminal Court

Elements of the Myanmar military's campaign of atrocities are currently under investigation by the ICC. In November 2019, the ICC authorised the Prosecutor to investigate alleged crimes against humanity, including deportation and other inhumane acts and persecution against the Rohingya population inside Myanmar which resulted in their displacement into Bangladesh, which is a State Party to the Rome Statute of the ICC.⁴

1 Republic of the Union of Myanmar, *Constitution of the Republic of the Union of Myanmar* (2008).

2 Melissa Crouch, 'Pre-emptive Constitution-Making: Authoritarian Constitutionalism and the Military in Myanmar' (2020) 54(2) *Law & Society Review* 487.

3 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) ('**FFM 2018 Report**').

4 International Criminal Court, 'ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar' (Press Release) (14 November 2019).

Proceedings at the International Court of Justice

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 at the International Court of Justice (ICJ). In 2020, the ICJ ordered provisional measures requiring Myanmar to prevent genocide in Rakhine State and to take steps to preserve evidence of past crimes.⁵

Under international law, states have obligations to prosecute and punish those who engage in the commission of international crimes. They also have a duty to prevent the commission of these crimes.⁶ Those States Parties to the *Genocide Convention* must ensure they are compliant with their duties and obligations under the Convention.⁷ This should include enhanced processes to ensure no businesses resident in their territory are involved directly or indirectly with Myanmar's military businesses.

Military coup

On 1 February 2021, the Myanmar military, under the Commander-in-Chief, Senior General Min Aung Hlaing, arrested and detained elected civilian leaders of national and state governments, nullified the results of the November 2020 elections, installed a junta through a 'State Administrative Council' and announced a one-year 'state-of-emergency'. Those detained by the military include President Win Myint and State Counsellor Aung San Suu Kyi. The military also detained officials from the National League for Democracy. The military has arbitrarily detained dozens of human rights activists, civil society group members, student leaders and journalists. Since the 1 February coup, the military has employed excessive and lethal force in demonstrations, killing hundreds and wounding dozens of peaceful protesters.⁸ The military barred access to social media websites and messaging services and cut off access to the internet in rolling shutdowns, while the country also struggles during a global coronavirus pandemic. This systematic campaign of repression has severely impacted on peoples' freedoms of

opinion, expression, association and assembly. In Yangon, the military deployed one of its Light Infantry Divisions to suppress protests.⁹ These frontline combat divisions are implicated in the mass killings, torture, arson and sexual violence committed in Arakan, Shan and Kachin States since 2017.

Justice For Myanmar on the imminent risk of a coup published an article on 30 January 2021 stating:

Public assets stolen by Senior General Min Aung Hlaing and his family must be returned to the people. Without action from a democratically elected government, there is a high risk that Senior General Min Aung Hlaing will try to hang onto power as Commander-in-Chief and use it to continue to amass wealth through military conglomerates and his family businesses, while the majority of the people of Myanmar and the rank-and-file of the military live in poverty.¹⁰

As stated by Amnesty International, years of international inaction emboldened the military who read the inaction as a quiet signal that they could oust the civilian government without any real consequences.¹¹

YEARS OF INTERNATIONAL INACTION EMBOLDENED THE MILITARY

The UN Fact-Finding Mission on Myanmar, human rights groups and experts around the world, have long warned the international community about the devastating impacts on the country's democratic and economic growth as a consequence of the military's financial control. Financial isolation of the military is crucial to ending the Myanmar military's grave human rights abuses and promoting accountability and justice to the people of Myanmar and the victims of the military's crimes.

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

6 Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951), art 1.

7 Felicity Gerry, 'Australia Must Do More to Ensure Myanmar Is Preventing Genocide Against the Rohingya' *The Conversation* (29 October 2020).

8 Scott Neuman, 'More Protesters Killed As Myanmar's Junta Intensifies Crackdown On Dissent' *NPR* (19 March 2021).

9 Helen Regan, 'Terrified' UN Envoy Issues Warning on Myanmar as Protesters Face Down Military' *CNN* (17 February 2021).

10 Justice For Myanmar, 'Who Profits From A Coup: The Power and Greed of Senior General Min Aung Hlaing' (30 January 2021).

11 Amnesty International, 'Myanmar: UN Security Council Must Act Urgently, Hold Military Accountable' (2 February 2021).



Rohingya refugees in September 2017 after crossing the Naf River that separates Myanmar and Bangladesh. In the background smoke rises from fires that the refugees say were started by the Myanmar military. Credit: © Adam Dean/Panos

Economic interests of the Myanmar military

In August 2019, the UN Human Rights Council's International Independent Fact-Finding Mission on Myanmar (the **FFM**) released its report (**the Report**) detailing the economic interests of the Myanmar military.¹² The FFM called for the financial isolation of the Myanmar military and its business partners, targeted sanctions against the senior generals and military companies, and arms embargoes. It follows the recommendations of the FFM's first report in 2018, which warned that:

no business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members...¹³

The Report revealed the Myanmar military's control over Myanmar's economy and its two main military holding companies: the Myanmar Economic Corporation (**MEC**); and Myanmar Economic Holdings Limited (**MEHL**). Together, they own at least 120 businesses across almost every sector in Myanmar's economy.¹⁴ MEHL and MEC's vast web of companies have seen them profit from 'near-monopoly control over many industries, amassing huge land holdings and businesses in manufacturing, construction, real estate, industrial zones, finance and insurance, telecommunications and mining'.¹⁵

At the time of the Report, the FFM named 14 foreign companies found to have joint ventures or commercial relationships, and at least 44 foreign companies that have other forms of commercial ties with Myanmar military businesses. Further, it found at least 14 foreign companies from seven countries that have provided arms and related equipment to the Myanmar military since 2016, even after the Myanmar military's brutal human rights record was widely and publicly known.

The Report revealed that MEHL and MEC are owned, influenced

and led by former and current high-ranking military officials including, the Commander-in-Chief Senior General Min Aung Hlaing and Deputy Commander-in-Chief, Vice Senior General Soe Win, both of whom are alleged to be responsible for gross violations of international human rights law and serious violations of international humanitarian law. These military holding companies are integrated into the military structure, functions and chain of command.

The FFM found that the Myanmar military's web of commercial interests is purposeful in insulating itself from accountability and any elected civilian oversight¹⁶ and provides financial support for the Myanmar military's operations with their wide array of international human rights and humanitarian law violations.¹⁷ This allows MEHL and MEC to secure unrestricted profits and influence that perpetuates an unending cycle of abuse and impunity.¹⁸

The FFM warned:

[f]oreign companies involved with the Tatmadaw and its conglomerates MEHL and MEC should sever their relationships with these enterprises and ensure that they are fulfilling their corporate responsibility to respect human rights. 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. This report puts companies on further and effective notice of the human rights implications that arise from maintaining business connections with the Tatmadaw.¹⁹

In relation to investors and business, the FFM recommends:

12 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). ('**FFM Economic Interests Report**'). Note: This is the updated version of the report initially released on 5 August 2019.

13 FFM 2018 Report, [1708], [1716]-[1717]; and FFM Economic Interests Report, [8].

14 UN FFM, *Alleged Subsidiaries and Affiliates of MEHL and MEC by Industry* Current as of August 2019.

15 Htwe Htwe Thein, 'Ethical Minefield: The Dirty Business of Doing Deals with Myanmar's Military', *The Conversation* (8 January 2021).

16 FFM Economic Interests Report, [6], [178].

17 FFM Economic Interests Report, [6].

18 Shayna Bauchner, 'How Myanmar's Armed Forces Fund Atrocities', *Human Rights Watch* (5 August 2019).

19 FFM Economic Interests Report, [146].

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).²⁰



Children looking at a wall of wanted posters of Senior General Min Aung Hlaing, Mandalay. Source: Myanmar Now

MEC corporate structure

As revealed by the FFM, the crimes of the Myanmar military are enabled by their business interests. The military has an expansive hold on the Myanmar economy, which supports the military's continued autonomy from civilian oversight and provides a strong financial incentive for it to block meaningful, democratic reform. The military's business interests are dominated by two conglomerates: Myanma Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC), each of which have their own global networks of subsidiaries, joint ventures and business partnerships. Both conglomerates were built through the systematic transfer of state assets and the endemic corruption of Myanmar's military dictatorship.²¹

MEC is fully owned and controlled by the Myanmar military and operates with a high degree of secrecy under the control of the Quartermaster General's Office of the Myanmar Army. As such it is a direct source of revenue for the military.²² MEC's Chairperson is the Quartermaster General of the Myanmar Army, a position that is responsible for military supply, including arms. In 2020, Lt Gen Kyaw Swar Oo was appointed Quartermaster General. However, Lt Gen Nyo Saw, the previous quartermaster general, has remained on the MEC board. According to reports, Lt Gen Nyo Saw is 'joint chairman'.²³ The Quartermaster General is under the command of the Commander-in-Chief, Senior General Ming Aung Hlaing,

The MEC has a wholly owned private subsidiary, Myanmar Economic Corporation Ltd and the Board of MEC Ltd comprises high level operational leadership of the Myanmar military, including the Chiefs of Staff of the Army, Navy and Air Force, and the directors of key army directorates, including Supply and Transport and Military Electrical and Mechanical Engineers.²⁴ The MEC is therefore owned and influenced by the Myanmar military and its senior leaders,

including Senior General Min Aung Hlaing, and Vice Senior General Soe Win.²⁵

MEC WAS BUILT THROUGH THE SYSTEMATIC TRANSFER OF STATE ASSETS AND THE ENDEMIC CORRUPTION OF MYANMAR'S MILITARY DICTATORSHIP

Despite being owned by the state and controlling valuable state assets, we have not identified any transparency over revenue flows. There is even a lack of clarity over what legal entity MEC refers to. Myanmar Economic Corporation Ltd is registered as a private company and shares are held by Myanmar Economic Corporation, an entity that is listed in MEC Ltd's company extract along with number 23/2010. The legality, structure and operations of entity MEC and what '23/2010' refers to is unknown.²⁶

In a press conference in June 2020, a spokesperson for the Ministry of Defence claimed that MEC was privatised and is 'concerned only with the military'.²⁷ There is no evidence of MEC being privatised, or of any democratic process to sell MEC's state assets. It is concerning to claim that a 'private' business can be owned by the military, as the military is a state institution funded through the Union Budget. Therefore, a military-owned business would, by definition, be a state-owned enterprise. It follows from this that for all practical purposes, MEC can be considered a state-owned enterprise.²⁸

MEC revenue supports off-budget military spending, including on arms. MEC profits are not disclosed to parliament. Under the military's chain of command, the Commander-In-Chief and Vice Commander-in-Chief have overall responsibility of MEC, being the superiors of the Quartermaster General and board members.

21 Justice For Myanmar, *Nodes of Corruption: How Mytel, Viettel and a Global Network of Businesses Support the International Crimes of the Myanmar Military* (2021) ('*Nodes of Corruption*') 22.

22 FFM Economic Interests Report, [188a].

23 Htet Naing Za, 'Young Myanmar Military Officers Promoted Key Roles in Reshuffle' *The Irrawaddy* (11 May 2020).

24 FFM Economic Interests Report, [188a]. See also, Annex I, FFM, *Governance Structure of MEHL and MEC*. Current as at 31 August 2019.

25 Ibid, [6(a)].

26 Justice For Myanmar, *Nodes of Corruption*, 23.

27 Nyan Hlaing Lin, 'Military Conglomerate Shields Profits From the Public While Leaving Myanmar with Massive Debt', *Myanmar Now* (27 June 2020).

28 Justice For Myanmar, *Nodes of Corruption*, 23.

MEC REVENUE SUPPORTS OFF-BUDGET MILITARY SPENDING, INCLUDING ON ARMS

Min Aung Hlaing and Soe Win are two of the six named individuals in the FFM's first report which identified the top military brass as responsible for the alleged atrocity crimes and urged the international community to exercise jurisdiction to investigate and where appropriate prosecute officials, including officials of companies²⁹ who allegedly participated in the commission of serious crimes under international law committed in relation to Myanmar's human rights crisis. It also recommended that 'investigations leading to the tracing, freezing, seizure and recovery of assets linked to persons responsible for crimes

under international law is a critical component in the pursuit of accountability'³⁰ and called for other measures such as targeted sanctions against the Myanmar military leaders.

The FFM's recommendations urge the international community and businesses to sever ties with Myanmar's military and the vast web of companies it controls and relies on, because the revenue the military earns from domestic and foreign business deals substantially enhances its ability to carry out gross violations of human rights with impunity.³¹



Protesters in Yangon set up barricade with a target on Senior General Min Aung Hlaing. Source: Myanmar Now

29 FFM 2018 Report, [8].

30 FFM Economic Interests Report, [8].

31 Ibid, [146].

Adani Ports' commercial ties with the MEC

In May 2019, Adani Ports and Special Economic Zone Ltd (Adani Ports or APSEZ) entered into a build, operate and transfer contract with MEC for a commercial port, leasing land held by the MEC for 50 years. Adani Ports has committed to investing US\$290 million for the project.³² This agreement was entered into less than two years after the military's ethnic cleansing campaign against the Rohingya, and less than a year after the FFM warned foreign corporations from engaging with MEC or MEHL.

The Adani Group/Adani Ports is one of approximately 58 foreign corporations listed and identified by the FFM that has entered into or maintained joint ventures, contractual or commercial ties with either MEC or MEHL or one of their subsidiaries. In the case of Adani Ports, the FFM listed Adani Yangon International Terminal Company, owned by APSEZ.³³ The FFM reported:

...foreign companies are engaged with MEHL, MEC and their subsidiaries more directly, paying Tatmadaw conglomerates for the use of their property. A stark example is that of Adani Group, of India, which is leasing land in Yangon from MEC for 50 years for USD 290 million for the construction of Ahlone International Port Terminal 2.³⁴

The Myanmar military owns three commercial ports in Yangon that are currently operational. They include TMT Port, Hteedan International Port Terminal and Ahlone International Port Terminal. The first phase of Adani's port, at Ahlone International Port Terminal 2, is scheduled for completion in 2021. According to reports, the Ahlone International Port Terminal 2 will be developed on 50 acres of land.³⁵ Land that is owned by the MEC. The terminal will have a quay length of 635 metres with the capability to handle three vessels at a time. Its total capacity is slated to reach 800,000 TEU (twenty-foot-equivalent unit shipping containers), with a first phase offering of 500,000 TEU by June 2021.³⁶

ADANI PORTS' TOTAL INVESTMENT \$290,000,000

It is not known how the MEC obtained and acquired the land on which the port is being built in Ahlone Township. The land occupies prime real estate on the Yangon River. It is well known that the military engages in land confiscation and appropriation of public assets as a source of off budget revenue for private profits. Due diligence obligations would require Adani Ports to investigate whether the land itself is the subject of illegal appropriation by the military.

DUE DILIGENCE OBLIGATIONS WOULD REQUIRE ADANI PORTS TO INVESTIGATE WHETHER THE LAND IS THE SUBJECT OF ILLEGAL APPROPRIATION BY THE MILITARY

Adani Ports' commercial relationship with the MEC has been confirmed by the company in corporate disclosures. For example, on a bond issuance document dated 16 July 2019, APSEZ stated:

Adani Yangon International Terminal Company Limited, our wholly-owned Subsidiary, **entered into a build, operate and transfer agreement dated 23 May 2019 with Myanmar Economic Corporation ("MEC") to develop and operate a greenfield port terminal at the Yangon Port, Myanmar.** This marks our first port development project outside India. We expect to develop a port terminal of 0.8 million TEU in two phases, and expect to start construction in the first half of Fiscal Year 2019 with an estimated completion timeline of approximately two years. The agreement has an initial term of 50 years, with the option to extend for two consecutive 10-year terms by obtaining permission from the Myanmar Investment Commission.³⁷

32 Directorate of Investment and Company Administration (DICA)(Myanmar), 'Summary of Proposed Investment (Rule 38).'

33 FFM Economic Interests Report, Annex V.B 'Foreign Companies with Contractual or Commercial Ties to MEHL and MEC.'

34 FFM Economic Interests Report, [144].

35 Kang Wan Chern and Thiha Ko Ko, 'New Yangon Port to Be Constructed as Trade' *Myanmar Times* (5 May 2019).

36 Sam Whelan, 'Indian Terminal Operator Adani Ports Breaks into Myanmar Box Business with Yangon Investment' *The Loadstar* (6 June 2019).

37 APSEZ, 'Bond Issuance Document' (16 July 2019).



**Location of proposed
port, Ahlone International
Terminal 2, Ahlone
Township, Yangon River**

Adani Ports issued a media release on 23 May 2019 with details on the project.³⁸

On Adani Ports' website, it publishes favourable media coverage from the *Times of India*, of the deal including the fact that 'land where the port is proposed to be built has been leased from the Myanmar Economic Corporation (MEC)'.³⁹ The fact that MEC is a military-owned company is not reported.

Adani's Australia operations were forced to release a statement following controversy over its deal in Myanmar, less than two years following the largest wave of widespread and systematic violence targeting the Rohingya people and causing the largest mass displacement in recent years, which may amount to the crime of genocide. This major threat to international peace and security and the crimes of the military would not have gone unnoticed to any observer in the region.

THE MASS VIOLENCE AGAINST THE ROHINGYA AND THE CRIMES OF THE MILITARY WOULD NOT HAVE GONE UNNOTICED TO ANY OBSERVER IN THE REGION

Before its rebranding as Bravus Mining & Resources, Adani Australia's statement in May 2019 confirmed the lease of land from the MEC:

The land where the port is proposed to be built has been leased from Myanmar Economic Corporation (MEC) following extensive due diligence.⁴⁰

In its May 2019 statement, Adani Australia denied any problem with this commercial deal, stating that although there are arms embargoes and travel restrictions on key members of the military 'this does not preclude investment in the nation or business dealings with corporations such as MEC'.⁴¹

The Adani Group, through this statement issued by Adani Australia provided no information about its 'extensive due diligence'. This statement represented the first public denial of any concerns about doing business with the

MEC. The statement and the deal were made despite the fact that the UN Human Rights Council and the FFM warned foreign corporations that any commercial relationship with Myanmar's military companies, are at risk of complicity with the military's crimes. There is no evidence of this 'extensive due diligence'. Adani Ports should release their due diligence reports so that they can be subject to examination and debate.

ADANI PORTS SHOULD RELEASE THEIR DUE DILIGENCE REPORTS SO THAT THEY CAN BE SUBJECT TO EXAMINATION AND DEBATE

It is reasonable to conclude that Adani Ports' involvement with the MEC through its build, operate and transfer agreement, is helping to finance the Myanmar military, while creating valuable assets for them, as the port is to be transferred to the MEC on completion of the lease. The investment is therefore producing income at no cost to the MEC, while providing a valuable asset for the military in the future and a source for long-term off-budget financing. It is representative of the endemic corruption of the Myanmar military and its companies.

Through land lease payments, Adani Ports channels revenue to the Office of the Quartermaster General, the military's department which buys weapons of war that are used on the people of Myanmar in the commission of war crimes, crimes against humanity and genocide.

In our assessment, Adani Ports has failed to exercise leverage or end its relationship with the MEC. Adani Ports has failed in its corporate responsibility to respect human rights. As the FFM warned, Adani Ports is at high risk of contributing to or being complicit, 'either in law or in the eyes of the public' with violations of human rights law and international humanitarian law through its contribution to the Myanmar military's financial capacity.

ADANI PORTS IS AT HIGH RISK OF CONTRIBUTING TO OR BEING COMPLICIT, 'EITHER IN LAW OR IN THE EYES OF THE PUBLIC'.

— UN FACT-FINDING MISSION

38 APSEZ, 'APSEZ's First Voyage to South East Asia' (Media Release) (23 May 2019).

39 Times of India, 'Adani to Develop Container Terminal Port in Myanmar' (15 May 2019).

40 Adani Australia, 'Myanmar Investment Meets International Standards' (Media Statement) (13 May 2019). Please note: After Adani Australia's rebranding to Bravus Mining & Resources in 2020 this media statement was removed from its website. It was not included in the archived media releases. A copy can be available on request.

41 Ibid.

Other foreign corporations involved in the Yangon port build

Other foreign corporations that have indicated they are involved in the construction of the Ahlone International Port Terminal 2 include:

- 1) Indian engineering construction firm ITD Cementation India Ltd in an US\$80 million contract;⁴² and
- 2) Singaporean firm, HSL Constructor Pte Ltd;⁴³ and
- 3) Singaporean Firm, Asia Infrastructure Ptd Ltd.⁴⁴

ITD indicated that they were constructing a container berth, backup yard facilities, building and utilities for Adani Yangon International Terminal Company Limited.⁴⁵

Leaked documents reveal lease paid by Adani Ports to MEC

Documents obtained by Justice For Myanmar reveal for the first time the amount purported to be paid by Adani Ports' subsidiary in Myanmar, the Adani Yangon International Terminal Company Limited to the MEC: an amount of up to US\$52 million. This includes an amount of US\$30 million paid in land lease fees to MEC.

\$30,000,000
Land Lease Fees

In addition, a further US\$22 million was paid in land clearance fees. The recipient of the land clearance fees is unclear, but it is likely that the fees may flow to MEC as the owner of the land.

\$22,000,000
Land Clearance Fees



MEC owned Ahlone International Port Terminal 1, Yangon. Location of new port in the background. Source: Myanmar Port Authority

⁴² ITD Cementation, 'ITD Cementation India Limited Wins First Overseas Maritime Assignment in Myanmar' (Press Release) (27 December 2019).

⁴³ HSL Constructor Pte Ltd, 'Piling Works for Ahlone International Port Terminal 2'.

⁴⁴ Asia Infrastructure Ptd Ltd, 'Piling Works for Ahlone International Port Terminal 2 Project'.

⁴⁵ ITD Cementation India, *Excellence in Execution Annual Report 2019-2020* 13.

Adani and MEC – Lease Terms

Approved Adani Yangon International Terminal Company Limited. 155/2019 26/04/2019 [Go to Actual](#)

Name Of Investor: Mr. Sunil Seth Investing Country: Singapore Sector: Transport & Communication
 Type of Investment: Myanmar Investment Law (MIL) Form of Investment: Wholly Foreign Owned Investment, BOT Sector Category: Port Operation

< Investor Info Contacts Investment Details **Lease Terms** Land Lease Address JV Percentage Taxes Capital Manpower Attachments >

Landowner: Myanmar Economic Corporation Land Area: Acres
 Lease Term: Years Extended Lease Term: Years
 Annual Lease Fee (in million): Land Use Premium: US Dollar
 Total No. of Employee: 1176 Local Total No. of Employee: 66 Foreign
 Corporate Social Responsibility: 2.00 % Environment and Social Impact Assessment: EIA – Environment Impact Assessment x
 EMP – Environmental Management Plan x

05/May/2019, 2:21 pm
 Land Lease Fees 30.00 million, Land clearance fees 22.00 million

[Add Comment](#)

Adani and MEC – Joint Venture Percentage

Approved Adani Yangon International Terminal Company Limited. 155/2019 26/04/2019 [Go to Actual](#)

Name Of Investor: Mr. Sunil Seth Investing Country: Singapore Sector: Transport & Communication
 Type of Investment: Myanmar Investment Law (MIL) Form of Investment: Wholly Foreign Owned Investment, BOT Sector Category: Port Operation

< Investor Info Contacts Investment Details Lease Terms **JV Percentage** Land Lease Address Taxes Capital Manpower Attachments >

No	Company Name	Country	%
1	Adani International Terminals Pte Ltd.	Singapore	100.00

06/May/2019, 2:21 pm
 Land Lease Fees 30.00 million, Land clearance fees 22.00 million

[Add Comment](#)

Adani's response to allegations of complicity

As highlighted above, in May 2019, after concerns were raised that one member of the Adani Group was engaging in business in Myanmar, the Adani Group's Australian operations were forced to release a statement saying it 'rejects insinuations that this investment is unethical or will compromise human rights'.⁴⁶

In July 2019, a Myanmar military delegation led by Commander-in-Chief, Senior General Min Aung Hlaing visited India and went to Adani Ports' headquarters in the port of Mundra, India.⁴⁷ The Senior General, published photographs and videos of this extensive tour on his personal website, and the website of the Office of the

Commander-in-Chief of Myanmar Defence Services. The tour was also reported by Myanmar's state news media.

This special tour included the exchanging of gifts between Adani Ports' CEO, Karan Adani and accused war criminal and perpetrator of genocide, Senior General Min Aung Hlaing. Less than ten days before this visit, the US State Department imposed travel bans on the Senior General, and three other senior military leaders for their 'responsibility for gross human rights violations, including in extrajudicial killings ... during the ethnic cleansing of Rohingya'.⁴⁸



Adani Ports' CEO, Karan Adani (centre left) receives gift from Senior General Min Aung Hlaing (centre right). Source: MWD Variety/YouTube

⁴⁶ Adani Australia, 'Myanmar Investment Meets International Standards' (Media Statement) (13 May 2019). Please note: After Adani Australia's rebranding to Bravus Mining & Resources in 2020 this media statement was removed from its website. It was not included in the archived media releases. A copy can be available on request.

⁴⁷ Global New Light of Myanmar, 'Myanmar Military Delegation Visits India's Adani Ports, Solar Panel Unit' (29 July 2019).

⁴⁸ US State Department, 'Public Designation, Due to Gross Violations of Human Rights, of Burmese Military Officials' (Press Statement) (16 July 2019).



Adani Ports' CEO, Karan Adani (centre left) exchanges gifts with Senior General Min Aung Hlaing (centre right). Next to the Adani Ports' logo and flags of India and Myanmar, the screen title reads: 'Team Adani Welcomes Senior General Min Aung Hlaing Commander-in-Chief of Defence Services, Myanmar' Source: MWD Variety/YouTube

In a February 2021 statement the Adani Group stated:

We categorically deny having engaged with military leadership while receiving this approval or thereafter.⁴⁹

The photos of the tour appear to contradict this statement from the Adani Group.

THE PHOTOS OF THE TOUR IN INDIA CONTRADICT ADANI GROUP'S STATEMENT DENYING THEY ENGAGED WITH THE MILITARY LEADERSHIP OF MYANMAR

While the Adani Group was prompt to defend itself in May 2019 as a result of concerns raised from human rights and environmental groups, it stayed conspicuously silent following the release of the FFM's report in August 2019 and the conclusions the FFM found in relation to foreign companies and their relationships with the Myanmar military's conglomerates. This further exacerbates the 'tacit acceptance and approval of the Myanmar military's actions' as concluded by the FFM, especially in light of other

foreign corporations that have reviewed their relationship to Myanmar as a result of the FFM's Report and findings, and more recently as a consequence of the Myanmar military's coup d'état.⁵⁰

In their May 2019 statement, and all subsequent statements defending their operations in Myanmar, Adani Ports are keen to stress that the port terminal has the requisite permission from various state agencies and departments. It also repeats the following in numerous statements: 'The port terminal will be built under the auspices of the Myanmar [sic] Port Authority'.⁵¹

It was reported in July 2020, the Managing Director of the Myanmar Port Authority, a former Myanmar military general, was forced to resign from his role as director of the military conglomerate, MEHL, after the Attorney General found an illegal conflict of interest. At the time, Justice For Myanmar said the decision did not go far enough as the retired general continued to hold shares in MEHL and maintained his part in the military's patronage network that is spread through all parts of the state, providing top generals with immense power and influence.⁵²

49 Adani Group and APSEZ, 'Company Response: Adani Ports & SEZ Ltd.'s Response' *Business & Human Rights Resource Centre* (8 February 2021).

50 Some foreign corporations severed ties as a result of the UN FFM's report, and others as a result of the current crisis of the military's coup. These include: Newtech, Esprit, H&M, Kirin Holdings.

51 Adani Australia Media, 'Adani Responds to ABC Claims on Myanmar Human Rights Allegations' (Media Statement) (16 December 2020).

52 Nyan Hlaing Lin and Min Min, 'Ex-Generals Resign From MEHL Board Over Conflicts of Interest' *Myanmar Now* (21 July 2020).

In December 2020, an Adani spokesperson repeated some previous statements to the Australian Broadcasting Corporation (ABC), including the following:

The Adani spokeswoman said the deal with MEC went ahead after “extensive due diligence”.

“While some nations, including Australia, have arms embargoes and travel restrictions on key members of the military in place, this does not preclude investment in the nation or business dealings with corporations such as MEC,” the spokeswoman said. ... The Adani Group’s vision is to help build critical infrastructure for nations across key markets and help in propelling economic development and social impacts,” the spokeswoman said.⁵³

Adani Australia Media published a statement on its ‘Adani Facts’ website in response to the ABC report, which included:

This matter does not relate [to] any of Adani’s businesses in Australia or the Carmichael Project. All Adani’s businesses in Australia operate under Australian law and regulations. Adani’s proposed investment in the Myanmar port is held through Singapore-based entities and follow the strict regulations of the Singapore government. Singapore has a Memorandum of Understanding in place with Myanmar to boost partnerships in transport and logistics including port planning.

It is important to note that many economic sanctions against Myanmar were lifted in recent years following political reforms within the country and the election of a civilian government. While some nations, including Australia, have arms embargoes and travel restrictions on key members of the military in place, this does not preclude investment in the nation or business dealings with corporations such as MEC.⁵⁴

It is important to note that Adani Ports’ operations in Myanmar and Australia have one common beneficial owner, the Adani Group.

Maersk pulls out of Yangon’s military owned ports

In October 2020, global shipping giant, Danish firm, Maersk, announced it will end use of the military-owned ports in Myanmar by the end of October 2020.⁵⁵

The Burma Campaign UK received a statement from the Denmark based, A P Moller-Maersk, announcing it will consolidate all of its Yangon ports to those not operated or owned by the Myanmar military.

In a statement to Agence France-Presse, Maersk stated, it was ‘cognisant of recent recommendations from the United Nations to maintain operations in Myanmar while exercising heightened due diligence’.⁵⁶

This significant news would not have gone unnoticed to anyone in the global shipping and port industry.

MAERSK’S ANNOUNCEMENT WOULD NOT HAVE GONE UNNOTICED TO ANYONE IN THE GLOBAL SHIPPING AND PORT INDUSTRY

Following Maersk’s announcement to stop using military-owned ports in 2020, and in response to the human rights abuses occurring following the military’s coup, in February 2021, Singaporean shopping company, Transworld Group Singapore, advised they will no longer use military-owned ports in Yangon. In August 2019, Burma Campaign UK called on the Transworld Group to stop use of the military-owned ports.⁵⁷

53 Michael Slezak, ‘Australia’s Future Fund ‘In bed with Adani’ After Freedom of Information Request Reveals \$3.2 million Investment’ ABC News (16 December 2020).

54 Adani Australia Media, ‘Adani Responds to ABC Claims on Myanmar Human Rights Allegations’ (Media Statement) (16 December 2020).

55 Burma Campaign UK, ‘Shipping Giant Maersk to Stop Using Military Ports in Burma’ (8 October 2020).

56 Business Times Singapore, ‘Maersk to Stop Using Myanmar Military Ports: Rights Group’ (9 October 2020).

57 Burma Campaign UK, ‘Transworld Removed From ‘Dirty List’ – Will No Longer Use Military Ports’ (23 February 2021).

Adani's response to the Myanmar military coup

As a result of the current crisis in Myanmar, whilst other foreign corporations have severed ties with the Myanmar military, the Adani Group and Adani Ports remained silent. The Adani Group was forced to respond to a request from the *Business & Human Rights Resource Centre*. In their statement of 8 February 2021,⁵⁸ any reference to the MEC was now removed. A reasonable conclusion can be reached by this stark omission is that there is an effort by Adani

Ports to obfuscate its commercial operations in Myanmar, and remove any mention of the MEC.

Also concerning are remarks made by Adani Ports' CEO, Karan Adani, at the most recent 'earnings conference call' where a question on Adani Ports' Myanmar operations was raised in light of the brutal military coup in Myanmar:

ASHISH SHAH: And just last one. Any impact of this recent turmoil in Myanmar on our project is that progressing or there are any challenges in construction of that project?

KARAN ADANI: So far we have not faced any issues on the ground. Work is still continuing. There has not been any disruption at site or at on the construction. We are waiting and watching how the situation arises to then take an informed call but as of now work is going in full swing and we expect the terminal to be commissioned by April of 2021.

ASHISH SHAH: And our construction framework in contract is that rock solid irrespective of what happens at the political level there?

KARAN ADANI: Yes, that is there.⁵⁹

This conversation represents a careless lack of awareness on the part of Adani Ports with respect to the serious questions around its complicity in its build, operate and transfer agreement with MEC. Karan Adani in this statement disregards Adani Ports' corporate responsibility to respect human rights, particularly in light of the Myanmar military's ongoing crimes and illegitimate claim to governance.

In our view, the statement also represents a careless disregard for the safety and wellbeing of Adani Ports' workers in Yangon. A popular and widespread civilian disobedience movement is participating in nationwide strikes to protest the military's illegitimate claim to power, which has resulted in the deaths of over 200 people.⁶⁰ Corporate actors are reminded that their actions and inactions in Myanmar can contribute to the entrenchment of the military junta, violations of international law and deterioration of the rule of law.

IN OUR VIEW, KARAN ADANI'S STATEMENT REPRESENTS A CARELESS DISREGARD FOR THE SAFETY AND WELLBEING OF ADANI PORTS' WORKERS IN YANGON

Further, the question and confirmation that the construction framework contract was 'rock solid irrespective of what happens at the political level there' could also represent an understanding that their business partner has taken full control of the country. Prior to the military's coup, their business partner the MEC was under the military. However, the commercial engagement also involved links with other agencies and government departments that were under the civilian government. Now, all of those agencies and departments are controlled by the military.

This exchange suggests that Adani Ports' overriding preoccupation is whether the Myanmar coup has impacted

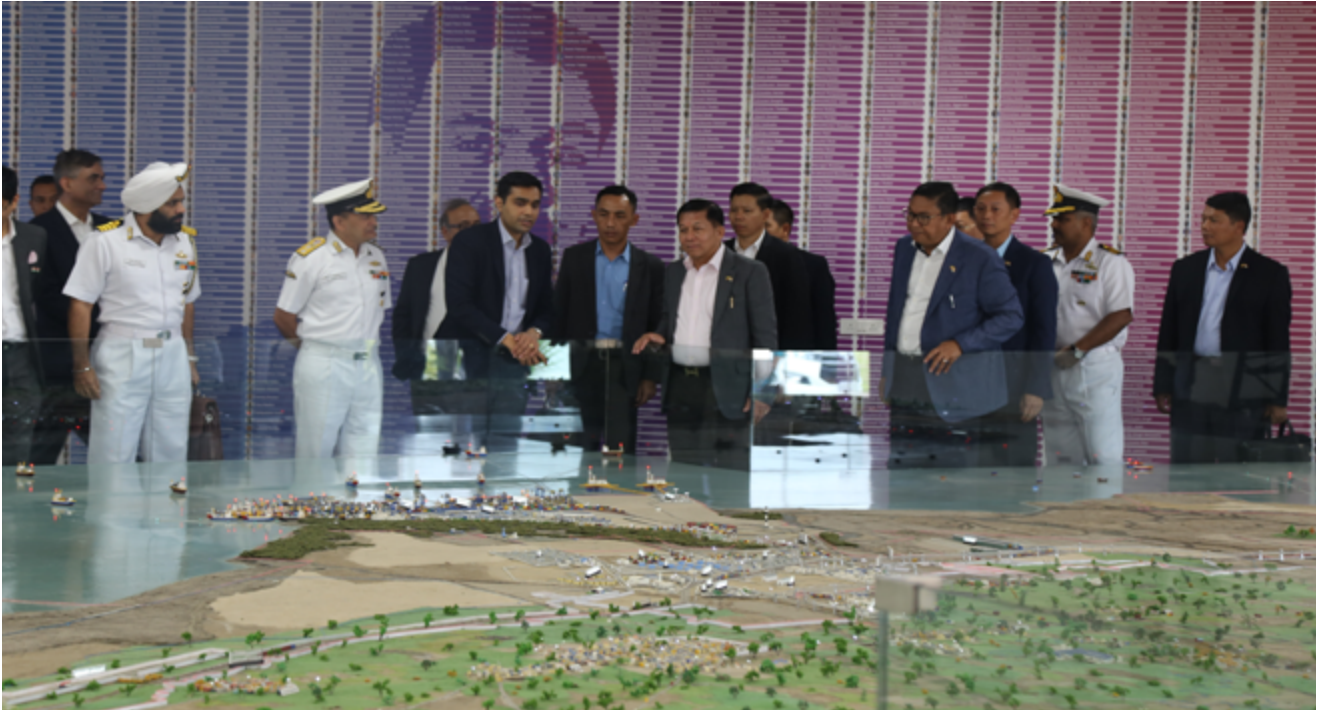
58 Adani Group and APSEZ, 'Company Response: Adani Ports & SEZ Ltd.'s Response' *Business & Human Rights Resource Centre* (8 February 2021).

59 APSEZ, 'Adani Ports and Special Economic Zone Limited Q3 FY-21 Earnings Conference Call' (9 February 2021).

60 Hannah Beech, 'Myanmar Protesters Answer Military's Bullets With an Economic Shutdown' *The New York Times* (19 March 2021).

its port construction. Concern for its workers or the military's grave human rights violations is not evident. It indicates that Adani Ports has ignored all previous warnings that Adani Ports could be at risk of being seen to

be complicit, in law or in the eyes of the public, with the crimes of the Myanmar military through its engagement with MEC.



At Adani Ports' headquarters, Senior General Min Aung Hlaing centre, together with Karan Adani, CEO, Adani Ports. Source: [www.cincds.gov.mm/Office of the Commander-in-Chief of Defence Services](http://www.cincds.gov.mm/Office%20of%20the%20Commander-in-Chief%20of%20Defence%20Services)

Adani Group policy on human rights

Adani Ports' commercial ties with the MEC are also inconsistent with the Adani Group's human rights policy.⁶¹ The Adani Group states that it is committed to upholding fundamental human rights, and to ensure compliance and adherence to all applicable human rights laws, including internationally recognised human rights. The Adani Group's guidelines which are to be followed and 'observed by the group in its business processes' include, conducting business in a manner that respects the rights and dignity of all people. It specifically includes the need to:

Recognize our responsibility to respect human rights and avoid complicity in human rights abuses.

The policy also provides that the Adani Group will 'within its sphere of influence, promote the awareness and realization of human rights across our value chain'.⁶²

In April 2020, Adani Ports supplemented the Adani Group's 2018 policy by issuing its own set of guidelines. This policy states that APSEZ is committed towards protecting the human rights of employees, associates and communities, in line with the UN Guiding Principles on Business and Human Rights, recognised frameworks and applicable laws and standards.⁶³ Violation of this policy or the refusal to cooperate will result in disciplinary action and be referred to the appropriate authorities.

Adani Ports subscribes itself to a number of externally developed principles, including the United Nations Global Compact,⁶⁴ the Sustainable Development Goals (SDGs), and the Global Reporting Initiative (GRI) Standards. It joined the UN Global Compact on 2 November 2020. The Ten Principles of the UN Global Compact include:

- Principle 1: Businesses should support and respect the protection of internationally proclaim human rights.
- Principle 2: Business should make sure they

are not complicit in human rights abuses.

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Adani Ports does not provide any details about how its deal with the MEC in Myanmar is compliant with the above principles and standards. Adani Ports has written a letter of commitment to the UN Global Compact stating that Adani Ports is 'committed to making the UN Global Compact and its principles part of the strategy, culture and day-to-day operations of our company'.⁶⁵ In this letter Adani Ports pledges to report on its progress in its efforts to comply with the Compact's Ten Principles, including that it supports 'public accountability and transparency'. In this respect, Adani Ports indicates it will provide:

A description of practical actions (i.e., disclosure of any relevant policies, procedures, activities) that the company has taken (or plans to undertake) to implement the UN Global Compact principles in each of the four issue areas (human rights, labour, environment, anti-corruption).

In our view:

- Adani Ports' registration with the UN Global Compact indicates its increasing sensitivity to criticism.
- Adani Ports will need to do far better if it wants to be taken as seriously committed to what the UN Global Compact and its Ten Principles represent.
- In all of its actions or omissions in respect of its relationship with MEC in Myanmar, it has failed in its responsibility to conduct extensive due diligence and respect human rights.

⁶¹ Adani Group, 'Group Policy on Human Rights' HRP-HR (11 September 2018).

⁶² Ibid.

⁶³ APSEZ, 'Guidelines for Human Rights' HR-SG (1 April 2020).

⁶⁴ UN Global Compact, 'Adani Ports and Special Economic Zone Limited'.

⁶⁵ APSEZ, 'Letter of Commitment' UN Global Compact (27 July 2020).

Adani Ports' commercial operations in Australia

Adani Ports and Special Economic Zone Ltd is a registered entity in India. In Australia the following registered entities list APSEZ as their holding company:

- Bowen Rail Company Pty Ltd
- Abbot Point Operations Pty Ltd
- Abbot Point Bulkcoal Pty Ltd

Adani Ports' business in Australia was only recently revealed⁶⁶ as having a direct role in the controversial Carmichael coal project, which many First Nations people and climate and environmental justice groups have long held is a major threat to the environment and the Traditional Owners of the land, the Wangan and Jagalingou people.⁶⁷ Adani Ports' subsidiary, the Bowen Rail Company, was established to transport coal from the Carmichael mine to the port at Abbot Point.

In response to this claim, Adani Ports states that 'APSEZ is not the developer or owner of the Carmichael Rail Network'.⁶⁸ This does not change the fact that APSEZ owns the Bowen Rail Company which will be used to transport coal from the Carmichael mine, regardless of the fact that another Adani Group subsidiary is the owner and developer of the Carmichael Rail Network.

As already described, in May 2019 Adani Australia issued a statement claiming that its Myanmar project has no relation to Adani Mining Pty Ltd or the Carmichael Project.⁶⁹ A similar reaction was also relayed in December 2020.⁷⁰ In its separate statement responding to the ABC's report, Adani Australia states:

This matter does not relate any of Adani's businesses in Australia or the Carmichael

Project. All Adani's businesses in Australia operate under Australian law and regulations.⁷¹

Australian lawyer and member of the FFM, Chris Sidoti, has said that 'so far as this port is concerned, it's putting money into the hands of the military and that's the bottom line. Adani should not be doing it and we [Australia] should not be dealing with Adani when it does do things like that'.⁷² Sidoti further stated that Adani Australia cannot claim that the actions of the Adani Group are not related:

This is called hiding behind the corporate veil and it doesn't wash. Adani is one group. These companies are subsidiaries of Adani. It's like saying that because my left hand is doing something else, my right hand knows nothing about it.⁷³

Human Rights Watch's Phil Roberston stated: 'Put simply, the military commanders who ultimately control the MEC belong in prison rather than a boardroom cutting deals with foreign investors like Adani. Australia should put Adani on notice that their Myanmar projects going forward will jeopardise their ability to do business in Australia'.⁷⁴

In our view, Adani Ports' obfuscation and denial falls far short of satisfactorily addressing its failure to comply with its responsibility to respect human rights and prevent indirect complicity with severe human rights abuses. These acts or omissions by Adani Ports and the Adani Group should agitate a serious consideration by the Australian and Queensland Governments over Adani Group's suitability to conduct business in Australia.

One of the key recommendations of the [UN] report was a call for disengagement from the Tatmadaw and its business network.

66 Josh Robertson, 'Adani Launches Own Rail Company to Haul Coal from Carmichael Mine' *ABC News* (10 September 2020).

67 For more, see Wangan & Jagalingou Family Council <<https://wanganjagalingou.com.au>>.

68 Adani Australia Media, 'Adani Responds to ABC Claims on Myanmar Human Rights Allegations' (Media Statement) (16 December 2020).

69 Adani Australia, 'Myanmar Investment Meets International Standards' (Media Statement) (13 May 2019). Please note: After Adani Australia's rebranding to Bravus Mining & Resources in 2020 this media statement was removed from its website. It was not included in the archived media releases. A copy can be available on request.

70 Michael Slezak, 'Australia's Future Fund 'In bed with Adani' After Freedom of Information Request Reveals \$3.2 million Investment' *ABC News* (16 December 2020).

71 Adani Australia Media, 'Adani Responds to ABC Claims on Myanmar Human Rights Allegations' (Media Statement) (16 December 2020).

72 Ben Smee and Emanuel Stokas, 'Adani Deal With Myanmar Military-Linked Company Raises Human Rights Alarm' *The Guardian* (13 May 2019).

73 Ibid.

74 Ibid.

This should include a return to sanctions against the Tatmadaw and its offshoots and those companies that do business with them. We hope that politicians in Australia and Queensland will take this into account where it comes to the proposed mine.⁷⁵

– CHRIS SIDOTI

In December 2020, it was revealed that Australia's sovereign wealth fund, the Future Fund held AUD\$3.2 million in

equity holdings in Adani Ports. Numerous environmental and human rights groups in Australia criticised the investment, due to Adani Ports' environmental and human rights record.⁷⁶ Mohammad Junaid from the Burmese Rohingya Community in Australia stated:

Our message to businesses is simple, stop funding the pockets of the military which has allowed them to commit genocide against my people.⁷⁷



I Abbot Point, Queensland. Source: Greenpeace/Tom Jefferson

Adani's Myanmar and Australian operations are linked

Statements from the Adani Group have on multiple occasions claimed the operations in Myanmar are not linked to its Australian operations. Corporate mapping research conducted on the various subsidiaries indicates that there is a link between Adani Ports' operations in Myanmar and its Australian operations.

Corporate mapping research was conducted through accessing company records lodged with Myanmar's Directorate of Investment and Company Administration (DICA); Singapore's Accounting and Corporate Regulatory Authority (ACRA); and the Australian Securities and Investment Commission (ASIC).

At the least, the link between the operations in Myanmar and its Australian operations are reflected in an individual who is a director in Adani Ports' companies in Australia and Myanmar.

Adani Ports' Capt. Sandeep Mehta is the company's President of Business Development. He is also listed as a Director of two Australian subsidiaries of Adani Ports, in its Singaporean entities, and its entity in Myanmar. This report does not suggest that Capt Mehta has engaged in any illegal conduct, but his position as director in each of these corporate entities is highlighted to illustrate a link that is being denied by the Adani Group.

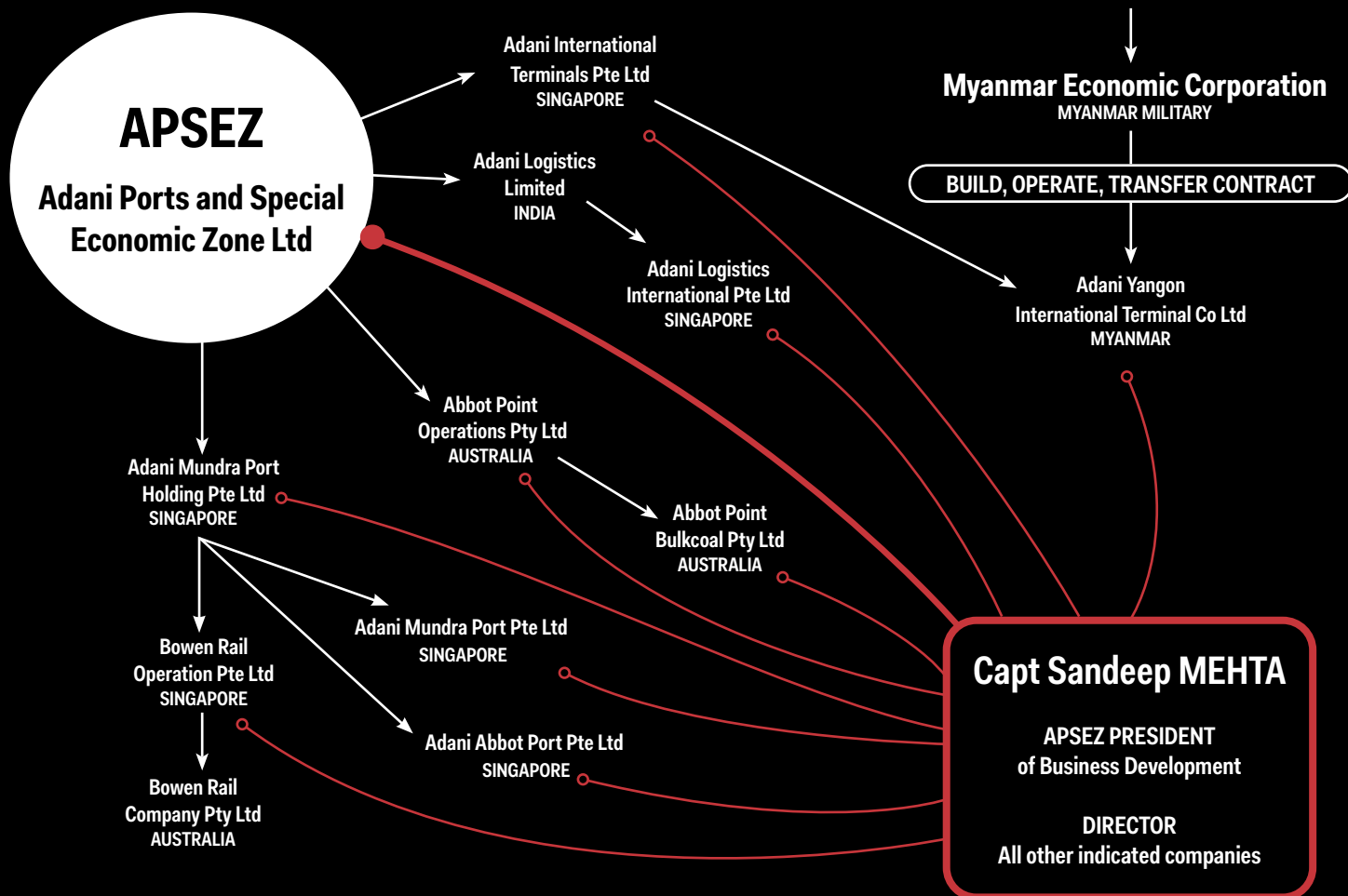
⁷⁵ Ibid.

⁷⁶ Michael Slezak, 'Australia's Future Fund 'In bed with Adani' After Freedom of Information Request Reveals \$3.2 million Investment' *ABC News* (16 December 2020).

⁷⁷ Ibid.

Adani Ports and Special Economic Zone Ltd (APSEZ) and its business ties the Myanmar Military

SUBSIDIARIES OF APSEZ



INVESTORS, CREDITORS & BOND ARRANGERS TO APSEZ

INDIAN INVESTORS

Adani Family Trust
SBI
Life Insurance Corporation

AUST/NZ INVESTORS

Macquarie Group
Future Fund
NZ Super

EUROPEAN INVESTORS

NBIM
UBS
DZ Bank
HSBC
Deutsche Bank
Credit Suisse
PGGM

US/CANADIAN INVESTORS

BlackRock
TIAA/Nuveen
SunLife
ManuLife
JP Morgan Chase
Vanguard
Citigroup
Goldman Sachs
Capital Group
Capital Research Global Investors
State Board of Administration Florida
State of California

ASIAN INVESTORS

MUFG
Government of Singapore
Mizuho

JANUARY 2021 BOND ARRANGERS

Merrill Lynch
Citigroup
Standard Chartered Bank
JP Morgan Chase
Barclays Bank
MUFG
DBS Bank
Emirates NBD
Mizuho

Adani Ports' failure to respect human rights

Corporations have a responsibility to respect human rights wherever they operate in the world. The UN Guiding Principles on Business and Human Rights⁷⁸ provides that business enterprises have a responsibility to respect human rights by avoiding causing or contributing to human rights abuses through their own activities, and by seeking to prevent abuses that are directly linked to their operations by their business relationships. Consequently, this means not engaging in business with Myanmar's military and ensuring that any investment does not indirectly contribute to the human rights abuses against the people in Myanmar, including for ethnic or religious minorities.

In March 2019, the UN Human Rights Council confirmed the importance of applying the UN Guiding Principles on Business and Human Rights in Myanmar, encouraging all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the Guiding Principles on Business and Human Rights, and calls upon the home states of business enterprises operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.⁷⁹

Under the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, businesses domiciled or operating in OECD member and observer states are required to uphold international standards of human rights and take proactive measures across their supply chains to prevent causing, contributing or being directly linked to human rights violations⁸⁰ and corrupt practices.⁸¹ The guidelines and recommendations address 'all the entities within the multinational enterprise (parent companies and/or local entities)'.⁸² The OECD guidelines therefore elaborate the standards that enable compliance with international treaty obligations. The OECD has issued sector-specific guidance

to advise businesses in the implementation of human rights due diligence and anti-corruption requirements, including for banks in the issuance of corporate loans.⁸³

Adani Ports repeatedly claims that its Yangon operation is to benefit 'Myanmar's civil society by contributing to the nation's economic development' and 'social impacts'. Adani states 'our investment is slated to usher development and create employment opportunities for the people in Myanmar'.⁸⁴ In our view, while this may be an intended aspect of their investment, there is no escaping the fact that commercial relationships with Myanmar's military provides revenue for the generals and finances the military, which is committing serious crimes under international law and other serious human rights violations in Myanmar.

The obligation to conduct due diligence procedures remains constant throughout the business relationship. Adani Ports' statements indicate that entering into a relationship with the MEC was performed after 'extensive due diligence'. This statement has been repeated frequently and on our assessment of Adani's continuing commercial relationship with the MEC, Adani has ignored the advice of the UN's FFM, academic and legal experts, activists and civil society groups around the world. The extent and nature of this due diligence has never been revealed, and it appears as if Adani Ports has failed to conduct ongoing due diligence into its activity. Public information connecting the MEC to the Myanmar military is well-known and has been put to Adani Ports on several occasions. At every turn, Adani Ports has failed to acknowledge this problem, or appears to have ignored it.

THE EXTENT AND NATURE OF THIS DUE DILIGENCE HAS NEVER BEEN REVEALED, AND IT APPEARS AS IF ADANI PORTS HAS FAILED TO CONDUCT ONGOING DUE DILIGENCE INTO ITS ACTIVITY

78 UN 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**').

79 UN Human Rights Council, *Situation of Human Rights in Myanmar* HRC, 40th sess, Agenda Item 4, UN Doc A/HRC/RES/40/29 (11 April 2019).

80 OECD, *OECD Guidelines for Multinational Enterprises*, (2011) Chapter IV.

81 Ibid, Chapter VII.

82 Ibid, Chapter I.

83 OECD, *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key Considerations for Banks Implementing the OECD Guidelines for Multinational Enterprises* (2019).

84 Adani Group and APSEZ, 'Company Response: Adani Ports & SEZ Ltd.'s Response' *Business & Human Rights Resource Centre* (8 February 2021).

The FFM recalls that the Guiding Principles call upon states to exercise adequate oversight in order to meet their international human rights obligations when contracting with, or legislating for, business enterprises to provide services that may impact upon the enjoyment of human rights.⁸⁵

The Guiding Principles recognise the heightened risk of human rights abuses occurring in the context of conflict areas and emphasise that states should ‘help ensure that business enterprises operating in those contexts are not involved with such abuses’.⁸⁶ One of the measures for doing this includes:

Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation.⁸⁷

States have a heightened duty to take appropriate legislative and other measures to ensure that the companies’ activities are consistent with the state’s human rights obligations and responsibilities.⁸⁸ States are also called on to assist consumers to avoid dealing with MEHL, MEC and their subsidiaries and any other company owned or influenced by the Myanmar military.⁸⁹

⁸⁵ Guiding Principles on Business and Human Rights, Principle 5.

⁸⁶ Guiding Principles on Business and Human Rights, Principle 7.

⁸⁷ Guiding Principles on Business and Human Rights, Principle 7.

⁸⁸ FFM Economic Interests Report, [146].

⁸⁹ Ibid, [187].

Risk of complicity in violations of international law

Adani Ports and other foreign businesses engaged in commercial conduct with Myanmar's military companies have been publicly put on notice that they are at risk of contributing to the commission of international crimes and other violations of human rights and international humanitarian law. Corporations and corporate actors have a responsibility to respect international humanitarian law (IHL) and any obligations that may arise under international criminal law.⁹⁰

At the general level, corporate actors risk individual criminal liability for violations of IHL or other severe violations of human rights which may amount to the commission of international crimes, such as crimes against humanity, genocide or war crimes, as defined by the Rome Statute of the International Criminal Court, if they directly breach the law, or if they are complicit in the commission of a breach, carried out by another actor. Corporate actors can be held criminally liable for their direct acts or omissions and for involvement with others in crimes under international law if they directly commit or otherwise aid, abet or assist in war crimes, genocide or crimes against humanity.⁹¹

The commentary to the UN Guiding Principles on Business and Human Rights, includes:

The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.⁹²

Practical assistance includes acts such as the provision of financial assistance, goods, information and services, such as banking and communications services.⁹³

Businesses are also warned that, 'complex corporate

structures may not immunise a parent company from allegations of IHL violations committed by a subsidiary company'.⁹⁴

Many domestic criminal justice systems have the ability to hold any corporate actors criminally liable for complicity in the commission of international crimes.⁹⁵ In addition to criminal liability, corporate actors, entities and employees may also face the risk of civil liability.⁹⁶

In light of the clear principles outlined above, and in consequence of what appears to be Adani Ports' ignorance of its responsibilities to respect human rights and mitigate risks that could be complicit in crimes under international law, we recommend that if Adani Ports and other significant foreign business associates refuse to disengage from their ties to the MEC or MEHL, they should be considered in any targeted sanctions measures.

IF ADANI PORTS AND OTHER SIGNIFICANT FOREIGN BUSINESS ASSOCIATES REFUSE TO DISENGAGE FROM THEIR TIES TO THE MEC OR MEHL, WE RECOMMEND THEY SHOULD BE CONSIDERED IN ANY TARGETED SANCTIONS MEASURES

90 Guiding Principles on Business and Human Rights, Principles 11 and 12.

91 Amnesty International, *Military Ltd: The Company Financing Human Rights Abuses in Myanmar*, (September 2020) ('**Military Ltd**') 21. See also n 35.

92 Guiding Principles on Business and Human Rights, Commentary to Principle 17.

93 Amnesty International, *Military Ltd*, 22 and n 37. See also, Joanna Kyriakakis, 'Developments in International Criminal Law and the Case of Business Involvement in International Crimes' (2012) 94(887) *International Review of the Red Cross* 981.

94 Australian Red Cross and RMIT University, *Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities*, ('**Doing Responsible Business**') (2020).

95 For example, in Australia pursuant to Division 268 of the *Criminal Code Act 1995* (Cth), sch 1 div 268.

96 Australian Red Cross and RMIT University, *Doing Responsible Business*.



At Adani Ports' headquarters, Senior General Min Aung Hlaing. Source: [www.cincds.gov.mm/Office of the Commander-in-Chief of Defence Services](http://www.cincds.gov.mm/Office%20of%20the%20Commander-in-Chief%20of%20Defence%20Services)

Conclusion

Adani's Yangon port is being built on land controlled by the Myanmar military. Revenues from the port should be a national asset and rightfully belong to the people of Myanmar. However, in reality, the evidence suggests substantial payments have been grabbed by military leaders who recently tightened their hold on Myanmar through their brutal and illegitimate February 1 coup. The Adani Ports development has been built with a 50-year build-operate-transfer contract. It means the port is set to be fully owned by the military at the end of this contract, providing a valuable asset and a source for long-term off-budget financing.

International accountability is necessary as a first crack in the massive wall of impunity that protects Myanmar's military. Accountability can play a transformative role for the future of Myanmar and all of its people. Financial isolation of the military is an essential step. The international community and corporate actors were put on further notice in 2018 and 2019 by the UN's Fact-Finding Mission that financial isolation of the Myanmar military and their business interests will help deter any further violations of international human rights law and international humanitarian law.⁹⁷

Foreign companies who have joint ventures and other commercial relationships with the Myanmar military may help contribute to the human rights violations perpetrated by the Myanmar military and may be complicit through their tacit acceptance of the Myanmar military's actions.⁹⁸ Adani Ports and Special Economic Zone Limited is dealing with the MEC, a company fully owned and controlled by the senior generals of the Myanmar military, who stand credibly accused of genocide and other crimes under international law. Senior General Min Aung Hlaing orchestrated the coup d'état which is currently repressing fundamental human rights in Myanmar and resulting in atrocities and the military's attempts to consolidate its rule.

Foreign corporations and governments failed to comprehensively implement long standing recommendations to stem the flow of profits to the Myanmar military's companies, and by extension to the generals they support. Financial isolation of the military is crucial to ending the Myanmar military's human rights abuses and promoting accountability and justice to the people of Myanmar and the victims of the military's crimes.

⁹⁷ FFM Economic Interests Report, [11].

⁹⁸ Ibid, [179].

Recommendations

To UN Member States

- Impose targeted sanctions, including financial sanctions, on all senior Myanmar military generals.
- Impose targeted sanctions, including financial sanctions, on all Myanmar military-owned businesses, including MEHL and MEC, and their subsidiaries.
- Impose targeted sanctions, including financial sanctions, on all directors of Myanmar military-owned businesses, including MEHL and MEC, and their subsidiaries.
- Designate all significant foreign and domestic business associates for targeted sanctions where they fail to disengage from commercial ties with Myanmar military-owned businesses.
- Support convening a special session of the UN Security Council to urgently assess the situation and invoke Chapter VII authority under the UN Charter to call for a global arms embargo, targeted sanctions regime and a referral to the International Criminal Court to investigate Rome Statute crimes that have occurred in the last several years.
- Support all available mechanisms for accountability such as through the exercise of universal jurisdiction to investigate and prosecute alleged perpetrators of atrocity crimes in Myanmar.
- Support convening a special session of the UN General Assembly to make recommendations for collective measures.
- Intervene to support The Gambia, Netherlands, Canada and the Maldives, at the International Court of Justice to punish Myanmar for acts of genocide against the Rohingya people and prevent Myanmar from continuing acts of genocide against the Rohingya.
- Appoint specialist investigators within your war crimes investigations units that are skilled to investigate any business complicity in international crimes and to provide liaison and mutual support to the Independent Investigative Mechanism for Myanmar.
- Ensure no business domiciled in your territory is trading with Myanmar's military businesses.

To the Australian and Queensland Governments

- Reconsider licenses issued to Adani Group companies in light of Adani Ports and Special Economic Zone Ltd's failure to disengage with MEC and the Myanmar military.
- The Australian Government should consider a longer-term strategy to implement recommendations in the recent parliamentary inquiry report and adopt stand-alone targeted sanctions legislation to address human rights violations and corruption.

To the Indian Government

- Ensure businesses domiciled in your country and operating in Myanmar, comply with corporate responsibility to respect human rights in Myanmar and undertake human rights due diligence measures and furnish those reports publicly so that they can be subject to examination and debate.
- Take action to ensure any enterprise in your territory is not involved in grave human rights violations and to take appropriate steps such as exploring civil, administrative or criminal liability for such enterprises that commit or contribute to grave human rights violations and/or atrocity crimes.

To the Indian Stock Exchange

- Take action to prevent the use of the stock exchanges from raising of funds that may be complicit in financing grave human rights violations and/or atrocity crimes.

To the Singapore Government

- End the use of Singapore's territory by Adani Ports and Special Economic Zone Ltd and other businesses for commercial activities with the Myanmar military subsidiaries they control, which may be helping to finance grave human rights violations and/or atrocity crimes.

To all sovereign wealth funds, pension funds and other institutional investors

- Divest from all equity holdings in MEHL and MEC, their subsidiaries and significant business associates.
- Divest from all equity and bond holdings in Adani Ports and Special Economic Zone Ltd due to its failure to disengage with the MEC and the Myanmar military.
- Demand that investee companies which have commercial ties with state entities that have come under military control as a result of the February 2021 coup, immediately stop payments to the military. Divest from those companies that continue payments to the military.

To bond-arranging banks

- Refuse to participate in any future Adani Ports and Special Economic Zone Ltd bond issue due to its failure to disengage with the MEC and the Myanmar military.

To shipping companies

- Refuse to call in Ahlone International Port Terminal 2 to be operated by Adani Ports and Special Economic Zone Ltd, due to its failure to disengage with the MEC and the Myanmar military. Conduct human rights due diligence on your commercial relationships in Myanmar and end all business with military-owned or controlled companies and their significant business associates.

To the UN Global Compact

- Delist Adani Ports and Special Economic Zone Ltd from the UN Global Compact due to its failure to disengage with the MEC and the Myanmar military.

To the Dow Jones Sustainability Index

- Review the inclusion of Adani Ports and Special Economic Zone Ltd in the Dow Jones Sustainability Index due to its failure to disengage with the MEC and the Myanmar military.





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