

28 July 2017

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

SUBMISSION TO THE INQUIRY INTO THE GOVERNANCE AND OPERATION OF THE NORTHERN AUSTRALIA INFRASTRUCTURE FACILITY

Transparency International (TI) Australia thanks the Committee for this opportunity to make a submission to the Inquiry into the Governance and Operation of the Northern Australia Infrastructure Facility (NAIF). The submission is not confidential and may be published.

[Transparency International Australia](#)

TI Australia is the national chapter of Transparency International (TI), the global coalition against corruption that has a presence in over 100 countries.

TI's global Mining for Sustainable Development programme is led by TI Australia and seeks to enhance the contribution of mining to sustainable economic and human development through a focus on enhanced transparency and accountability in awarding mining-related permits, licences and contracts across a range of national jurisdictions.

TI Australia has recently assessed mining approval processes in Queensland and Western Australia. The governance of the Northern Australia Infrastructure Facility (NAIF) was identified as a vulnerability in the broader regulatory framework for mining approvals.

[Problems with NAIF Governance](#)

Through our research¹, we found that the NAIF processes for investment decision-making **lack transparency, accountability and integrity**. These weaknesses undermine public scrutiny of its decisions, give rise to conflicts of interests, and could result in companies with a history of non-compliance, criminal or corrupt behaviour gaining access to public funds.

[Weaknesses in NAIF Governance](#)

1. Lack of transparency and accountability

- The eligibility criteria for financial assistance published on the NAIF website are broad, and there are no publicly available guidelines on how the criteria should be interpreted and applied when assessing the applications.

¹ This research was undertaken by Helen Langley, the Australian National Research consultant for the TI Australia Mining for Sustainable Development Programme Australia Mining for Sustainable Development Programme

- The NAIF does not disclose the *reasons for decisions* on applications nor the assessment of whether the application meets the mandatory criteria set out in Schedule 1 of the Northern Australia Infrastructure Facility Investment Mandate Direction 2016.

The current lack of transparency means Australians have no way of seeing how NAIF decisions are made and cannot effectively hold decision-makers to account to invest public funds for public benefit.

2. Applicant eligibility

- **Criteria to assess suitability of applicants:** The eligibility criteria on the NAIF website primarily relates to the *project*, there are no criteria regarding the suitability of the *applicant* who will receive financial assistance. The non-binding [Application and Approval Procedure Guidelines](#) state that “if feasible”, the proponent should provide background information about the proponent, participants and sponsor, including, experience and financial profile, but does indicate (a) whether the suitability of the applicant will be assessed and (b) what criteria, if any, will be used to assess their suitability.
- **Due diligence of applicants’ integrity:** There are no specified due diligence checks into the character, integrity and conduct in Australia or overseas of companies and their directors applying for NAIF financial assistance. This has the potential for applicants with a poor business, environmental or human rights record to be provided with a NAIF loan. For example, associated companies of a NAIF loan applicant, Adani, have been investigated in India for corrupt conduct and environmental damage.² Further, the CEO of the Adani Group’s operation in Australia was previously an executive officer of a company that pleaded guilty to criminal charges of serious water pollution of the Kafue River, Zambia and of failure to report environmental pollution.³
- **Investigation into the beneficial owners of companies:** Neither the Investment Mandate, the Explanatory Notes or the *Northern Australia Infrastructure Facility Act 2016* provides for investigation of the real owners of a company applying for a financial assistance through NAIF. The guidelines request applicants to include information about their shareholders “if feasible”. Transparency International Australia’s position is this is not sufficient. With significant sums of public money at stake, it is important to investigate who has ultimate control of, and benefits from, the applicant company. Uncovering the real beneficial owners helps prevent the misuse of companies for illicit activities such as tax evasion, money laundering, bribery, corruption and potential terrorism financing.

Current governance arrangements leave the door open for non-compliant, and potentially corrupt actors to access public investment finance.

3. Conflict of interest risk

- There are no provisions in the *Northern Australia Infrastructure Facility Act 2016* for board members to declare their interests in a particular project that is the subject of an application before the NAIF and to withdraw from the decision-making process if they have a conflict of interest. The

² Ministry of Environment and Forests, Government of India, *Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification, 1991 by M/s Mundra Port & SEZ Limite’* (15 December 2010) <<http://www.moef.nic.in/downloads/public-information/show-cause-mundra-opg.pdf>>. para 1 – 19; Stephen Long, ‘Adani facing multiple financial crime, corruption probes,’ *ABC News* (Online) 22 December 2016 <<http://www.abc.net.au/news/2016-12-22/adani-companies-facing-multiple-corruption-probes/8140100>>.

³ Environmental Justice Australia, *The Adani Brief* (15 February 2017) <https://envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/The_Adani_Brief_by_Environmental_Justice_Australia.pdf> 29.

Australian Broadcasting Corporation reported that two NAIF board members involved in considering the Adani application stood to benefit financially if the Adani mine and rail project is approved.⁴

The lack of procedures for decision-makers to declare their interests gives rise to a serious risk of conflict of interest, and undermines public perception of the credibility and independence of the NAIF's investment decisions.

Recommendations to the Committee

The introduction of fundamental transparency and accountability measures is required to improve the integrity and governance of the NAIF. Accordingly, TI Australia recommends that the NAIF:

- Publish its decision-making and project assessment guidelines on the NAIF website;
- Publish the reasons for its decisions on investment applications, including its assessment of the eligibility projects;
- Introduce applicant eligibility criteria;
- Conduct due diligence checks into the character and integrity of applicants;
- Investigate the beneficial ownership of companies applying for financial assistance;
- Publish board members' declaration of interests in applications on the NAIF website and ensure that they abstain from decision-making when they have a conflict of interest.

Sound investment decisions using public funds demands good governance. Addressing the serious transparency and accountability gaps in the NAIF's governance arrangements must be a priority if the fund is to continue and successfully deliver on its objective to develop northern Australia.

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⁴ ABC News, 'Adani: Government body board members considering rail loan 'linked to companies who may benefit', 30 May 2017 <http://www.abc.net.au/news/2017-05-29/conflict-of-interest-concerns-over-adani-rail-loan/8564368>.