

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

**NCP**

Norway National Contact Point

Address: 7. juni-plassen/ Victoria Terrasse, 0032, Oslo, Norway

**Complainant**

The Centre for Research on Multinational Corporations (SOMO) on behalf of 474 Myanmar-based civil society organisations

Address: KNSM-laan 17, 1019LA, Amsterdam, The Netherlands

Telephone: +31 (0)20 639 12 91

**Defendant**

Telenor ASA

Address: Snarøyveien 30, N-1360 Fornebu, Norway

Telephone: +47 810 77 000

**Subject**

Alleged non-compliance with the OECD Guidelines for Multinational Enterprises by Telenor ASA in relation to its disengagement from its Myanmar operations

**Date**

27 July 2021

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## 1 Executive summary

SOMO, on behalf of 474 Myanmar-based civil society organisations ('CSOs'), is submitting a complaint against Norway-based telecommunications multinational Telenor ASA ('Telenor') to Norway's National Contact Point ('NCP') in accordance with the OECD Guidelines for Multinational Enterprises ('OECD Guidelines'). The 474 Myanmar-based CSOs must remain anonymous due to the extreme human rights abuses currently being committed by the military junta in Myanmar. The complaint relates to Telenor's activities in Myanmar.

Telenor Myanmar Ltd ('Telenor Myanmar'), Telenor's wholly owned subsidiary, commenced operations in 2014 and currently serves more than 18.2 million customers across Myanmar.<sup>1</sup> On 4 May 2021, due to "the worsening of economic and business environment outlook and a deteriorating security and human rights situation", Telenor announced that it had "fully impaired" (i.e. written off) its Myanmar operations to the value of NOK6.5 billion.<sup>2</sup> Two months later, on 2 July, Telenor disclosed that it was "in the process of evaluating various options" in relation to its Myanmar operations.<sup>3</sup> The following week, on 8 July, Telenor announced that it had entered into an agreement to sell 100 per cent of Telenor Myanmar to M1 Group SAL ('M1 Group'), a Lebanese investment holding company.<sup>4</sup>

SOMO and the 474 Myanmar-based CSOs ('the Complainants') contend that Telenor has irresponsibly disengaged from its Myanmar operations and failed to act in accordance with the principles and standards in both the OECD Guidelines and United Nations Guiding Principles on Business and Human Rights ('UNGPs') in three key respects. First, Telenor has failed to conduct appropriate risk-based due diligence and has failed to seek to prevent or mitigate adverse human rights impacts to its customers potentially arising from the sale of its Myanmar operations. Second, Telenor has failed to meaningfully engage with relevant stakeholders in relation to the sale of Telenor Myanmar to M1 Group. Third, Telenor has not acted in accordance with OECD standards on disclosure and communication about due diligence in relation to its decision to disengage from its Myanmar operations. In short, the

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<sup>1</sup> Telenor Group, 'Q1 – 2021: Interim Report January-March 2021', <https://www.telenor.com/wp-content/uploads/2020/11/Telenor-Group-Q1-2021-Report-0fe827900a389764548e3e7664530a14.pdf> (accessed 26 July 2021). See also Telenor Myanmar, 'Telenor at a glance', <https://www.telenor.com.mm/en/about/telenor-glance> (accessed 17 July 2021) and Telenor Group, 'Telenor Myanmar', <https://www.telenor.com/about-us/global-presence/myanmar/> (accessed 17 July 2021).

<sup>2</sup> Telenor Group, 'Steady performance in the first quarter', 4 May 2021, <https://www.telenor.com/media/press-release/steady-performance-in-the-first-quarter> (accessed 17 July 2021).

<sup>3</sup> Telenor Group, 'Telenor evaluates options in Myanmar', 2 July 2021, <https://www.telenor.com/media/announcement/telenor-evaluates-options-in-myanmar?fbclid=IwAR3vpXKz8G3004uTX3lqJHxmhWQi-T89KEOPQxuCQNBaNcvgOAddV-URS2Y> (accessed 17 July 2021).

<sup>4</sup> Telenor Group, 'Telenor Group sells Telenor Myanmar to M1 Group', 8 July 2021, <https://www.telenor.com/media/press-release/telenor-group-sells-telenor-myanmar-to-m1-group%e2%80%af> (accessed 17 July 2021). According to Telenor's press release, "Telenor Group has entered into an agreement to sell 100 percent of its mobile operations in Myanmar to M1 Group for a total consideration of 105 million USD (approximately 900 million NOK), of which 55 million USD (approximately 470 million NOK) is a deferred payment over five years. The transaction corresponds to an implied enterprise value of approximately 600 million USD (approximately 5.2 billion NOK). M1 Group will acquire all the shares in Telenor Myanmar and continue the current operation."

Complainants submit that the sale by Telenor of its Myanmar business to M1 Group does not comply with the OECD Guidelines and constitutes irresponsible disengagement.

The Complainants respectfully request for the NCP to expedite its initial assessment, given that an agreement to sell Telenor Myanmar to M1 Group has already been signed and the deteriorating human rights situation in the country. If the NCP determines that the issues raised merit further examination, the Complainants encourage the NCP to offer good offices as soon as possible, with the aim of resolving the issues raised in the complaint. If the good offices fail to produce a mutually-acceptable solution, the Complainants request that the NCP conduct an examination of the facts and make a public statement that contains a determination as to whether Telenor has acted in accordance with the OECD Guidelines and recommendations to Telenor aimed at bringing its behaviour into line with the Guidelines.

## 2 Criteria for making an initial assessment

The Complainants respectfully submits that the issues raised in this complaint are bona fide and relevant to the implementation of the OECD Guidelines. The following sections address the criteria that the NCP should consider when making an initial assessment.<sup>5</sup>

### 2.1 The identity of the party concerned and its interest in the matter

#### 2.1.1 The MNE: Telenor ASA

The OECD Guidelines do not provide a precise definition of ‘multinational enterprise’.<sup>6</sup> However, the Guidelines state that MNEs “usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways”.<sup>7</sup> The Guidelines also apply to private, state and mixed ownership MNEs.<sup>8</sup>

Telenor is an MNE with responsibilities under the OECD Guidelines. Telenor ASA is a majority state-owned multinational telecommunications company registered and headquartered in Oslo, Norway.<sup>9</sup> Telenor Myanmar is a wholly owned subsidiary of Telenor headquartered in Yangon, Myanmar.<sup>10</sup> Since September 2014, Telenor Myanmar has provided a telecommunications network and services to mobile users in the country, with over 18.2 million mobile subscriptions as of 2020.<sup>11</sup>

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<sup>5</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, I. Commentary on the Procedural Guidance for NCPs, Initial Assessment, page 82-83, paragraph 25.

<sup>6</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, I. Concepts and Principles, page 17, paragraph 4: “A precise definition of multinational enterprises is not required for the purposes of the Guidelines...”

<sup>7</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, I. Concepts and Principles, page 17, paragraph 4.

<sup>8</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, I. Concepts and Principles, page 17, paragraph 4.

<sup>9</sup> Telenor Group, ‘Major Shareholdings’, 31 March 2021, <https://www.telenor.com/investors/share-information/major-shareholdings/> (accessed 17 March 2021). As of 31 March 2021, the Government of Norway held 53.97 per cent of total shares in Telenor.

<sup>10</sup> Telenor Group, ‘Telenor Myanmar’, <https://www.telenor.com/about-us/global-presence/myanmar/> (accessed 18 June 2021).

<sup>11</sup> Telenor Group, ‘Q1 – 2021: Interim Report January-March 2021’, <https://www.telenor.com/wp-content/uploads/2020/11/Telenor-Group-Q1-2021-Report-0fe827900a389764548e3e7664530a14.pdf> (accessed

2.1.2 The notifier: The Centre for Research on Multinational Corporations (SOMO)  
SOMO is an independent, not-for-profit organisation registered in Amsterdam, The Netherlands, focusing on the impact of MNEs' activities on people and the environment. SOMO monitors the implementation of both the OECD Guidelines and UNGPs and advocates for strong corporate accountability frameworks to address global governance gaps.<sup>12</sup>

SOMO is filing this complaint on behalf of 474 Myanmar-based CSOs, which must remain anonymous due to the extreme human rights abuses currently being committed by the military junta in Myanmar. SOMO can confidentially share the names of these organisations with the NCP upon request.

## 2.2 Whether the issue is material and substantiated

The Complainants allege that the sale of Telenor Myanmar to M1 Group contravenes Telenor's responsibilities under the OECD Guidelines in three key respects.

### 2.2.1 Inadequate due diligence and irresponsible disengagement

The decision to disengage from a business relationship is one with which enterprises are frequently faced. According to the OECD Guidelines, the decision to disengage is a business decision like any other for which companies are supposed to conduct due diligence to identify, prevent and mitigate adverse impacts resulting from the business decision.

Chapter II (General Policies), OECD Guidelines provides that MNEs should:

**"10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts [...] and account for how these impacts are addressed.**

The 2018 OECD Due Diligence Guidance for Responsible Business Conduct provides further guidance as to what this due diligence expectation means when it comes to responsible disengagement:

"In these situations, enterprises should also consider and address the potential adverse impacts of a decision to disengage. If an enterprise determines that disengagement is the most appropriate action, there are a range of actions that it may take to ensure that its process for disengagement is responsible".<sup>13</sup>

The Guidance provides as examples of responsible disengagement that the company clearly articulates its escalation measures for disengagement upfront with stakeholders and provides detailed information supporting the decision to disengage to stakeholders. The Guidance also notes that it is important to provide sufficient notice of the disengagement.<sup>14</sup>

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26 July 2021). See also Telenor Myanmar, 'Telenor at a glance', <https://www.telenor.com.mm/en/about/telenor-glance> (accessed 17 July 2021) and Telenor Group, 'Telenor Myanmar', <https://www.telenor.com/about-us/global-presence/myanmar/> (accessed 17 July 2021).

<sup>12</sup> For additional information on SOMO: <https://www.somo.nl/>.

<sup>13</sup> OECD, 2011, OECD Due Diligence Guidance for Responsible Business Conduct, page 80.

<sup>14</sup> OECD, 2011, OECD Due Diligence Guidance for Responsible Business Conduct, page 80.

As an MNE with responsibilities under the OECD Guidelines, Telenor should conduct comprehensive due diligence on the sale of Telenor Myanmar to M1 Group. Such due diligence should identify, prevent and mitigate actual and potential impacts of the sale. This includes identifying and assessing impacts that Telenor may cause or contribute to through its activities, and to address those impacts when they occur, as well as those that are directly linked to its Myanmar operations.

The Complainants are not aware of any due diligence Telenor has conducted regarding the sale of its Myanmar operations.<sup>15</sup> In any event, if Telenor did conduct due diligence on the sale, in the Complainant's opinion such due diligence should have led to the conclusion that the sale would likely result in severe human rights impacts for Telenor Myanmar's customers and mobile users contacted by Telenor's customers.

M1 Group is a Lebanese investment holding company controlled by the Mikati family. The company was co-founded by the former Prime Minister of Lebanon Najib Mikati and his brother Taha Mikati. The Mikati family has a track record of conducting business in countries operating under authoritarian regimes. Investcom Holding ('Investcom'), a telecommunications company previously owned by the Mikati family, operated mobile networks in Yemen, Syria, Liberia and Sudan during the Darfur genocide.<sup>16</sup> In Yemen, Investcom partnered with Shaher Abdulhak, a Yemeni businessman with ties to former President Ali Abdullah Saleh, during whose presidency numerous severe human rights abuses occurred.<sup>17</sup> In 2006, Investcom was sold to Johannesburg-listed MTN Group Limited ('MTN').<sup>18</sup> In 2020, M1 Limited (a subsidiary of M1 Group<sup>19</sup>) held 6.44 per cent of shares in MTN – making it the second largest shareholder.<sup>20</sup> The same year, Azmi Mikati (the current CEO of M1 Group), who had served on the board of MTN for nine years, retired from his position due to company policy.<sup>21</sup> MTN has continued to operate in authoritarian contexts, including Iran, Syria, Afghanistan and Yemen.<sup>22</sup> Through their business dealings, Investcom, MTN and M1 Group have been linked to numerous human rights abuses.<sup>23</sup>

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<sup>15</sup> Despite Telenor's responsibility under the OECD Guidelines to disclose information to relevant stakeholders. See section 2.2.3 of this complaint.

<sup>16</sup> Yale Law School, 'An analysis of select companies' operations in Sudan: A resource for divestment', 13 December 2005, page 45-46, <https://acir.yale.edu/sites/default/files/files/YaleLowensteinSudanReport.pdf> (accessed 18 July 2021); Institutional Investor, 'Mikati's calling plan for chaos', 10 November 2005, <https://www.institutionalinvestor.com/article/b150nnl83xhsr3/mikatis-calling-plan-for-chaos> (accessed 19 July 2021).

<sup>17</sup> Human Rights Watch, 'Yemen: Ali Abdullah Saleh Leaves Behind Grim Legacy', 5 December 2017, <https://www.hrw.org/news/2017/12/05/yemen-ali-abdullah-saleh-leaves-behind-grim-legacy> (accessed 18 July 2021).

<sup>18</sup> John Reed and Francesco Guerrera, 'MTN in \$5.5bn agreed takeover of Investcom', Financial Times, 2 May 2006, <https://www.ft.com/content/caa8b536-da21-11da-b7de-0000779e2340> (accessed 18 July 2021).

<sup>19</sup> M1 Group, 'Companies', <https://www.m1group.com/sectors/#company-m1-limited> (accessed 31 July 2021).

<sup>20</sup> MTN Group Limited, 'Annual Financial Statements for the year ended 31 December 2020', page 154, <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf> (accessed 18 July 2021).

<sup>21</sup> MTN Group Limited, 'Annual Financial Statements for the year ended 31 December 2020', page 12, <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf> (accessed 18 July 2021); M1 Group, 'History', <https://www.m1group.com/about-us/> (accessed 21 July 2021).

<sup>22</sup> MTN Group Limited, 'Annual Financial Statements for the year ended 31 December 2020', <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf> (accessed 18 July 2021).

<sup>23</sup> In relation to Yemen, see, for example, Mohammed AlMahdi, Mokhtar Alibrahim, Musa'ab Al Shawbkeh and Eman Asi, 'Shaher Abdulhak's Tax Havens Violate International Law', 22 July 2018,

Two lawsuits have recently been commenced against MTN. A lawsuit filed in December 2020 under US anti-terrorism legislation alleges that MTN (as well as five other MNEs) provided 'material support to known terrorist organisations' in Afghanistan (including al-Qaida and the Taliban), by either directly making or having reckless disregard to 'protection payments' to those organisations, in order to protect their business and divert attacks away from their business interests.<sup>24</sup> Another lawsuit filed in June 2021 alleges that MTN (alongside a Chinese technology company) conducted business with the Islamic Revolutionary Guard Corps with knowledge that such business would provide (financial and arms) support to the organisation for their campaign in Iraq.<sup>25</sup> Both lawsuits are ongoing.

Indeed, in August 2019, M1 Group was named in the United Nations Independent International Fact-Finding Mission on Myanmar ('Mission') as a result of its investment in tower company Irrawaddy Green Towers ('IGT'). The Mission found that IGT was a foreign company "with contractual or commercial ties" to the Myanmar military due to its business with military mobile operator Mytel. The Mission recommended that "no business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into or remain in a business relationship of any kind with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them (including subsidiaries) or their individual members."<sup>26</sup> IGT has not implemented the recommendations of the Mission and M1 Group continues to be in a commercial relationship with Mytel through its investment in IGT. Also in August 2019, M1 was added to Burma Campaign UK's 'Dirty List' of companies due to its ties to the Myanmar military.<sup>27</sup>

Individual members of the Mikati family have also been accused of serious crimes. In October 2019, Najib Mikati was charged with illegitimate gains by obtaining subsidised loans.<sup>28</sup>

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<https://en.arij.net/investigation/shaher-abdulahaks-tax-havens-violate-international-law/> (accessed 18 July 2021). In relation to Sudan, see, for example, 'MTN contributed to human rights violations in Sudan, say 23 civil society groups', Mail & Guardian, 10 July 2019, <https://mg.co.za/article/2019-07-10-mtn-contributed-to-human-rights-violations-in-sudan-say-23-civil-society-groups/> (accessed 18 July 2021).

<sup>24</sup> Elliot Smith, 'G4S and MTN sued over alleged 'protection payments' to terrorists in Afghanistan', CNBC, 2 January 2020, <https://www.cnbc.com/2020/01/02/g4s-mtn-sued-over-alleged-protection-payments-to-terrorists-in-afghanistan.html> (accessed 19 July 2021); BBC News, 'Telecom giant MTN accused of paying bribes to Taliban, al-Qaeda', 30 December 2019, <https://www.bbc.com/news/world-africa-50952001> (accessed 19 July 2021).

<sup>25</sup> Bloomberg, 'MTN Group, ZTE accused in U.S. suit of aiding Iraq terror', 23 June 2021, <https://www.bloomberg.com/news/articles/2021-06-23/mtn-group-zte-corp-accused-in-u-s-suit-of-aiding-iraq-terror> (accessed 20 July 2021); Tech Central, 'MTN, ZTE accused in US lawsuit of aiding Iraq terror', 24 June 2021, <https://techcentral.co.za/mtn-zte-accused-in-us-lawsuit-of-aiding-iraq-terror/108412/> (accessed 19 July 2021).

<sup>26</sup> Human Rights Council, 'The economic interests of the Myanmar military: Independent International Fact-Finding Mission on Myanmar', A/HRC/42/CRP.3, 5 August 2019, page 100, [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) (accessed 19 July 2021).

<sup>27</sup> Burma Campaign UK, 'About the company: M1 Group', 20 August 2019, <https://burmacampaign.org.uk/take-action/m1-group/> (accessed 18 July 2021). According to the Director of Burma Campaign UK, Mark Farmaner, M1 Group was included on the Dirty List for being a major shareholder in IGT: Myanmar Now, 'Telenor sells Myanmar operations to company on 'dirty list' for military ties', 8 July 2021, <https://www.myanmar-now.org/en/news/telenor-sells-myanmar-operations-to-company-on-dirty-list-for-military-ties> (accessed 18 July 2021).

<sup>28</sup> 'Lebanese prosecutor charges ex-PM Mikati, Bank Audi for "illegitimate" gains', Reuters, 23 October 2019, <https://www.reuters.com/article/lebanon-protests-mikati-idUSL5N2782N6> (accessed 18 July 2021). See also International Commission of Jurists, 'Lebanon: Stop removal of investigative authorities overseeing high-level

The Complainants are deeply concerned about the sale of Telenor Myanmar to M1 Group. There are real concerns for the safety and security of mobile users' data if the sale proceeds. Telenor Myanmar users' right to privacy is especially in danger of being breached.<sup>29</sup> The military junta in Myanmar has forced telecommunications providers – including Telenor Myanmar – to install intercept spyware, giving the junta the power to listen in on calls, view text messages and emails, as well as track the location of users without the assistance of telecommunications and internet companies.<sup>30</sup> Violations of the right to privacy may have cascading, negative impacts on other human rights, such as the prohibition of torture and the rights to life, liberty and freedom of expression.

Telenor has gained a reputation as the sole reliable mobile operator in the country, more significantly since the coup, largely due to the company's links to the Norwegian state. Telenor has resisted directives from the junta to temporarily block social media websites,<sup>31</sup> objected to a proposed change to Myanmar's cyber security law due to human rights and other considerations,<sup>32</sup> repeatedly advocated for the restoration of mobile services in Myanmar and emphasised the rule of law, upholding international human rights standards and mobile users' freedom of expression, opinion and association.<sup>33</sup> Indeed,

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corruption and criminal negligence cases', 4 May 2021, <https://www.ici.org/lebanon-stop-removal-of-investigative-authorities-overseeing-high-level-corruption-and-criminal-negligence-cases/> (accessed 18 July 2021). The International Commission of Jurists ('ICJ') criticised the removal of Ghada Aoun, Mount Lebanon Public Prosecutor, by Lebanon's General Prosecutor from the financial cases she had been overseeing, including Najib Mikati's illegitimate gains case. The Director of the ICJ's MENA Programme criticised the decision on the basis that it undermined the independence and functioning of the Lebanese judiciary. The ICJ has previously made findings on the independence and functioning of the Lebanese judiciary, including recommendations to ensure that the judiciary is not subject to any form of undue influence by political actors and confessional communities: International Commission of Jurists, 'Lebanon: The ICJ calls for extensive reforms to strengthen judicial independence and accountability', 28 February 2017, <https://www.ici.org/lebanon-the-ici-calls-for-extensive-reforms-to-strengthen-judicial-independence-and-accountability/> (accessed 18 July 2021). The Complainants note that there is no evidence that the Mikati family has unduly influenced the Lebanese judiciary.

<sup>29</sup> The right to privacy is enshrined in several international human rights instruments: Universal Declaration of Human Rights, article 12; International Covenant on Civil and Political Rights, article 17; European Convention on Human Rights, article 8.

<sup>30</sup> Fanny Potkin and Poppy Mcpherson, 'How Myanmar's military moved in on the telecoms sector to spy on citizens', Reuters, 19 May 2021, <https://www.reuters.com/world/asia-pacific/how-myanmars-military-moved-telecoms-sector-spy-citizens-2021-05-18/> (accessed 18 July 2021).

<sup>31</sup> Telenor Group, 'Directive to block social media service', 3 February 2021, <https://www.telenor.com/directive-to-block-social-media-service/> (accessed 18 July 2021); Telenor Group, 'Directive to block social media services Twitter and Instagram in Myanmar', 5 February 2021, <https://www.telenor.com/directive-to-block-social-media-services-twitter-and-instagram-in-myanmar/> (accessed 18 July 2021); Telenor Group, 'Directives from authorities in Myanmar – February-July 2021', <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/> (accessed 18 July 2021).

<sup>32</sup> Telenor Group, 'Telenor Group's response to proposed Myanmar Cyber Security Bill (Updated 8.3.2021)', 8 March 2021, <https://www.telenor.com/media/press-release/telenor-groups-response-to-proposed-myanmar-cyber-security-bill> (accessed 18 July 2021).

<sup>33</sup> See, for example, Telenor Group, 'Network restored in eight townships in Myanmar', 3 February 2021, <https://www.telenor.com/network-restored-in-eight-townships-in-myanmar/> (accessed 18 July 2021); Telenor Group, 'Telenor Myanmar stands with businesses in Myanmar', 19 February 2021, <https://www.telenor.com/media/press-release/telenor-myanmar-stands-with-businesses-in-myanmar> (accessed 18 July 2021); Telenor Group, 'Telenor Myanmar pays annual licence fee under strong protest – calls for immediate opening of data network', 26 March 2021, <https://www.telenor.com/media/announcement/telenor-myanmar->

CSOs recently acknowledged Telenor Myanmar's track record of acting responsibly.<sup>34</sup> It is for this reason that the sale of Telenor Myanmar to M1 Group is so troubling for these organisations and the people of Myanmar. In our opinion, Telenor Myanmar's 18.2 million mobile subscribers and the people they communicate with will foreseeably be negatively affected by the transaction, and the likely deterioration of their human rights. Accordingly, the Complainants submit that the due diligence conducted by Telenor in relation to the sale (if any) did not comply with the OECD Guidelines because it failed to identify, prevent and mitigate actual or potential impacts of the transaction.

Further, Chapter IV (Human Rights), OECD Guidelines relevantly provides:

**"1. Respect human rights**, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

...

**5. Carry out human rights due diligence** as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts."

Accordingly, Telenor's sale to the M1 Group also contravenes the Human Rights chapter of the OECD Guidelines.

## 2.2.2 Failure to meaningfully engage with relevant stakeholders

Chapter II (General Policies), OECD Guidelines states that MNEs should:

**"14. Engage with relevant stakeholders** in order to provide **meaningful opportunities** for their **views to be taken into account** in relation to planning and decision making for projects or other activities that may **significantly impact local communities**."

The OECD Due Diligence Guidance for Responsible Business Conduct ('OECD Guidance') also provides that MNEs considering disengagement from a business relationship should provide "detailed information supporting the decision to disengage" to key stakeholders, including trade unions.<sup>35</sup>

Regarding the sale of Telenor Myanmar to M1 Group, Telenor has neither consulted nor engaged with any of the 474 Myanmar-based CSOs on whose behalf SOMO has filed this complaint.<sup>36</sup> Notably, several of the notifying CSOs that previously communicated with Telenor in relation to its Myanmar operations' human rights responsibilities were not consulted in relation to the sale. These organisations are 'relevant stakeholders' as they are concerned with a wide range of human rights issues throughout

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[pays-annual-licence-fee-under-strong-protest-calls-for-immediate-opening-of-data-network](#) (accessed 18 July 2021).

<sup>34</sup> Joint statement by 464 civil society organisations, 'Myanmar civil society calls on Telenor and the Norwegian government to cancel sale of Myanmar business to M1 Group', 12 July 2021, <https://progressivevoicemyanmar.org/2021/07/12/myanmar-civil-society-calls-on-telenor-and-the-norwegian-government-to-cancel-sale-of-myanmar-business-to-m1-group/> (accessed 18 July 2021).

<sup>35</sup> OECD, 2011, OECD Due Diligence Guidance for Responsible Business Conduct, page 80.

<sup>36</sup> Joint statement by 464 civil society organisations, 'Myanmar civil society calls on Telenor and the Norwegian government to cancel sale of Myanmar business to M1 Group', 12 July 2021, <https://progressivevoicemyanmar.org/2021/07/12/myanmar-civil-society-calls-on-telenor-and-the-norwegian-government-to-cancel-sale-of-myanmar-business-to-m1-group/> (accessed 18 July 2021).

Myanmar, including the rights to privacy and freedom of information. Accordingly, Telenor has not provided meaningful opportunities for stakeholders' views to be taken into consideration in its disengagement decision-making process. Further, as noted in section 2.2.1, the sale of Telenor Myanmar to M1 Group will arguably have a considerable and adverse impact on the human rights of Telenor's mobile users in Myanmar.

### 2.2.3 Lack of transparency regarding disengagement decision-making

Chapter III (Disclosure), OECD Guidelines relevantly provides:

“1. Enterprises should ensure that **timely and accurate information** is disclosed on **all material matters** regarding their **activities**, structure, financial situation, performance, ownership and governance. This information should be disclosed for the **enterprise as a whole**, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Disclosure policies of enterprises should include, but not be limited to, material information on:

...

f) **foreseeable risk factors**; ...” (Emphasis added)

Except for Telenor's press release announcing the sale of Telenor Myanmar to M1 Group, Telenor has not made publicly available any other material information.<sup>37</sup> This is striking in light of the previously discussed, foreseeable risks associated with M1 Group. If the sale proceeds, 18.2 million mobile users currently subject to Telenor's internal and external regulatory frameworks (including internal company policies as well international responsible business conduct standards ('RBC')) will be subject to the decisions and policies of M1 Group. This is alarming given M1 Group's history of entering into business contexts with authoritarian regimes with little or no regard for international human rights law.

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<sup>37</sup> The 2020 Ranking Digital Rights Corporate Accountability Index ranked Telenor equal third of 12 telecommunications MNEs based on the company's disclosed commitments, policies and practices affecting the freedom of expression and privacy of internet users worldwide: Ranking Digital Rights, 'About Ranking Digital Rights', <https://rankingdigitalrights.org/about/> (accessed 18 July 2021); Ranking Digital Rights, 'Telenor ASA', <https://rankingdigitalrights.org/index2020/companies/Telenor> (accessed 18 July 2021). However, Telenor's failure to adequately disclose information was repeatedly highlighted. For example, Telenor reportedly “lacked sufficient transparency about whether it conducts regular, comprehensive, and credible human rights due diligence across all aspects of its operations”, “did not disclose the number or nature of content blocking and account restriction actions it took to enforce its own rules” and “disclosed less about its security policies than most of its European peers, disclosing almost no information about how it addresses security vulnerabilities”. Ranking Digital Rights recommended for Telenor to increase its disclosure to users and improve its human rights due diligence processes. Telenor Group released a press release announcing its rank in the 2020 Ranking Digital Rights Corporate Accountability Index: Telenor Group, 'Telenor places third among telcos on 2020 Ranking Digital Rights Corporate Accountability Index', 25 February 2021, <https://www.telenor.com/media/announcement/telenor-places-third-among-telcos-on-2020-ranking-digital-rights-corporate-accountability-index> (accessed 18 July 2021).

### 2.3 Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

The Complainants submit that there is a clear link between the sale of Telenor Myanmar to M1 Group and the alleged contraventions of the OECD Guidelines (as outlined in section 2.2 of this complaint).

### 2.4 The relevance of applicable law and procedures, including court rulings

The OECD Guidelines and UNGPs are the most authoritative international standards on RBC, human rights due diligence and (ir)responsible disengagement. The principles and standards contained in both instruments are applicable.

The Complainants submit that Myanmar law is not applicable to the complaint. Norway has “clearly condemned” the military coup and does not recognise the junta as a legitimate authority.<sup>38</sup> While regulatory approval by the Posts and Telecommunications Department of Myanmar’s Ministry of Transport and Communications (‘Department’) is required for the sale of Telenor Myanmar to M1 Group, such approval does not take into consideration the (adverse) human rights impacts of the transaction. However, as the Department is currently under the control of the ‘illegal’ and ‘illegitimate’ military junta,<sup>39</sup> compliance with any decision of the Department would arguably constitute de facto recognition of the authority of the junta.

The Complainants are not aware of any relevant domestic or international court rulings.

### 2.5 How similar issues have been, or are being, treated in other domestic or international proceedings

The Complainants are aware of only one domestic or international proceeding similar to the present complaint. On 16 December 2019, the Committee Seeking Justice for Alethanyaw (‘CSJA’) filed a specific instance against Telenor to the Norwegian NCP. CSJA claims, among other things, that Telenor failed to carry out appropriate human rights due diligence in its Myanmar business.<sup>40</sup> The NCP found that the issues raised in the complaint merited further consideration and decided to proceed with the complaint.<sup>41</sup> The complaint is currently in progress.

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<sup>38</sup> Ministry of Foreign Affairs, Norway, ‘Grave situation in Myanmar’, 9 February 2021, [https://www.regjeringen.no/en/aktuelt/myanmar\\_grave\\_situation/id2833577/](https://www.regjeringen.no/en/aktuelt/myanmar_grave_situation/id2833577/) (accessed 18 July 2021).

<sup>39</sup> See Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, A/HRC/46/56, 4 March 2021, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_56.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf) (accessed 18 July 2021).

<sup>40</sup> See National Contact Point for Responsible Business Conduct Norway, ‘Committee Seeking Justice for Alethanyaw (CSJA) vs. Telenor’, <https://www.responsiblebusiness.no/committee-seeking-justice-for-alethanyaw-csja-vs-telenor/> (accessed 8 July 2021).

<sup>41</sup> National Contact Point for Responsible Business Conduct Norway, ‘Initial assessment: Committee Seeking Justice for Alethanyaw (CSJA) vs. Telenor Group’, 28 October 2020, [https://files.nettsteder.regjeringen.no/wpuploads01/blogs.dir/263/files/2020/10/CSJA-Telenor\\_Initial-Assessment\\_EN.pdf](https://files.nettsteder.regjeringen.no/wpuploads01/blogs.dir/263/files/2020/10/CSJA-Telenor_Initial-Assessment_EN.pdf) (accessed 18 July 2021).

## 2.6 Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

Consideration of the complaint by the Norwegian NCP would greatly contribute to the purposes and effectiveness of the OECD Guidelines. Facilitated dialogue by the NCP between the parties to the complaint, with the aim of ensuring Telenor's Myanmar operations comply with the principles and standards of the OECD Guidelines, would be especially useful for the resolution of the issues raised in this complaint.

If the NCP decides that the issues raised merit further examination and offers its good offices to the parties, the Complainants would seek the following outcomes through this process:

1. Suspension of the sale of Telenor Myanmar to M1 Group until such time as Telenor conducts human rights due diligence in accordance with the OECD Guidelines.
2. For Telenor to disclose information on human rights due diligence (if any) that it conducted in relation to the sale of Telenor Myanmar to M1 Group.<sup>42</sup> Alternatively, for Telenor to conduct comprehensive risk-based human rights due diligence on the sale, including to prevent and mitigate actual and potential adverse human rights impacts that they cause or to which they contribute, or alternatively to seek to prevent or mitigate adverse impacts to which they are directly linked (including, for example, to suspend the sale of Telenor Myanmar until a more responsible buyer is identified).
3. For Telenor to meaningfully engage with key stakeholders on the sale of Telenor Myanmar (including, for example, CSOs, journalists and their mobile users).
4. For Telenor to be more transparent about human rights due diligence (if any) that it has conducted and its reasons for leaving Myanmar.
5. Generally, to act in accordance with its obligations under the OECD Guidelines and UNGPs in relation to responsible disengagement.

## 3 Conclusion and recommendations

In conclusion, the Complainants contend that Telenor has irresponsibly disengaged from its Myanmar operations. This contention has three limbs: (1) inadequate human rights due diligence, negatively affecting human rights; (2) failure to meaningfully engage with stakeholders; and (3) failure to be transparent in relation to its disengagement decision.

Considering that an agreement between Telenor and M1 Group has already been signed and the worsening human rights situation in Myanmar, the Complainants respectfully request for the Norwegian NCP to expedite this complaint and to swiftly conduct its initial assessment. If the NCP determines that the issues raised merit further examination, the NCP is encouraged to promptly offer good offices to the parties with a view to the resolution of the issues raised in the complaint.

If Telenor declines the NCP's offer of good offices, or alternatively if good offices between the parties fail to reach a mutually agreeable solution, the Complainants encourage the NCP conduct its own fact-finding (potentially involving a third-party examination of the issues raised) and/or develop Terms of Reference for a fact-finding report in dialogue with the parties to the complaint. In any case, the Complainants respectfully request that the NCP issue a public statement, including a determination on

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<sup>42</sup> The OECD Guidance makes clear that MNEs are expected to include risks associated with corruption in their due diligence, and thus also in their disengagement due diligence.

Telenor's compliance with the OECD Guidelines and recommendations for Telenor to ensure that it acts responsibly in the future.