



Ms Cathrine Halsaa
OECD National Contact Point Norway Secretariat
Oslo
Norway

17 February 2020

Complaint to the OECD National Contact Point Norway: SCJ Alethankyaw – Telenor

Dear Ms Halsaa,

We refer to the email received by the Norwegian OECD National Contact Point (“NCP”) on 20 December 2019 regarding a complaint brought forward by SCJ Alethankyaw against Telenor Group (“Telenor”) and our meeting with the NCP Secretariat on 9 January 2020. In the NCP Secretariat’s email of 16 January 2020 Telenor was asked to reply within 17 February.

1. Introduction

Telenor would like to express its deepest concern and sympathy with all those who have suffered violations of human rights in Myanmar as a result of the conflict. Telenor views the situation in Rakhine with grave concern, including the allegations of misuse of the tower premises of Telenor’s tower vendor, Irrawaddy Green Towers (IGT) in Alethankyaw in August, 2017.

To Telenor, respect for human rights is integral to our business as clearly stated in our Code of Conduct and policies. Telenor takes its stated commitment to comply with the OECD Guidelines for Multinational Enterprises, as well as the UN Guiding Principles on Business and Human Rights, seriously. As a global company, we acknowledge that we do face human rights challenges where we operate, especially in Myanmar. We continuously work to understand and mitigate potential negative human rights impacts of our business.

Telenor has made significant effort to be transparent and communicate its measures to avoid and mitigate risks of human rights violations with regards to our operations in Myanmar and elsewhere. For further information on Telenor’s operations in Myanmar, including the response to the allegations as reported by the Kaladan Press in November 2018, please see our website [here](#)¹.

¹ <https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>

The complainants allege that Telenor, by its operation in Myanmar, has violated the OECD Guidelines and “*bears significant responsibility for what took place on its tower*”. Telenor does not agree with this allegation.

To explain our position, Telenor will in the following sections provide a brief description of the company’s operations in Myanmar and our risk based framework and extensive due diligence efforts when operating in conflict-affected countries. Lastly we will comment on whether the complaint merit further consideration by the NCP and the possibility of dialogue with the complainants.

2. Telenor and its operations in Myanmar

Telenor Myanmar Ltd. (“TML”) is a wholly-owned subsidiary of Telenor Group and was awarded a license in February 2014 from the Myanmar Ministry of Transport and Communication (“MoTC or Ministry”) to provide telecommunications services throughout Myanmar.

Since starting operations in Myanmar, Telenor’s ambition has been to provide mobile telecommunication services to all people living in Myanmar, with the strong belief that connectivity is a key enabler for reducing inequality and enhancing economic growth. This connectivity has also enabled previously unconnected communities and ethnic minority groups to communicate amongst each other and to the outside world, and hence better exercise their right to free expression. For the last five years, TML has rolled-out its network in all states and regions, and today TML’s network covers more than 92 percent of the population which is in line with TML’s license conditions.

3. Telenor’s risk-based approach and extensive due diligence efforts when operating in a conflict-affected area

Before entering Myanmar in 2014, Telenor conducted its own due diligence and commissioned a number of third party pre-investment due diligence processes, including on corporate responsibility risks and opportunities. This covered human rights, labour rights, corruption and environmental sustainability. As part of this effort Telenor engaged third parties including BSR ([Business for Social Responsibility](#)). BSR is a leading non-profit focused on corporate sustainability since 1992, with expertise working with business on a wide range of issues associated with the environment, human rights, economic development, governance and accountability.

BSR’s final report (The Myanmar Corporate Responsibility Due Diligence report) concluded that Myanmar was *‘on a positive trajectory towards increasing economic and political reform and that the country was in the early stages of a nation-building process. Positive signs abound, including new foreign investment and labor laws, political reform, increased freedom of expression, relaxed trade restrictions and reconciliation processes in ethnic areas. In this context, a key BSR conclusion is that appropriate localization and disciplined execution of existing Telenor CR (Corporate Responsibility) policies, principles and procedures will form a strong foundation for risk management. However, Telenor also has an opportunity to demonstrate competitive advantage during the license bid process and help Myanmar realize the full potential of increased connectivity by taking a strategic, integrated and localized approach to CR’.*

In response to the pre-investment due diligence and as part of Telenor's preparations before entering Myanmar, Telenor focused on addressing six sustainability areas to help ensure it would honour the principles of internationally recognised human rights: institutional capacity development, legal framework around the whole operation, corruption issues, land issues, health and safety, and the ongoing conflict in specific minority areas.

In response to the allegations set out by the complainant, we would like to elaborate on two of these factors: Land issues and the ongoing conflict in specific minority areas:

Land issues: The main land use for a mobile telecommunications operations is to set up ground based telecom towers ("towers"). Telenor has approximately 10,000 towers in its network coverage throughout Myanmar. A sizable number of these towers are owned by tower companies, and not by the mobile operators themselves. The land required to set up these towers is limited, and hence the impact of raising towers does not normally impact local communities to any substantial degree.

Nevertheless, TML had (and continues to have) a high focus on identifying and avoiding any land grabbing issues in connection with renting land for towers. This is safeguarded in the contractual obligations binding on the tower companies. A three step process is followed, both with the tower companies and in TML, to check and verify - 1) the identity of the land owner; 2) documentation of ownership of the land; and 3) neighbour consent to ensure that neighbours are aware that a tower will be installed in their area and have an opportunity to comment if they have any issues in this regard. TML also established a complaint system which allows local community members to either call or send complaints through email to TML. In addition, TML conducts sample, unannounced inspections to verify all this information according to our three step process.

Conflict Areas: During the time when Telenor entered Myanmar there were bilateral ceasefire agreements signed with several of the ethnic groups, although the situation remained quite unstable. Telenor's approach when entering conflict areas has been to provide ethnic groups with mobile coverage as part of our network rollout obligation. Some of these areas are partly self-governed and TML actively worked both with the government and the ethnic groups to prepare for network rollout.

At the onset of TML setting up operations, a community outreach team was established which consisted of eight 'state liaison officers' (SLOs). These SLOs represents various different ethnicities and covers the different conflict states such as Kachin, Shan, Kayah, Kayin, Mon, Chin and also Rakhine. Their job was and is to ensure that TML better understands how its operations are affecting the local communities and to act as a local liaison for TML in these ethnic states.

During the period 2014- 2018, TML held several community engagement meetings including in the ethnic states. This provided an opportunity for local communities to provide feedback and input to the SLOs. The SLOs continue to liaise with ethnic minority groups and act as an integral part of TML's community outreach till date.

Regarding the Specific Instance - The Alethankyaw tower (known as RA0224 – all towers have a unique identifying code) was commissioned by TML, but TML does not own or operate it. It is owned and operated by the tower company named Irrawaddy Green Towers (IGT) who leased the land from the land owner. IGT is one of the tower companies selected by TML following Telenor's vendor due diligence process. As part of the agreement, IGT had to sign Telenor's Agreement on Responsible Business Conduct (ABC), which legally obliges the vendor to comply with Telenor's Supplier Conduct

Principles (SCP). For further information about Telenor's SCP and ABC, please see the Telenor Group [website](#).²

IGT began its site acquisition process for tower RA0224 in May 2016. This process included inquiries for land availability and proof of ownership with landowners for a number of tower sites. A specific site was selected for tower RA0224 to be built on, following an assessment of IGT's site acquisition report and technical site survey report. The assessment included documentation of proof of ownership, township approval and village recommendation letter for specific land use.

The tower was constructed by a third party vendor of IGT in accordance with the technical requirements set by TML. To ensure the tower companies' compliance with requirements at the site during the construction of towers, TML conducts regular sample unannounced site inspections. Tower RA0224 was not part of the sample inspections.

During the period 2015-2019 TML's Supply Chain Sustainability team conducted a total of 14,000 inspections across all locations, 423 out of these were conducted in Rakhine state, of which two were in Maungdaw township. In 2015, stakeholder engagement meetings were also held across Rakhine State where the most intensive network rollout was taking place. During this period stakeholder engagement meetings took place in 12 of the 17 Rakhine townships. Community complaints received were mainly in relation to noise levels or Electromagnetic field ("EMF") and were settled through dialogue, remediation and/or by an agreement to move a tower to another location. There is no indication during these processes in Rakhine state of complaints in relation to land confiscation for building of towers. Neither was there any finding during TML's inspections or community engagement meetings of objections from the local population that the towers be built.

Once the civil work on Alethanyaw tower RA0224 was completed, the power equipment was installed on the tower in February 2017, making it ready for telecom equipment installation. The site was then equipped with appropriate fence and gate. The network rollout was affected by continuous delays due to the conflict in the area. In the period between August 2016 and April 2017, and between August and December 2017 entry into the area was not allowed for Telenor personnel based on TML's assessment of the safety and security situation. In August and September 2017 there were also strict restrictions on access to the region imposed from the Myanmar authorities. TML telecommunication equipment was not installed until end of January 2018 and put on air 5th of March 2018.

TML has taken steps ever since the incident to continue improving its operations in Myanmar, and is continuously assessing and reviewing the conflict developments. For instance, TML and Telenor Group has conducted network tower security due diligence, with sample checks of towers regarding safety and security. In addition, Telenor and TML have continued to be transparent about its operations in Myanmar, including its challenges and how it takes steps to mitigate those challenges. TML has held an annual Sustainability Briefing since 2014, where TML's CEO provides a transparent update on key areas defined as important in order to operate responsibly in Myanmar. For further information and recordings of these briefings, please visit: <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/>.

² <https://www.telenor.com/sustainability/responsible-business/supply-chain-sustainability/the-requirements/>

Telenor has also communicated publicly about specific instances such as the one reported in the Kaladan Press in 2018 and the internet shutdown since June 2019, with regular updates on the situation. All these communications are made available [here](#)³.

4. Does the Issue Merit Further Consideration by the NCP?

Telenor will not contest that the Norwegian NCP is the correct entity to assess the complaint.

As Telenor understands, the complaint raises two main issues. First, that Telenor has failed to ‘perform due diligence and proper risk assessment’. And, second, that Telenor, by developing and making use of telecommunication infrastructure in Rakhine, contributed to an actual human rights violation.

As set out above, we believe Telenor’s due diligence and risk assessments has been comprehensive and that Telenor has had adequate policies and processes in place, including in the relevant township in Rakhine State. In Telenor’s view, the processes, including risk assessment, has been in accordance with the framework set by the OECD Guidelines.

The second issue relates to whether Telenor has caused or contributed to an adverse impact covered by the Guidelines. It is beyond doubt that the violent incidents in Alethankyaw in late August 2017 constitute a serious violation of human rights. However, maintaining ordinary infrastructure for civilian use, such as a mobile base station, is not an activity that causes or contributes to adverse impact as specified in the Guidelines Commentary section 14 as; “... *a substantial contribution, meaning an activity that causes, facilitates or incentivizes another entity to cause an adverse impact and does not include minor or trivial contributions*”.

Based on the broad risk assessment described above, telecommunication towers in Rakhine have been appropriately set up secured with fences and gates.

The alleged military use of the tower in late August 2017 was a completely unauthorised and possibly an illegal intrusion of civilian infrastructure. The tower is intended for mobile communications equipment. It would have been impossible for TML or IGT to prevent the acts that occurred in August 2017. Any infrastructure, including houses, apartment buildings, water towers, antenna towers etc. can be used for improper purposes, as evidenced throughout a number of previous armed conflicts globally.

The adverse impact is thus not linked to Telenor through a business relationship. Nor does the tower company have a business relationship with the military relevant to the incident in August 2017.

Based on this Telenor strongly disagrees with the complainants allegation that Telenor has caused or contributed to the violence in Alethankyaw.

5. Whether the consideration of the specific instance would contribute to the purposes and effectiveness of the Guidelines.

³ <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/>

Telenor believes the incident should be investigated by relevant authorities. A common challenge for Telenor and the NCP would be to clarify the facts of the incident. Following reports in November 2018 on the killings in Alethankyaw, Telenor asked the Myanmar authorities to – with involvement of independent NGOs - investigate the allegations that the tower was used by the military. However, to date we have not received any substantive response. Telenor still continues to advocate for the incident to be investigated by relevant authorities and has as recently as January 2020 repeated the request to the Permanent Secretary of the Ministry of Transport and Communication (MoTC).

6. Engaging in Dialogue With the Complainant

Should the NCP conclude that the complaint does merit further consideration, and that the Norwegian NCP is the appropriate mechanism for conducting dialogue in response to the complaint, Telenor will respect the process and cooperate within appropriate procedures.

Telenor is committed to engaging with its stakeholders, as also set out in the [Group Policy Sustainability](#) and the [Group Manual Human Rights Due Diligence](#). Telenor engages with a number of organisations to advance its human rights objectives, including the UN Global Compact, the Global Network Initiative, GSMA, the Joint Audit Cooperation (JAC) and Global Union. If Telenor is invited to engage in dialogue with the complainant as part of the NCP mediation process, we kindly request that the objectives, scope and intended outcomes of such a dialogue are clearly outlined in advance.

We are of course available to provide the Norwegian NCP with further information.

Yours Sincerely,



Anne Kvam

Chief Corporate Affairs Officer

Telenor Group