



1 February 2020

Mr Joe Kaiser
President and CEO
Siemens Aktiengesellschaft
Werner-von-Siemens-Straße 1
80333 Munich, Germany
By email: -joe.kaeser@siemens.com

Dear Mr Kaiser

**Meeting request to discuss the Siemens contract with Adani Mining
and the Wangan and Jagalingou people's human rights**

We are leaders and spokespeople of the Wangan and Jagalingou (W&J) Traditional Owners Family Council, representing the First Nations people of Wangan and Jagalingou country. Our lands and waters encompass much of the Galilee Basin in the Central Queensland region of Australia.

We write because you have contracted to work on Adani's Carmichael coal project, and to justify this you said that the Adani mining project has been "approved by the Government of Australia, the Highest Courts and – *very important to us – the indigenous Wangan and Jagalingou people.*"

We wish to meet you to draw attention to our ongoing rejection of the Adani mine and to demonstrate that, critically, there is no Free, Prior and Informed Consent (FPIC) for the project: there is no W&J 'approval' that is consistent with our rights under international law, or in accord with our own laws and customs.

We outline some concerns and issues below for your consideration, ahead of a meeting:

Siemens failed in its due diligence regarding Indigenous rights

It is clear to us that you did not meet due diligence standards regarding your obligations to First Nations people. You are not in a position to speak of W&J because you sought no representations from us. Siemens did not speak to the W&J Council - which is the only self-determined body of the W&J people - nor even the Native Title Applicant, which is a body imposed by the requirements of the Native Title Act when we seek to have our original ownership of our lands and waters recognised by the settler state.

How did you form your view? Relying on advice from self-interested advocates for the mine, including Senator Canavan, and Adani itself, is not sufficient to meet your obligations to us, or to conclude that the mine has First Nation approval.

It is critical that you gather a more complete picture of the situation of the Wangan and Jagalingou people. It is also critical that you do not mistake a series of Government permits, and administrative reviews by the courts, as providing approval by the W&J First Nation to the Adani mine.

Contrary to statements by the Adani corporation and members of the Australian government, we have never given our free, prior and informed consent to the extinguishment of our rights, or the development of the Carmichael mine on our traditional lands – a development that would destroy large parts of our ancestral homelands to which our law and culture are deeply connected.

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The threat to our rights and to our homelands from the Adani mining project is now upon us and depends on the collaboration of contractors such as Siemens. That you “*should have been wiser about this project beforehand*” is cold comfort to our people whose rights have been abused and who are facing the irreversible inter-generational loss of our lands and culture.

Do not allow legal obscurities or pro coal mining advocacy to cloud your judgement. We have rejected an agreement with Adani and refused to allow the extinguishment of our rights on many occasions since 2012. We have maintained our resistance against the mine, and the role played by Governments in facilitating it, for over five years - and our public campaign is ongoing. We will not relent.

Protection of Indigenous rights by corporations is mandated

Your home jurisdiction of Germany, and Australia, have both endorsed the United Nations Declaration on the Rights of Indigenous Peoples and other human rights laws and conventions.

Our rights are protected under international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the United Nations Declaration on the Rights of Indigenous Peoples. These rights need to be respected in full.

Your responsibilities exist independently of a country’s abilities or willingness to fulfil its own obligations with respect to the rights of Indigenous peoples. All Australian Governments have failed this test and are not reliable arbiters of Indigenous rights.

We have alerted a number of United Nations human rights bodies and mechanisms to violations of our rights and will continue to pursue these matters in the international arena.

That we have exhausted administrative review proceedings before the Federal Court of Australia and the Supreme Court of Queensland is not a measure of approval for the project. It simply highlights the lack of protection our rights are afforded under Australian law and why we must seek international law remedies.

The pretense of ‘W&J approval’ for Adani

It is incontestable that the mining leases held by Adani were granted by the Queensland State Government without consent, agreement or authority from the W&J people. The National Native Title Tribunal presiding member said that “the native title party did not indicate its support or consent to the grant of the mining leases”, but none-the-less mining leases were issued by the Queensland State Government in clear breach of our FPIC rights.

The engineering of a meeting by Adani and the State to overturn our decisions and ‘approve’ the mine did not retrospectively validate these leases. It merely added ‘*a veneer of consent*’ and served to divide our people. The instrument of approval you appear to be relying on - the *Adani Indigenous Land Use Agreement (ILUA)* - was rendered invalid by a Federal Court decision in 2017. It was only rescued by the intervention of the Commonwealth Attorney General in one of our court proceedings, and by amendments to the Native Title Act 1993 to ensure the ILUA survived summary dismissal.

This action was taken with the express commitment of the Prime Minister of Australia to Gautam Adani to ‘fix’ the native title problem. This ‘agreement’ therefore remains highly contested and controversial in Australia, lacks the legitimacy of genuine FPIC, and is not in accord with our laws and customs for decision making.

Legal ‘approval’ not enough – Siemens must raise the bar

It is not true, as you say, that ‘the Highest Courts’ have approved the mine. There has never been a High Court of Australia case regarding Adani, and any litigation in the Supreme and Federal Courts - whether on grounds

of environmental harm or assertion of Aboriginal rights - were administrative reviews only; they did not 'approve the mine' or consider the merits of the arguments against it.

The Adani ILUA has been registered, as Justice Perry of the Federal Court said, "notwithstanding any deficiencies which might have tainted the validity of the certification".

You would know from your own corporate history that legal compliance, and following the lead of Government authorities, is no guarantee of rights and justice. Nor must contracts be maintained if they facilitate breaches of human rights.

We know that 'internationality' is high on your agenda and that you consider the respect of human rights to be an integral part of your responsibility as a global business.

This corporate responsibility to respect human rights is a global standard of expected conduct for business enterprises wherever they operate and is set out in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the United Nations Human Rights Council in 2011.

We fear you have been poorly informed of our situation and ask that you look deeply into the human rights issues surrounding the Adani project and properly account for your corporation's obligations under international law.

International law advice

For your consideration, we attach international law advice we have received from attorneys at Earthjustice in San Francisco, USA. This advice describes:

1. How human rights violations may result from the development by Adani of the Carmichael mine on our ancestral homelands; and
2. The responsibility of business enterprises to respect human rights and avoid complicity in human rights violations, including by withholding services to projects that violate human rights.

We ask that you give careful consideration to this. We seek a hearing from you so we can demonstrate that we have not been consulted in good faith about, nor given our consent to, the impacts of this project upon our rights and culture; and that our own institutions of representation and decision-making have been ignored and undermined.

Any contribution from Siemens to the Adani Carmichael project may involve your corporation in international human rights issues; violations of Indigenous rights; destruction of culture and land and waters; and the acceleration of global warming with profound and adverse impacts on all peoples, with First Nations often the most affected.

Suspension of Siemens' Adani contract is required

The purpose of highlighting these matters to you is to ask that Siemens suspend its contract with Adani in view of the serious human rights breaches against W&J people.

We hope you agree it is important that you hear directly from us about the serious problems associated with the Adani project, and to fulfil your responsibilities to respect our human rights and avoid complicity in the violation of those rights.

At a meeting we can provide you with detail on –

- the significance of our ancestral lands and waters and sacred sites on which the mine is being built, and their importance to our cultural sovereignty and law
- the failure of the Australian legal system to protect our rights, and the racial discrimination embedded in the Native Title Act 1993

- the international human rights issues and our engagement with United Nations human rights bodies and mechanisms
- the Australian legislative and political context and the failure to apply the UN Declaration on the Rights of Indigenous Peoples and other international human rights treaties, and
- the historical, social and political context in which these issues are taking place.

Siemens must avoid violating our customary law

Siemens needs to understand how the Australian legal system and corporate governance in Australia fails to respect, recognise and uphold our laws and customs in a way consistent with our status as First Nation people.

Our lands and waters embody our culture and are central to our physical and spiritual well-being because they are the origins and living source of our customs, laws, and spiritual beliefs. Indeed, our culture is inseparable from the condition of our ancestral homelands.

Our customary law underpins our standing as First Nation people and our connection to Country. It requires that only the right people 'speak for Country'.

The development of the Carmichael mine will violate our laws and our right to practice our culture and protect our cultural resources; and will permanently destroy vast areas of our lands and waters, as well as plants, animals, and sacred sites. This includes destroying our most sacred site, the Doongmabulla Springs.

The mine will tear the heart out of our Country.

Adani's rail infrastructure will also open the way to other major coal mines in the Galilee Basin, and our lands and waters, which are sacred to us and form our culture, will disappear. We will not be able to pass our culture onto our children and grandchildren in perpetuity.

We ask you to consider the impact of the Carmichael mine on our homelands; the failure of Adani, and the Queensland and Australian governments, to secure our genuine free, prior and informed consent to the mine; the violations of our human rights, which are protected under international law; and the international responsibility of corporations such as Siemens to respect those rights.

We look forward to your response to our request for a meeting. Please contact our Council adviser, Anthony Esposito, to make arrangements. He can be reached in Australia on +61 (0) 418 152 743 or info@wanganjagalingou.com.au.

Yours faithfully,

Adrian Burragubba



Murrawah Johnson



On behalf of the Wangan and Jagalingou Traditional Owners Family Council