



Telenor ASA
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1360 Fornebu
Norway

Norwegian National Contact Point
7. juni plass Victoria Terrasse
0032 Oslo
Norway

Date
12/08/2021

RE: Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises

Dear Sir or Madam,

We are referring to the complaint sent by the Centre for Research on Multinational Corporations (SOMO) on behalf of 474 Myanmar-based civil society organisations the "Complainant". The Complainant alleges that Telenor ASA has failed to comply with the OECD Guidelines for Multinational Enterprises ("OECD Guidelines") in relation to Telenor ASA's ("Telenor") sale of its subsidiary, Telenor Myanmar Ltd. ("Telenor Myanmar").

As an initial comment we would like to express that we do share the serious concerns of the Complainants with the challenging situation in Myanmar following the military takeover. On 13 April the UN High Commissioner for Human Rights announced that grave human rights violations and possible crimes against humanity was commissioned by the military in Myanmar.¹ We contend that the situation in Myanmar results from the military takeover and not by Telenor's decision to sell Telenor Myanmar. The decision to disengage our operations in Myanmar has been extremely challenging and taken only as a last resort. As will be substantiated in the following Telenor has carried out thorough assessments on the available alternatives prior to the decision to sell. The ability to continue adherence to responsible conduct of business, international law and human rights principles have been key factors to our assessment. Furthermore, the security and safety of our personnel and the value of employees being allowed continued employment has also been of importance in these assessments. Telenor has indeed complied with the OECD Guidelines both during Telenor's time of ownership and in the decision to sell Telenor Myanmar.

1. Initial comments relevant for the response

As recognized by the OECD Guidelines, complying with domestic laws is a first obligation of the multinational enterprise. Telenor, as a multinational enterprise, is required to and expected to meet local regulations and local expectations in different jurisdictions. According to Chapter I. Concepts and

¹ <https://news.un.org/en/story/2021/04/1089612>



Principles, paragraph 2, the OECD Guidelines “are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law”. Telenor Myanmar and Telenor has continuously worked to promote the standards of the OECD Guidelines from its inception in Myanmar in 2013 and to date. Following the military takeover Telenor Myanmar ended up in a situation where it was going forward required to balance compliance with international human rights principles and international law up against the directives and laws enacted by the military regime.

Chapter I paragraph 8 of the OECD Guidelines prescribe that “[t]he entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.” Intragovernmental organizations such as the ASEAN and the United Nations as well as national states have all been involved in trying to resolve the challenging situation in Myanmar. Unfortunately, these efforts have not resulted in any resolution, nor presented any encouraging signs for a future resolution.

Following the takeover of the new regime Telenor has used all efforts to remedy the situation and work to continue our operations in Myanmar. Having in mind the efforts of ASEAN, the UN and national states, Telenor, guided by our commitment to responsible business conduct and adherence to human rights principles, was left with the only alternative, which was to sell Telenor Myanmar. The decision to sell would allow for a continuation of service to 18 million subscribers, banks, hospitals, ATMs etc.; allow for an owner independent of the military regime; and allow for continued employment for the employees of Telenor Myanmar.

Telenor is deeply concerned with the situation in Myanmar and saddened by being forced to leave Myanmar. Telenor contends that the complaint should not be brought for further assessment by the NCP. The reasons for this are mainly that there is an insufficient link between the cause of the human rights violations that have occurred following the military takeover² and the operations and decision to sell Telenor Myanmar; and second that the extension by the NCP of its good offices will not have any impact on the issue of human rights violations in Myanmar.

In the following we will provide our comments to the complaint and reasoning that the complaint should be dismissed.

2. The criteria for making an initial assessment are not met

2.1 Introduction

Telenor does not dispute that SOMO may have legal interest in the matter and may be competent to raise the complaint. Telenor also recognizes that the issue of the complaint, caused by the military takeover of

² <https://news.un.org/en/story/2021/04/1089612>



power in Myanmar on 1 February is material and substantiated. The takeover caused a destabilization of government and, violation of human rights. The takeover of power by the military is expected to impact materially on Telenor's future ability to comply with regulatory obligations at the same time as respecting international human rights principles and the Telenor Code of Conduct. Due to the severe situation caused by a takeover of power, there is also very limited, if any, comparable earlier proceedings that may indicate how this matter should be solved.

2.2 There is no link between the enterprise's activities and the issue raised in the specific instance
As a condition for the NCP's further assessment of the matter, the OECD Guidelines require that there is a link between the activities of Telenor and the deteriorating situation in Myanmar caused by the military takeover of power.

2.2.1 Some comments on the cause of the situation

Telenor agrees that the deteriorating situation in Myanmar is alarming and causes deep concern. The NCP is asked to recognize that the situation is not caused nor contributed to by Telenor, and the sale by Telenor is thus not the cause of the adverse impacts that should be addressed under the Guidelines.³

2.2.2 Telenor has been transparent on the situation

Telenor has at all times, both before the takeover and after, been as transparent as possible on our operations in Myanmar. As noted on our website on 14 February, our ability to be transparent has however been limited by the new regime.⁴

Telenor has complied with the OECD Guidelines⁵ and obligations to notify under the stock exchange rules by e.g. being transparent on the directives forcing Telenor Myanmar to amongst others shut down the internet. Please refer to the website "[Directives from authorities in Myanmar](https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/)"⁶ where we have listed, as far as permitted, the directives subjected to and their status.

Human rights have been a focal point for Telenor since the inception of Telenor Myanmar and has in line with the OECD Guidelines been part of the operations of Telenor Myanmar. By way of example the OECD Guidelines Chapter IV. Human Rights, commentary to paragraph 5 recommends:

"... that enterprises carry out human rights due diligence. ... Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-

³ The OECD Guidelines Chapter II. General Policies paragraph 14, page 23 reads: "...The Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12."

⁴ <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/> See "update 14.2.21".

⁵ The OECD Guidelines on disclosure chapter III. page 28, paragraph 28, requests enterprises to be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.

⁶ <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/>



holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve.”⁷

Telenor has had continuous and comprehensive stakeholder engagement at a local and international level, and collaborated with partners to ensure Telenor contributed positively to the people of Myanmar. Telenor Myanmar has been open and transparent about its human rights successes and challenges over the years, including through its Sustainability briefings, held annually since 2014.⁸

Telenor Myanmar has also provided information on the directives it has been subjected to in order to ensure that the society and stakeholders understand the environment Telenor Myanmar is operating in. By way of example the most substantial notice provided by Telenor was its 4 May 2021 notice of a full impairment of the value of Telenor Myanmar that was due to the limited prospects of improvement going forward resulting from the worsening economic and business environment outlook and deteriorating security and human rights situation.⁹ The notice substantiated the severity of the situation and limited prospects for Telenor in continuing operations in Myanmar. Following the notice Telenor also invited for several meetings with CSOs both domestic and international.

2.2.3 Telenor has engaged with stakeholders

Telenor has engaged with stakeholders continuously as part of its operations in Myanmar.

The Complainants argue that Telenor should have discussed the sale with the CSOs or other interest groups. By virtue of being a publicly listed company Telenor has been prevented from discussing the transaction of the ownership of Telenor Myanmar, as such information would be sensitive information potentially affecting the share price of Telenor. Telenor was thus legally prevented from discussing the direct sale of Telenor Myanmar with the CSO's or other interest groups under stock exchange rules.

After the sale was publicly announced, Telenor communicated the sale by e-mail and messages within the hour to local stakeholders. Telenor invited for and held meetings with local CSOs following the announcement of the transaction to offer further conversation and understand the thoughts of the CSOs. In addition to local CSOs, Telenor has carried out follow-up meetings with international CSOs to understand the thoughts of the CSOs and share, to the extent possible at this time, Telenor's reasoning on its decision to sell including what alternatives Telenor was considering.

As a member of the Global Network Initiative (GNI),¹⁰ a multistakeholder platform, which consists of internet and telecommunications companies, civil society organizations, investors and academic organizations from around the world, Telenor has engaged in dialogue and advocacy efforts related to privacy and freedom of expression rights and authority directives. As part of its membership, Telenor also

⁷ Cf OECD Guideline page 34, paragraph 45.

⁸ <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/>

⁹ <https://www.telenor.com/wp-content/uploads/2020/11/Telenor-Group-Q1-2021-Report-0fe827900a389764548e3e7664530a14.pdf>

¹⁰ <https://globalnetworkinitiative.org/>



has to undergo an independent assessment to determine whether it is implementing the GNI Principles.¹¹ Telenor has in addition carried out local discussions with Myanmar CSOs since its inception in Myanmar.

2.2.4 Telenor has carried out thorough assessments on how to proceed

As noted above, human rights has always been a focal point of Telenor Myanmar and has continuously been part of the risks assessed and reported on by Telenor Myanmar. As a result of the military takeover of power, and following a comprehensive assessment of the developments since the takeover, Telenor concluded that the expected adverse impacts of the new regime in a scenario of continuing operations were irremediable. Telenor did not see that the situation in Myanmar would change, and thus Telenor found that it could no longer operate in Myanmar while continuing to adhere to responsible business conduct and international human rights principles. Substantial time was spent assessing the option of continuing operations, which eventually became a non-viable option. The sale of Telenor Myanmar was considered as the least detrimental solution and would allow for continued connectivity for our subscribers and enterprises depending on it, continuous employment of staff and an operator independent of the new regime. In accordance with the OECD Due Diligence Guideline recommending that disengagement should be taken only as a last resort, this decision to eventually sell was indeed a last resort decision for Telenor having taken into account other alternatives more detrimental to the Myanmar society.¹²

2.2.5 No link between the severe human rights violations caused by the military and the operations of Telenor

The decision to sell Telenor Myanmar is a direct consequence of the deteriorating and severe situation and not a cause of the deteriorating situation. There is no link between the severe human rights violations caused by the military regime and the operations of Telenor. The NCP should recognize that the decision to sell was the decision least detrimental to the Myanmar society. As supported by the Guidelines, Telenor cannot be held accountable for the situation that has arisen as a result of the regime change.

*"Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship."*¹³

Telenor recognizes that the situation caused by the regime change is material. However, in a situation where Telenor will become obliged to act contrary to international law, human rights commitments and its Code of Conduct, and where Telenor is carrying out mitigating actions, Telenor is a victim of the actions of the military regime as well.

¹¹ In 2019, Telenor underwent its first GNI Independent Assessment by an external assessor. Following a detailed review of the assessment by the multi-stakeholder GNI Board representing industry, civil society organisations, investors and academics, it was determined that Telenor is making good faith efforts to implement the GNI Principles with improvement over time. Cf. <https://globalnetworkinitiative.org/wp-content/uploads/2020/04/2018-2019-PAR.pdf>

¹² Cf. OECD Due Diligence Guidance for Responsible Business Conduct page 31. "Consider disengagement from the supplier or other business relationship as a last resort after failed attempts at preventing or mitigating severe impacts; when adverse impacts are irremediable; where there is no reasonable prospect of change; or when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them. Any plans for disengagement should also take into account how crucial the supplier or business relationship is to the enterprise, the legal implications of remaining in or ending the relationship, how disengagement might change impacts on the ground, as well as credible information about the potential social and economic adverse impacts related to the decision to disengage. see Annex Q39"

¹³ Cf. OECD Guideline. Commentary on Human Rights, paragraph 43. Page 33.



To this effect we believe it is appropriate to refer to the commentary of Chapter IV Human Rights of the OECD Guidelines recommending that where a state fails to “... *implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law ...*”¹⁴

Telenor ended up in a situation where it going forward no longer would be allowed to respect human rights principles and international law as a result of being faced with legal obligations enforced by the military regime. Telenor was accordingly put in a situation where it was required to balance the safety of employees and compliance of local laws up against complying with international law and human rights principles. Consistent with the OECD Guidelines Telenor has sought to continue its operations as far as possible respecting human rights principles and protecting its customers. Telenor has come in a position where it was going forward no longer viable to continue operations in line with its policies and internal and external requirements as a result of the military takeover and was forced to sell as a last resort.

The human rights violations being the issue of the complaint are not caused by Telenor nor by any contribution by Telenor, but are due to the regime change. There is as such no link between the human rights violations and the decision to sell Telenor Myanmar as a cause of the violations.

2.3 Due to the severity of the situation there are no similar domestic or international proceedings providing guidance

Telenor does not believe that the OECD Guidelines has been drafted with the situation in mind that there has been a military takeover by a state in which the multinational enterprise operates in. Rather, the OECD Guidelines have been drafted to guide on how multinational enterprises should act in jurisdictions where it may contribute to the further development of the jurisdiction in line with internationally recognized principles for conduct of business, e.g. by establishing requirements for business partners and sub-contractors.¹⁵ Where the state has been subject to a takeover by the military, it should be recognized that it is first and foremost the international community represented by the United Nations, ASEAN and national states that will be most appropriate to influence the new regime.

We are not aware of any proceedings on similar situations providing guidance on how to proceed in this situation.

2.4 The consideration of the specific issue will not contribute to the purposes and effectiveness of the Guidelines

According to the United Nations, Myanmar is in a deteriorating and severe situation after the regime change.¹⁶ Telenor believes that the situation should primarily be resolved through intra-governmental influence by e.g. the United Nations, ASEAN or national states. Telenor has to date implemented and complied with the OECD Guidelines in respecting human rights and international law in Myanmar and

¹⁴ Cf. OECD Guideline. Commentary on Human Rights, paragraph 38. Page 32.

¹⁵ Cf the OECD Guidelines Chapter II. General Policies.

¹⁶ <https://news.un.org/en/story/2021/04/1089612>



through being transparent and having engaged with stakeholders. Telenor has furthermore been as transparent as permitted and facilitated CSO engagement following the announcement of the transaction. Telenor respects and shares the concerns of SOMO and CSO's for the severe situation in Myanmar, however and in accordance with the OECD Guidelines, Telenor should not be held responsible for the situation resulting from the military takeover.

The further assessment by the NCP and the kind offering of the NCP of its good offices will not contribute to resolving the deteriorating situation in Myanmar as Telenor is not the correct party subject to such discussions.

3. Closing remarks

Telenor is deeply saddened and concerned by the situation caused by the military takeover and the severe situation for human rights in Myanmar. The decision to sell Telenor Myanmar is a decision that has not been motivated by financial or strategic motives but rather a last resort decision to prevent having to decide between following local laws on the one side; and compliance with international human rights principles on the other side, and taking account of the security and safety of our personnel. Following the completion of the transaction Telenor will be able to engage with local and international CSO's to elaborate further on its reasoning for the decision to sell.

As has been substantiated above Telenor has been both transparent and engaged stakeholders in discussions around the challenging situation in Myanmar. Having used all efforts to remedy the situation and continue operations, Telenor was left with no other choice than to sell Telenor Myanmar. Telenor considered that a sale of Telenor Myanmar would secure access to service for 18 million subscribers, hospitals, banks, etc., a fourth operator independent of the military regime and continued employment for the employees of Telenor Myanmar.

To the extent the NCP should decide to bring the proceedings further and offer its good offices, Telenor will participate in the further proceedings.

Yours Sincerely,

Rita Skjærvik

SVP, Head of Group Strategy & External Relations

Telenor Group