

# JUSTICE FOR MYANMAR

## INVESTING IN THE MILITARY CARTEL:

### Two Dutch pension funds invest US\$2.3 billion in companies linked to the Myanmar military's atrocities

As the Myanmar military ramps up its brutal violence against the people of Myanmar following the brutal and illegal February 1, 2021 coup, Dutch pension funds are profiting from the military's prolonged oppression through their holdings. Gross human rights violations have become widespread and systematic as the Myanmar military violently kill innocent, peaceful people, including children.<sup>1</sup> These violations amount to crimes against humanity.

Amid the increasingly widespread and systematic crimes committed against the people of Myanmar, Justice For Myanmar (JFM) has revealed the equity stakes collectively valued at US\$2.3 billion held by two Dutch pension fund asset managers – PGGM and APG – across 20 publicly-traded companies operating in Myanmar. These companies – a selection from the oil and gas, telecommunications, real estate, consumer goods and military technology industries, among others – have either a direct and longstanding commercial tie to the Myanmar's military, or to state entities that the military now controls as a result of the coup. Through these ties, the pension funds could be complicit in the Myanmar military's grave violations of human rights in Myanmar.

We call on Dutch pension funds and other institutional investors to divest from those companies that have longstanding ties to the military and demand that other investee companies immediately stop financially enabling the Myanmar's military. We call on the Dutch government to urge the EU to impose immediate targeted sanctions against the Myanmar military, their businesses and significant business associates, and to advocate for a global arms embargo.

### International condemnation of foreign companies' ties to Myanmar's military

In August 2019, the United Nations Independent International Fact-Finding Mission on Myanmar released a report on the economic interests of Myanmar's military.<sup>2</sup> It found that the military owned and operated two major holding companies – Myanma Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC). MEHL, MEC and their subsidiaries generated revenue dwarfing all civilian-owned companies in Myanmar.<sup>3</sup> The UN Fact-Finding Mission concluded that the military's business empire enabled it to secure financial resources to support its unlawful activities, including acts of genocide, war crimes and crimes against humanity, and to evade accountability and oversight.<sup>4</sup>

Significantly, the UN Fact-Finding Mission considered that foreign companies involved in commercial relationships with Myanmar's military, MEHL or MEC pose a "high risk" of contributing or being linked to violations of international human rights and humanitarian law.<sup>5</sup> It urged foreign companies to "sever their relationships" with these entities, or otherwise risk being complicit "in law, fact or the eyes of the broader public", in contributing to the financial resources available to the military.<sup>6</sup> The Report "put companies on further and effective notice" of the human rights implications that arise from maintaining business relationships with the military.<sup>7</sup>

## Links between Dutch pension funds and the military

Despite the damning findings of the UN Fact-Finding Mission report, multinational companies identified continue to conduct business with Myanmar's military, MEHL, MEC and their subsidiaries, while others are commercial partners with entities under military control following the coup.<sup>8</sup>

JFM identified two Dutch pension fund asset managers – PGGM Vermogensbeheer B.V. and APG Asset Management N.V. – who collectively manage US\$2.3 billion in shares in 20 companies with ties to Myanmar military businesses and the military junta for two Dutch funds: PFZW and APB, respectively. Ten of these 20 companies are in the oil and gas sector, and the two pension funds hold US\$1.39 billion in shares in these oil and gas companies.

The commercial ties between the 20 companies and Myanmar's junta differ:

1. Nine companies have a direct and long-term relationship with the Myanmar military or military-controlled businesses predating February 1, 2021: port operator Adani Ports and Special Economic Zone Ltd; Bharat Electronics Ltd, a supplier of military equipment to the Myanmar junta; global construction corporation Daiwa House Industry Co Ltd; global hotel chains Hilton Worldwide Holdings Inc and Shangri-La Asia Ltd; international beverage company Kirin Holdings Company, Ltd; diversified steel and energy corporation Posco and its listed subsidiary Posco International; Korean chaebol Lotte Corp; and real estate developer and manager Tokyo Tatemono Co Ltd.<sup>9</sup>
2. Eleven companies have a direct commercial relationship with Myanmar state-owned enterprises that came under military control following the February 1, 2021 coup. Nine of these companies operate in the oil and gas sector (Chevron Corp, Eneos Holdings Inc, ENI Spa, Gail (India) Ltd, Oil and Natural Gas Corporation Ltd, PTT Exploration and Production PCL, Royal Dutch Shell, Total SE, Woodside Petroleum Ltd), and two operate in the telecommunications sector, KDDI Corp and Sumitomo Corp.<sup>10</sup>

Table 1 lists the names of these companies, sector and value of shares held by the two Dutch pension fund asset managers, PGGM and APG. Note that this selection of 20 companies is not exhaustive and that the pension funds likely own shares in many more companies with ties to Myanmar military companies and the Myanmar junta.

**Table 1: Multinational companies linked to Myanmar’s military and Dutch pension investment value (as of last filing)**

Company	Sector	PGGM share value (million USD)	APG share value (million USD)
<b>Direct relationship and/or long-term relationship with the military in Myanmar</b>			
Adani Ports and Special Economic Zone Ltd	Transportation	11.50	1.12
Bharat Electronics Ltd	Military technology	3.16 <sup>11</sup>	4.70
Daiwa House Industry Co Ltd	Real estate		32.57
Hilton Worldwide Holdings Inc	Tourism	23.93	106.32
Kirin Holdings Co Ltd	Beverage	33.81	14.6
Lotte Corp	Real estate	1.91	
Posco/Posco International	Oil and gas	3.07	42.68
PTT Exploration and Production PCL	Oil and gas		25.83
Shangri-La Asia Ltd	Tourism/ Real estate	1.21	
Tokyo Tatemono Co Ltd	Real estate	177.69	17.97
<b>Direct relationship with Myanmar state-owned enterprises</b>			
Chevron Corp	Oil and gas		411.42
Eneos Holdings Inc	Oil and gas	14.45	28.08
Eni SpA	Oil and gas	77.36	11.23
GAIL (India) Ltd	Oil and gas	8.00	1.12
KDDI Corp	Telecom	82.44	370.62
Oil and Natural Gas Corporation Ltd	Oil and gas		8.98
Royal Dutch Shell PLC <sup>(2)</sup>	Oil and gas	36.94	152 <sup>12</sup>
Sumitomo Corp	Trading	27.34	2.25
Total SE	Oil and gas	147.06	329.07
Woodside Petroleum Ltd	Oil and gas	0.37	93.22
<b>TOTAL</b>		<b>650.24</b>	<b>1,653.78</b>
<b>GRAND TOTAL</b>			<b>2,304.02</b>

**Adani Ports’ business with Myanmar’s military**

Adani Ports is India's largest private multi-port operator. In the recent report, ‘Port of Complicity: Adani Ports in Myanmar’, the Australian Centre for International Justice and Justice For Myanmar investigated the connections between Adani Ports and Special Economic Zone Ltd (Adani Ports) – an Indian subsidiary of the Adani Group – and the MEC. The report details that in May 2019, a wholly owned subsidiary of Adani Ports entered into a build-operate-transfer agreement for a port terminal in Yangon, agreeing to lease land owned by the MEC for 50 years.<sup>13</sup> The proposed amount of the investment for the project was US\$290 million, with a payment of up to USD\$52 million to the Myanmar military through MEC.<sup>14</sup>

The report concludes that the company has failed in its corporate responsibility to protect human rights.<sup>15</sup> Adani Ports deals directly with the MEC, a company fully owned and controlled by the senior generals of the Myanmar military, who are accused of genocide, war crimes and crimes against humanity.<sup>16</sup> The report calls for divestment from Adani Ports.

### **Dutch funds investing in Adani Ports**

Research conducted by JFM shows that PGGM Vermogensbeheer B.V. and APG Asset Management N.V. hold \$US11.5 million and US\$1.12 million of Adani Ports' shares, respectively.<sup>17</sup>

JFM calls on Dutch pension investors and these pension funds to seriously consider the recommendations in the report on Adani directed to "all sovereign wealth funds, pension funds and other institutional investors".<sup>18</sup> The report recommends that all equity and bond holdings be divested from Adani Ports due to the company's failure to disengage from the MEC and the military, and to divest all equity holdings from joint ventures and significant business partners of the Myanmar military and their holding companies.<sup>19</sup> Shareholders that do not divest may be directly linked to grave human rights violations and international crimes committed by Myanmar's military through their holdings in Adani Ports.

### **Expectations of companies and Dutch pension funds: Responsible (dis)engagement and divestment**

One month after the coup took place, Chris Sidoti, a former Member of the UN Fact-Finding Mission on Myanmar and a Founding Member of the Special Advisory Council for Myanmar, explained what is expected of companies doing business with the Myanmar junta: "If businesses are responsible, they will put everything on hold at this point" – doing so "will send a very clear message to the military that may, hopefully, cause them to rethink their actions."

Under the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the United Nations Guiding Principles on Business and Human Rights (UNGPs) – two global standards of responsible corporate conduct – companies whose products or services are directly linked to severe human rights impacts through a business relationship (for example, with a military junta) are expected to consider responsibly and immediately disengaging<sup>20</sup>. This responsibility is a global standard of expected conduct for all companies wherever they operate, and exists independently of States' ability and – as is the case for Myanmar's military – willingness to fulfil their own human rights obligations.<sup>21</sup> Applied specifically to the 20 companies listed above, this responsibility can be translated into two different categories of expected action, depending on the companies' relationship to the military and consequent connection to human rights abuses:

1. In line with the OECD Guidelines and UNGPs, the nine companies with commercial ties to Myanmar's military and military conglomerates (Adani Ports, Bharat Electronics, Daiwa House, Hilton, Kirin, Lotte Corp, Posco, Shangri-La, and Tokyo Tatemono) predating the February coup should immediately sever their business ties to the entity causing severe human rights impacts – Myanmar's military. These companies have longstanding ties to the military and thus also to the severe and ongoing human rights and humanitarian law violations in the country. Bharat Electronics must stop supplying military technology to the junta, as part of a moratorium on all sales of arms and related weaponry and materials to Myanmar, and close their Myanmar office.
2. The eleven companies with significant commercial ties to Myanmar state-owned entities now controlled by the military (Chevron, Eneos, ENI, Gail, Oil and Natural Gas Corporation, PTT Exploration and Production, Shell, Total, KDDI, Sumitomo, and Woodside Petroleum) should immediately suspend all contractually mandated payments to Myanmar state-owned entities. This fulfils the recommendation of former UN expert, Chris Sidoti, for businesses to

put “everything on hold” as a result of the February 2021 military coup. Instead, they should transfer all of these payments into an escrow account, to be held in trust until democracy is restored in Myanmar and the military is under civilian control. If these companies are unable to suspend such payments, then they should responsibly end their business with the Myanmar junta.

Importantly, international investors, including pension funds and their asset managers holding shares in these companies, also have a responsibility under the OECD Guidelines and UNGPs to use their leverage to convince their investee companies to act responsibly, and to divest from those companies if they do not act responsibly.<sup>22</sup> Moreover, the Dutch pension funds and asset manager ABP, APG, PFZW, and PGGM have all signed a formal “Pension Funds Agreement on Responsible Investment” with the Dutch government and other stakeholders.<sup>23</sup> By signing this agreement, the pension funds and asset managers have made an extra commitment to act responsibly in line with the OECD Guidelines. Given the longstanding and irresponsible ties between the nine companies in category 1 above and the Myanmar military, the pension fund asset managers APG and PGGM should divest immediately from these seven companies. If the asset managers do not do so, the OECD Due Diligence Guidance for Responsible Business Conduct indicates that they risk deepening their relationship to and responsibility for the atrocities in Myanmar. Under the OECD Guidelines, the asset manager may no longer simply be considered to be “linked” to the abuses, but could be considered to be “contributing” to them, and they may be subject to a formal complaint to this effect under the OECD Guidelines’ complaint mechanism.

Under the OECD Guidelines and UNGPs, as well as the Dutch Pension Agreement, APG and PGGM have a responsibility to conduct meaningful, timebound engagement with the 11 companies in category 2 above to insist that they immediately take the specific steps outlined in order to bring themselves into compliance with the international norms. If the companies do not immediately indicate that they are willing to take these steps and at least initiate a process to begin doing so, the pension funds should divest their shares of the companies until the companies are in compliance with the OECD Guidelines and UNGPs.

For both categories, the pension fund asset managers should be transparent about their due diligence steps and decision-making related to engagement and divestment from the shares directly linking them to Myanmar military businesses and the junta.<sup>24</sup> They should communicate how they are addressing their human rights impacts, as well as provide information to key stakeholders (including civil society organisations focused on the human rights situation in Myanmar) that is sufficient to evaluate the adequacy of their due diligence and their response.<sup>25</sup>

Finally, the Dutch government must urge the EU to impose immediate targeted sanctions against the Myanmar military, their businesses and significant business associates, and to advocate for a global arms embargo.

As of March 29, 2021, over 500 people have been brutally executed in the streets by the Myanmar military. This is not counting those who have lost their lives to nighttime air strikes by the Myanmar military in Karen State and other ethnic areas where civil war rages on and the military continues to commit war crimes and crimes against humanity with total impunity. If the pension fund asset managers of APG and PGGM do not take immediate action, they too will be complicit in these grave crimes. The international community must act now in response to these atrocities by staking steps to dismantle the Myanmar military cartel. The military must not be further emboldened to act with impunity and enrich themselves in the process.

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<sup>1</sup> The United Nations Human Rights Council's Independent International Fact-Finding Mission on Myanmar

<sup>2</sup> Hereafter referred to as 'the UN Fact-Finding Mission Report'. UN Human Rights Council, Independent International Fact-Finding Mission on Myanmar, A/HRC/42/CRP.3, 5 August 2019, "The Economic Interests of the Myanmar Military," <[https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A\\_HRC\\_42\\_CRP\\_3.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf)> (16 March 2021).

<sup>3</sup> Ibid, para 48.

<sup>4</sup> Ibid, paras 6a & 178.

<sup>5</sup> Ibid, para 145.

<sup>6</sup> Ibid, para 146.

<sup>7</sup> Ibid.

<sup>8</sup> The UN Fact-Finding Mission Report identified 14 foreign companies that have maintained or entered into joint ventures with the MEHL, the MEC or one of their subsidiaries, as well as 44 foreign corporations that had contractual or other commercial ties with these companies: Ibid, para 141.

<sup>9</sup>

- Adani Ports and Special Economic Zone Ltd: Ibid, para 144; Justice for Myanmar, "Myanmar Military-Controlled Businesses and Associates that Require Targeted Sanctions," 8 March 2021, <<https://www.justiceformyanmar.org/stories/myanmar-military-controlled-businesses-associates-that-require-targeted-sanctions>> (30 March 2021); Rawan Arraf, The Australian Centre for International Justice and Justice For Myanmar, Port of Complicity: Adani Ports in Myanmar, March 2021, p. 11, <<https://www.justiceformyanmar.org/stories/port-of-complicity-adani-in-myanmar>> (22 March 2021).
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- Sumitomo Corporation: Ibid.

<sup>11</sup> ABP has a EUR4M stake in Bharat Electronics Ltd, which converts to approximately USD4.7M. (XE.Com on 29-03-21)

<sup>12</sup> ABP has a EUR129M stake in Royal Dutch Shell PLC, which converts to approximately USD152M. (XE.Com on 29-03-21)

<sup>13</sup> Rawan Arraf, The Australian Centre for International Justice and Justice For Myanmar, Port of Complicity: Adani Ports in Myanmar, March 2021, p. 11, <<https://www.justiceformyanmar.org/stories/port-of-complicity-adani-in-myanmar>> (30 March 2021).

<sup>14</sup> Ibid, p. 11.

<sup>15</sup> Ibid, p. 13.

<sup>16</sup> Ibid, p. 30.

<sup>17</sup> These figures are based on Justice For Myanmar’s research and are correct as at 12 March 2021.

<sup>18</sup> Rawan Arraf, The Australian Centre for International Justice and Justice For Myanmar, Port of Complicity: Adani Ports in Myanmar, March 2021, p. 32, <<https://www.iusticeformyanmar.org/stories/port-of-complicity-adani-in-myanmar>> (30 March 2021).

<sup>19</sup> Ibid, p. 32.

<sup>20</sup> For more information on responsible disengagement: SOMO, “Should I Stay Or Should I Go?,” April 2016, <<https://www.somo.nl/should-i-stay-or-should-i-go-2/>> (26 March 2021); SOMO, ECCHR and PAX, “Responsible Disengagement in the Time of Corona,” April 2020, <<https://www.somo.nl/wp-content/uploads/2020/04/Time-of-corona.pdf>> (26 March 2021).

<sup>21</sup> United Nations Human Rights Office of the High Commissioner, 2011, Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’, Pillar II: The Corporate Responsibility to Respect Human Rights, Section A: Foundational Principles, Principle 11 and Commentary on Principle 11.

<sup>22</sup> United Nations Human Rights Office of the High Commissioner, 2011, Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’, Pillar II: The Corporate Responsibility to Respect Human Rights, Section A: Foundational Principles, Principle 14.

<sup>23</sup> Social and Economic Council of the Netherlands, “Dutch Pension Funds Agreement for Responsible Investment”, <<https://www.imvoconvenanten.nl/en/pension-funds>> (29 March 2021).

<sup>24</sup> United Nations Human Rights Office of the High Commissioner, 2011, Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’, Pillar II: The Corporate Responsibility to Respect Human Rights, Section B: Operational Principles, Human Rights Due Diligence, Principle 21; OECD Guidelines for Multinational Enterprises, 2011, Chapter III: Disclosure.

<sup>25</sup> Ibid.