



29 August 2022

FINAL STATEMENT:

COMMITTEE SEEKING JUSTICE FOR ALETHANKYAW VS. TELNOR ASA

As stated in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a Specific Instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available. As Specific Instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

This final statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to examine the issues raised in the submission. This statement also identifies recommendations made by the NCP to the enterprise on the implementation of the Guidelines.

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1 EXECUTIVE SUMMARY

On 16 December 2019, the Committee Seeking Justice for Alethankyaw (CSJA) submitted a complaint to the Norwegian National Contact Point (NCP), alleging non-observance of the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) by Telenor ASA and its wholly-owned subsidiary, Telenor Myanmar Ltd (TML).

The complaint primarily concerns an incident where a telecommunications tower owned and operated by a tower infrastructure vendor to TML allegedly was used in a military operation to kill and drive out unarmed civilians from Alethankyaw in Rakhine State in Myanmar in August 2017. The complainants allege that Telenor and its Myanmar subsidiary have breached the OECD Guidelines in failing to perform due diligence and proper risk assessments, which resulted in this misuse of the inactive tower. It also raises issues concerning land use and Telenor's role in a network shutdown in 2019. CSJA asks for a fair and unbiased investigation of the issues raised in the complaint and does not seek financial compensation.

In its Initial Assessment of 28 October 2020, the Norwegian NCP found that the main issue in the complaint is whether the enterprise, Telenor, has exercised ongoing due diligence for responsible business conduct in accordance with the OECD Guidelines. The NCP offered its good offices to the Parties. The Complainants did not wish to engage in dialogue and mediation, citing a lack of trust in the company and calling for an independent investigation of what happened at the tower in August 2017. The NCP proceeded to examine the issues raised in the complaint in line with the Examination Stage in the Procedural Guidelines of the Norwegian NCP. The Final Statement is based on the documentation submitted by the parties and gathered by the NCP following the Initial Assessment. Based on this documentation, the NCP has assessed the issues raised in the complaint in relation to the recommendations in the OECD Guidelines.

The NCP has determined that Telenor in general sought to respect human rights and carry out due diligence in accordance with the OECD Guidelines in its operations in Myanmar. There were several positive features in Telenor's efforts to identify, prevent and mitigate human rights risks and communicate about these in Myanmar. The NCP also, however, has found room for improvement when it comes to due diligence and stakeholder engagement in view of the context that evolved in Myanmar. In general, the NCP observes that engagement with stakeholders did not sufficiently prioritise the most vulnerable groups; in this case, the Rohingya.

When it comes to the main issue raised in the complaint, the NCP has not found grounds to conclude that Telenor caused or contributed to the misuse of a telecommunications tower owned and operated by a TML vendor in August 2017 in Alethankyaw. Telenor's operations were, however, directly linked to the adverse impact through a business relationship. The risk of misuse of the tower was not identified in Telenor's due diligence and was, in the view of the NCP, not reasonably foreseeable at the time. Today, however, the risk of misuse of telecommunications

infrastructure for harmful purposes is a risk that is known and therefore must be identified and mitigated in Myanmar and other high-risk contexts. Telenor has informed the NCP that this risk has subsequently been incorporated into Telenor's risk assessments. When it comes to the issues raised concerning land use and internet shutdown orders, the NCP finds that Telenor identified and worked to mitigate these risks, in pre-investment and ongoing due diligence.

The OECD Guidelines and accompanying guidance call for enhanced, proactive and reactive due diligence in conflict-affected and high-risk areas. The escalation of the conflict in Myanmar constitutes a context where the risks of adverse impacts on human rights were severe. Enhanced due diligence in such contexts calls for identifying the risk of complicity with human rights violations and due diligence with respect to the risk of doing business with the military or entities linked to the military. It calls for stakeholder engagement where the most vulnerable and severely impacted groups are given particular attention and prioritized for engagement.

2 BACKGROUND AND PROCEEDINGS

2.1 THE NCP AND ITS ROLE

The OECD Guidelines for Multinational Enterprises (the OECD Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.

The OECD Guidelines are supported by National Contact Points (NCPs), established by adhering governments to promote and implement the Guidelines. The NCPs provide a mediation and conciliation platform for resolving issues that may arise from the alleged non-observance of the Guidelines in Specific Instances.

The Norwegian NCP consists of four independent experts and is supported by a secretariat. The NCP promotes and raises awareness about the OECD Guidelines and handles Specific Instances in accordance with the Procedural Guidance of the OECD Guidelines and the Procedural Guidelines for handling specific instances of the Norwegian NCP.¹

2.2 THE PARTIES

The complainants are members of the Committee Seeking Justice for Alethanyaw (CSJA), comprising eight former residents of the village Alethanyaw in the Maungdaw Township in Rakhine State in Myanmar. They currently reside in a refugee camp in Bangladesh. According to

¹ National Contact Point Norway (2014), [Procedural Guidelines for Handling Specific Instances – NCP Norway](#).

the head of the CSJA, the Committee represents 9,000 villagers from Alethankyaw.² The complainants are represented by Tin Soe, Executive Editor of the Kaladan Press Network. Kaladan Press Network was established as the first Rohingya news agency in 2001.

Telenor Group is a multinational telecommunications enterprise headquartered in Norway. In January 2014, Telenor received a 15-year telecommunication service license in Myanmar, which officially began in September 2014. TML was a wholly owned subsidiary of Telenor ASA. The military operation that is the backdrop to the complaint involves the use of a tower owned and operated by a network vendor, Irrawaddy Green Towers (IGT). Telenor confirms that TML had a business relationship with IGT at the time of the incident raised in the complaint.

2.3 THE COMPLAINT

The complaint was submitted to the NCP on 16 December 2019. In their submission, the complainants allege that Telenor and its Myanmar subsidiary have breached the OECD Guidelines in failing to perform due diligence and proper risk assessments, which “resulted in the tower in Telenor’s cellular network being used to kill and drive out unarmed civilians from Alethankyaw”.³ The complainants furthermore claim that Telenor has handled the matter in a manner not consistent with the Guidelines after becoming aware of what took place at the tower, both when it comes to due diligence requirements when operating in conflict zones and in failing to disclose information regarding the activities of subcontractors.⁴

The complaint calls on Telenor to disclose the relationship between the firms and/or vendors and subcontractors involved in the operation of the tower and whether these firms are connected to the Myanmar security forces. The complainants request Telenor to disclose information on how the land used for the tower originally was confiscated from local Rohingya villagers by the local government administration.⁵ Finally, the complaint asserts that Telenor complied with orders from the Ministry of Transport and Communications (MoTC) to cease all mobile internet traffic in nine townships in Rakhine and Chin States on 21 June 2019.⁶

The complaint refers to the report of the UN Special Rapporteur on the situation of human rights in Myanmar,⁷ the Independent International Fact-Finding Mission on Myanmar (hereafter

² Letter from CSJA to the NCP, 1 February 2020.

³ Complaint from CSJA, p. 3. The complaint and the response from the company are published on the NCP website: [Committee Seeking Justice for Alethankyaw \(CSJA\) vs. Telenor – Ansvarlig Næringsliv \(responsiblebusiness.no\)](https://www.responsiblebusiness.no/committees/alethankyaw-vs-telenor)

⁴ Complaint from CSJA, p. 4.

⁵ Complaint from CSJA, p. 4.

⁶ Complaint from CSJA, p. 6.

⁷ Report of the Special Rapporteur on the situation of human rights in Myanmar, doc A/HRC/40/68, 5 March 2019. Available at: [G1912146.pdf \(un.org\)](https://www.un.org/ruhr/20190305).

referred to as “IIFMM”),⁸ as well as a statement from the UN Special Rapporteur on the right to freedom of expression.⁹ It makes extensive reference to the The Killing Fields of Alethanyaw (2018) by the Kaladan Press Network (hereafter referred to as the “KPN report”).¹⁰

2.4 RESPONSE FROM THE COMPANY

In their response to the complaint of 17 February 2020, Telenor states that they view 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 Alethanyaw in August 2017.”¹¹ Telenor does not agree with the allegation that Telenor bears responsibility for what took place on the tower. The company addresses this and other issues in their response to the complaint. The response is published on the NCP website. It is summarised in the Initial Assessment by the NCP and is referred to in the examination of the issues raised in Section 3 of this Final Statement.

2.5 INITIAL ASSESSMENT BY THE NCP

The NCP published its Initial Assessment on 28 October 2020.¹² The NCP came to the following conclusions and next steps in handling the Specific Instance:

The NCP finds that the complaint raises issues that merit further examination, and has decided to proceed with the complaint. The OECD Guidelines apply to Telenor and there seems to be a link between the enterprises’ activities and issues raised in the complaint. The complainant has provided sufficient information regarding their identity and interest in the specific instance. The complaint is material and substantiated by fact-finding reports. There are no parallel procedures that would prejudice handling the complaint.¹³

The NCP is of the view that considering the specific instance may contribute to the purpose and effectiveness of the Guidelines. There are few specific instances that address corporate conduct and due diligence in situations of armed conflict, and contexts characterised by the most serious violations of international law. The importance of ensuring adherence to the OECD Guidelines in such contexts means that there would need to be compelling reasons for the NCP to find that the complaint does not merit further examination. The NCP

⁸ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/42/CRP.5, 16 September 2019. Available at: [A/HRC/42/CRP.5 \(ohchr.org\)](https://www.ohchr.org/en/docid/4249121.pdf).

⁹ UN OHCHR, DisplayNews, 7 January 2019, “[UN expert urges DRC to restore internet services.](#)”

¹⁰ Kaladan Press Network (2018), The Killing Fields of Alethanyaw. Available at: <https://kaladanpress.org/images/document/2018/KillingFieldsWEB-01.pdf>.

¹¹ Telenor response to complaint, p. 1.

¹² Initial Assessment of the NCP (2020), Committee Seeking Justice for Alethanyaw (CSJA) vs. Telenor Group, p. 9. Available at: [CSJA-Telenor Initial-Assessment_EN.pdf \(regjeringen.no\)](#).

¹³ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (para 25). See also Procedural Guidelines for handling specific instances – NCP Norway.

has not, at this stage, expressed any view as to whether the company has acted consistently with the OECD Guidelines.

The company has expressed a wish to engage in dialogue with the complainant. The complainant has expressed willingness to cooperate with the NCP, but does not at present wish to engage in dialogue with the company. The absence of dialogue between the parties may limit the opportunities for arriving at a resolution of the issues raised, but the NCP will extend its good offices to each party with a view to handling the complaint in accordance with the Guidelines. The process may include a third-party examination of the issues raised, and/or developing a Terms of Reference for a fact-finding report, in dialogue with each party.

2.6 PROCEEDINGS FOLLOWING THE INITIAL ASSESSMENT

The goal of the Specific Instance procedure is to resolve the issues raised. The NCP offered its good offices to the parties, but the complainants did not wish to engage in dialogue with the company. The complainants cited a lack of trust in the company and called for an independent investigation of what happened at the tower in August 2017.¹⁴ The complainants explained this as follows:

The reason is that CSJA has seen no evidence of “good faith” from Telenor in handling the incident. Since evidence of the use of the Telenor communication tower in Alethankyaw for genocidal acts by the Burma military was first publicized, Telenor has consistently denied responsibility and taken the side of the Burmese authorities. We believe that Telenor will exploit any direct contact with us to undermine the viability of the complaint.¹⁵

As indicated in the Initial Assessment, the absence of dialogue between the parties limits the opportunities for arriving at a resolution of the issues raised. The opportunity to address the issues raised through mediation – the most effective way to contribute to a resolution – was impeded by the complainants’ standpoint not to engage in a dialogue with the company. The ability to examine the issues raised has furthermore been limited due to the situation in Myanmar and the Covid-19 pandemic. The complainants have, for certain periods of time, not responded to messages from the NCP. Handling the Specific Instance has also been complicated by the company’s serious concerns pertaining to the evolving security situation in Myanmar and its requests for confidentiality regarding information shared with the NCP.

In the absence of dialogue between the parties, the NCP proceeded to examine the issues raised in line with the Procedural Guidelines for handling specific instances of the Norwegian NCP. The NCP’s examination entailed gathering information from the complainants and the company as well as documentation from other sources, including independent experts. The NCP regrets that

¹⁴ Letter from CSJA to the NCP, 19 December 2019.

¹⁵ Letter from CSJA to the NCP, 5 October 2020.

the timeline for handling Specific Instances has not been upheld. The following table summarizes actions in the NCP’s examination of the issues raised in the complaint after the Initial Assessment of 28 October 2020.

Date	Action that occurred
17 November 2020	Orientation meeting between NCP and Telenor
26 November 2020	NCP shares questions from complainants of September 2020 with Telenor, informing that the Parties would later receive a list of issues for examination
17 December 2020	Webinar with NCP and independent expert, Anna Triponel
18 December 2020	Orientation meeting between NCP and complainants
12 January 2021	NCP shares general issues for examination with the Parties (Annex 1)
22 February 2021	NCP meets with Telenor to explain process of examination, after which Telenor shares further documentation with the NCP
15 April 2021	NCP shares documentation from Telenor and documentation gathered from other sources with the complainants; NCP asks complainants for confirmation of receipt on 20 April 2021 and 20 May 2021 (no response)
3 May 2021	NCP meets with Telenor and representatives from Business for Social Responsibility (BSR) concerning pre-investment due diligence
3 June 2021	NCP shares list of specific questions with Telenor (Annex 2), based on questions from Complainants from September 2020 and information gathered to date
7 June 2021	NCP meets with Telenor and TML staff to receive response to above questions
14 June 2021	NCP shares follow-up questions with Telenor (Annex 2)
22 June 2021	NCP informs complainants that summary of documentation will be shared for comments (no response); follow-up email sent on 27 August 2021 (no response)
2 July 2021	In response to questions from NCP, Telenor shares information on mitigation / leverage measures relating to internet shutdowns in advance of meeting with NCP
5 July 2021	NCP meets with Telenor to receive response to remaining questions
30 August 2021	NCP calls CSJA to inform about process, after which CSJA confirms that they are still part of the process and will review documents shared
18 October 2021	NCP meets with Telenor and receives information on Human Rights Impact Assessment and follow-up
13 December 2021	NCP shares summary of documentation compiled in meetings with Telenor for any factual corrections; Telenor requests extension of deadline and a meeting with the NCP on 13 January 2022, where Telenor raises concerns about security of staff

8 February 2022	Telenor requests documentation summary to be treated as internal document in the NCP, citing serious security concerns with sharing any non-public information
13 May 2022	Draft Final Statement is shared with both parties for comments; Complainants ask for extension of deadline through 10 June 2022, which is granted to both parties
10 June 2022	NCP receives input from both parties and finalises Final Statement. Parties receive draft Final Statement for a final review on 21 July 2022
29 August 2022	NCP publishes Final Statement

3 EXAMINATION BY THE NCP

In its Initial Assessment, the NCP found that the main question in the submission was whether Telenor has conducted ongoing due diligence in accordance with the OECD Guidelines. The complaint primarily concerns an incident where an inactive telecommunication tower vendor to Telenor was allegedly used by the military as a vantage point to kill and drive out unarmed civilians from Alethankyaw, Rakhine State, in August 2017. It also raises issues concerning disclosure regarding land use and Telenor’s role in a network shutdown.

In its Initial Assessment, the NCP considered that other, ongoing fact-finding and investigations are mainly aimed at the responsibility of the authorities and military in Myanmar and therefore would not prejudice the NCP’s examination of the issues raised in the complaint. The NCP has been unable to undertake a fact-finding mission as a basis for its examination of the issues raised in the Specific Instance. The capabilities of NCPs are limited in this regard. Still, the NCP has reviewed documentation submitted by both parties as well as information gathered from other sources, especially UN fact-finding missions. This review forms the basis for the NCP’s findings and recommendations with respect to the issues raised in the complaint.

The issues raised in the complaint relate to Chapter II (General Policies), Chapter III (Disclosure) and Chapter IV (Human Rights) of the OECD Guidelines. The following sections summarise the findings of the NCP in relation to the issues raised in the complaint.

3.1 BACKGROUND AND CONTEXT

In 2011, the government of Myanmar embarked on wide-ranging reforms towards political and economic liberalization and opened the telecommunications sector to foreign companies. In 2012, it was estimated that around 6 percent of Myanmar’s population owned a mobile phone, and

around one percent had broadband internet access in 2012.¹⁶ In January 2013, the government created two new operating licenses and invited expressions of interest from international firms. The Telecommunications Law (Law No. 31/2013) was passed by the parliament on 8 October 2013.¹⁷ In 2014, TML and Ooredoo Myanmar Limited (Qatar) received licenses to compete with the government-owned Myanmar Posts and Telecommunications (MPT), which had previously been the sole operator in the sector.¹⁸

When reforms began in Myanmar in 2011, a succession of military regimes had ruled the country since 1962. Myanmar had been a country of concern for the United Nations for more than 30 years, and resolutions had condemned the human rights situation since 1991. For nearly three decades, five consecutive Special Rapporteurs on the situation of human rights in Myanmar presented annual reports to the UN General Assembly and the UN Human Rights Council on the human rights situation. Successive special rapporteurs concluded that patterns of human rights violations were widespread and systematic, linked to State and military policy.¹⁹ All UN Special Rapporteurs for human rights in Myanmar, and other human rights mechanisms, have expressed grave concern regarding the situation of the Rohingya in Rakhine State.²⁰

The situation of the Rohingya was aggravated by their gradually increasing exclusion from the nation since the 1960s, leading to their de facto statelessness. While other ethnic and religious minorities are accepted, at least in theory, under their “national race” status, “the Rohingya’s lack of status has dramatically increased their vulnerability and contributed to the extreme scale and intensity of the violence against them”.²¹ In 2012, two waves of violence swept Rakhine State, displacing more than 140,000 people, most of whom were Rohingya.²² On 9 October 2016, the Arakan Rohingya Resistance Army (ARSA) launched an offensive against three border guard police posts in northern Rakhine State.²³

¹⁶ On 13 September 2019, the UN Special Rapporteur on the situation of human rights in Myanmar and the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression sent a letter to Telenor with questions relating to the shutdown orders. Telenor responded on 13 November 2019 (hereinafter referred to as Telenor response to UN Special Rapporteurs (2019)). See p. 8 of the response, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34955>.

¹⁷ Available at: [2013-10-08-Telecommunications_Law-en.pdf \(burmalibrary.org\)](#). See also OECD Investment Policy Review of Myanmar (2014) and [Myanmar Moves Toward Connectivity for All \(worldbank.org\)](#).

¹⁸ Report of the detailed findings of the independent international fact-finding mission on Myanmar A/HRC/39/CRP.2 17 September 2018, footnote 2973.

¹⁹ Report of the independent international fact-finding mission on Myanmar A/HRC/39/64 12 September 2018, para 11, para 14.

²⁰ Report of the detailed findings of the independent international fact-finding mission on Myanmar, para 100.

²¹ Report of the independent international fact-finding mission on Myanmar, doc. A/HRC/39/64, 12 September 2018, para 81.

²² Report of the independent international fact-finding mission on Myanmar, para 24, 28, 29.

²³ Report of the independent international fact-finding mission on Myanmar, para 44.

On 24 March 2017, the Human Rights Council issued a resolution condemning the attacks and resolving to dispatch an independent international fact-finding mission – the IIFFMM. The mission’s mandate was to establish the facts and circumstances of the alleged recent human rights violations by military and security forces with a view to ensuring full accountability for perpetrators and justice for victims.²⁴ According to IIFFMM, the outbreak of major violence in Rakhine State in 2012 and in 2016 were turning points, generating renewed allegations of serious human rights violations and abuses.²⁵ The mission details the violence in northern Rakhine State on 25 August 2017. By mid-August 2018, nearly 725,000 Rohingya had fled to Bangladesh and thousands were killed or injured.²⁶

The IIFFMM establishes consistent patterns of human rights violations and abuses in Rakhine State. It concludes that members of the military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes.²⁷ The mandate of the IIFFMM ended in September 2019, and the mission handed over its evidence to the Independent Investigative Mechanism for Myanmar (IIMM). The IIMM is mandated to collect, consolidate, preserve and analyze evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011.

In January 2020, the International Court of Justice (ICJ) imposed provisional measures ordering Myanmar to comply with obligations under the Convention on the Prevention and Punishment of the Crime of Genocide and urging the country to take all measures within its power to protect the killing of Rohingya or causing bodily or mental harm to members of the group.²⁸

3.2 DID TELENOR CARRY OUT HUMAN RIGHTS’ DUE DILIGENCE IN LINE WITH RECOMMENDATIONS IN THE OECD GUIDELINES?

The NCP is of the view that the main issue in the complaint is whether Telenor has exercised human rights due diligence in line with the OECD Guidelines. The complainants allege that Telenor and its Myanmar subsidiary have breached the OECD Guidelines in failing to perform due diligence and proper risk assessments, which “resulted in the tower in Telenor’s cellular network being used

²⁴ Resolution adopted by the Human Rights Council on 24 March 2017, A/HRC/RES/34/22, para 7 and 11.

²⁵ Report of the independent international fact-finding mission on Myanmar, doc. A/HRC/39/64, 12 September 2018, para 10.

²⁶ Report of the independent international fact-finding mission on Myanmar, doc. A/HRC/39/64, 12 September 2018, para 32 - 36. According to the IIFFMM, satellite imagery and first-hand accounts confirm widespread, systematic, deliberate and targeted destruction of Rohingya-populated areas across the three townships. At least 392 villages were partially or totally destroyed. More than 70 percent of the villages destroyed were in Maungdaw, where the majority of Rohingya lived. Rohingya-populated areas were specifically targeted. See para 42 of the report.

²⁷ Report of the detailed findings of the independent international fact-finding mission on Myanmar, para 747.

²⁸ International Court of Justice, 23 January 2020. Application of the Convention on the prevention and punishment of the crime of genocide (the Gambia v. Myanmar). Request for the indication of provisional measures. Order.

to kill and drive out unarmed civilians from Alethankyaw”.²⁹ The complainants furthermore claim that Telenor has handled the matter in a manner not consistent with the Guidelines after becoming aware of what took place at the tower, both when it comes to due diligence when operating in conflict zones and in failing to disclose information regarding the activities of subcontractors.³⁰

According to Chapter IV (Human Rights) of the OECD Guidelines, enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

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.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
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.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Telenor has submitted documentation to the NCP regarding their policy commitment to respect human rights and how this is reflected in policies and procedures in relation to the Myanmar operations. According to the *Group Policy Sustainability*, Telenor employs an ongoing process of human rights due diligence to identify, prevent, mitigate and account for how to address human rights impacts. Telenor has developed a *Group Manual Human Rights Due Diligence* and a *Human Rights Due Diligence Toolkit*. Grievances are reported through Telenor’s Integrity Hotline.³¹ Telenor’s *Supplier Conduct Principles* include commitments to respect internationally recognized human rights.³² Telenor has communicated about risks and mitigation in annual Sustainability

²⁹ Complaint from CSJA, p. 3.

³⁰ Complaint from CSJA, p. 4.

³¹ Telenor response to UN Special Rapporteurs (2019).

³² The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (1966).

Briefings in Myanmar since 2014. Telenor’s sustainability reports and statements relating to specific risks have been published on its website on a regular basis.

Before Telenor entered Myanmar, Telenor conducted its own due diligence and commissioned third-party pre-investment due diligence.³³ Business for Social Responsibility (BSR) began the pre-investment due diligence for Telenor in late 2012,³⁴ highlighting six issues: institutional capacity development, legal framework around the whole operation, corruption issues, land issues, health and safety, and conflict in specific minority areas. These issues were “presented to the investor community as the key risks to focus on in Myanmar and have since then been the focus of the management and TML”.³⁵ Telenor Group and TML implemented policies, processes and initiatives to address these issues, including Integrity Due Diligence processes on vendors and partners and ABC contracts on vendors and business partners. The ABC contracts incorporate the *Supplier Conduct Principles* and are followed up through inspections.³⁶

The ongoing conflict and entry into ethnic areas was one of the six key focus areas for Telenor in Myanmar. When it comes to conflict areas, Telenor notes the following:

During the time when Telenor entered Myanmar there were bilateral ceasefire agreements signed with most of the ethnic groups although the situation remained quite unstable. There is estimated to be or defined to be 135 ethnic groups in Myanmar and they make up around one third of the population. Their interests are related to self-rule, democracy, protection of local language, culture as well as access to natural resources. Our approach to these areas has always been that they are part of our rollout obligation and they represented approximately 30% of our expected customer base [...].³⁷

According to the CEO of Telenor, expanding to rural and ethnic areas clearly represented greater risks and opportunities to contribute to development of Myanmar.³⁸ When entering deep rural areas, Telenor anticipated encountering ongoing armed conflict, including in Northern Rakhine State. Personnel security was paramount, and a security team was employed from the beginning to maintain the safety of employees and communicate with employees of vendors.³⁹ Telenor’s stakeholder engagement included local and international civil society organisations. At the onset of setting up operations, TML established a community outreach team with eight State Liaison Officers (SLOs) representing different ethnicities and covering the different conflict states, such as Kachin, Shan, Kayah, Kayin, Mon, Chin and Rakhine.⁴⁰ According to Telenor, their job has been

³³ Telenor response to complaint, p. 2.

³⁴ [Telenor: Responsible Decision-Making in Myanmar | Case Studies | BSR](#).

³⁵ Telenor response to UN Special Rapporteurs (2019), p. 6.

³⁶ Telenor response to UN Special Rapporteurs (2019), p. 8 – 9.

³⁷ Telenor response to UN Special Rapporteurs (2019), p. 7.

³⁸ Telenor Myanmar Sustainability Briefing (2015).

³⁹ Telenor Myanmar Sustainability Briefing (2018).

⁴⁰ Telenor response to complaint, p. 2 – 3.

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.⁴¹ Telenor states that they held several community engagement meetings including in the ethnic states between 2014 and 2018.⁴²

On a general level, the NCP finds several positive features in Telenor's efforts to identify, prevent and mitigate risks of adverse human rights impacts and communicate about these. Human rights policies are included in contracts with vendors and business partners and followed up. Telenor has emphasised the importance of stakeholder engagement, through SLOs, public briefings and otherwise. Due diligence and risk mitigation has focused on the six issues that were identified in the pre-investment due diligence. Public briefings indicate that due diligence has been ongoing.

The NCP also found room for improvement when it comes to due diligence efforts in view of the context that evolved in Myanmar and the severity of risks and adverse human rights impacts due to the conflict. According to the OECD Guidelines, human rights due diligence should be appropriate to the context, among other factors. The Commentary to Chapter IV (Human Rights) of the OECD Guidelines elaborates on what human rights due diligence may entail in particular contexts:

40. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them [...]. Moreover, in situations of armed conflict, enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.

The OECD Due Diligence Guidance for Responsible Business Conduct (2018) highlights that when the likelihood and severity of an adverse impact is high, then due diligence should be "more extensive".⁴³ The OECD Minerals Guidance – which on this point has general interest – recognises that "given the complex operating environments of... high-risk areas, where conditions can evolve and degenerate rapidly, due diligence is understood as an *ongoing proactive and reactive process*".⁴⁴ The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector addresses stakeholder engagement in high-risk areas, and provides guidance of

⁴¹ Telenor response to complaint, p. 3.

⁴² Telenor response to complaint, p. 3.

⁴³ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p.17.

⁴⁴ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, p. 64. Highlights by the NCP.

general interest in this regard. According to this guidance, taking a risk-based approach means “prioritising the most vulnerable and severely impacted groups for engagement”.⁴⁵

The NCP takes note that Telenor’s pre-investment due diligence identified conflict and ethnic areas as one of six sustainability risks. Conflict, however, is not a risk that can be isolated. It became a defining feature for the operating context in Myanmar, calling for more extensive, proactive and reactive due diligence. To a significant extent, Telenor’s ongoing due diligence in view of the deteriorating situation in Myanmar focus on the security of Telenor staff and the staff of business partners. Furthermore, the NCP finds that stakeholder engagement has not sufficiently prioritised the most vulnerable and severely impacted groups. The official designation of 135 ethnic groups⁴⁶ that Telenor has referenced does not include the Rohingya. There was significant public information about the deteriorating situation of the Rohingya in Myanmar in 2012 through 2016, and in 2017.⁴⁷ Documentation reviewed by the NCP indicates that the risks for the Rohingya were not prioritised in Telenor’s due diligence and stakeholder engagement.

The question for the NCP is then if Telenor’s due diligence identified the risk of a military operation involving the telecommunications tower of a TML vendor in Alethanyaw in August 2017 and, if not, whether such a risk should have been identified and addressed at the time. Further, the complainants have asked the NCP to assess what responsibility – according to the OECD Guidelines – Telenor bears in relation to the atrocities caused by the military. The question is also whether the matter has been handled in accordance with the OECD Guidelines in the aftermath of the attacks in Alethanyaw.

3.2.1 THE TELECOMMUNICATIONS TOWER INCIDENT IN AUGUST 2017

The OECD Guidelines call on enterprises to 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. The NCP recalls that the responsibility of business enterprises to respect human rights “is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions”.⁴⁸ Under the OECD Guidelines, an enterprise may be linked to issues that arise by causing adverse impact or contributing to the impact. An enterprise may also be directly linked to adverse impact through their business

⁴⁵ OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, p. 44.

⁴⁶ Telenor response to UN Special Rapporteurs (2019), p. 6 – 7.

⁴⁷ Report of the detailed findings of the independent international fact-finding mission on Myanmar, para 85, para, 477.

⁴⁸ UNGP, Principle 12 Commentary.

operations, products or services by a business relationship, even if they have not contributed to those impacts.⁴⁹ According to Chapter IV (Human Rights) of the Guidelines, enterprises should:

Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.⁵⁰

Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

According to the complainants, Myanmar military personnel used a telephone tower that is part of Telenor's Myanmar cellular network late August 2017 as a vantage point to kill fleeing Rohingya men, women and children in Alethankyaw. According to the complaint, soldiers from the Myanmar Army Light Infantry Division 99 were dispatched to Alethankyaw in the days leading to August 25, 2017. The high tower platform allegedly "provided the Myanmar forces a unique strategic location to shoot at and terrorise Rohingya villagers in a wide radius in the sprawling village."⁵¹ The complainants contend that Telenor bears significant responsibility for what took place on the tower.⁵² The complainants make extensive reference to the KPN report. According to the KPN report,⁵³ whether or not Telenor knew exactly what happened on its premises in August 2017, they could not fail to be aware of the scale of atrocities that were committed against the Rohingya throughout Rakhine State, and the allegations of genocide.⁵⁴

Telenor states the following when it comes to the incident in August 2017:

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 incentivises another entity to cause an adverse impact and does not include minor or trivial contributions*". [...]

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 og IGT to prevent the acts that occurred in August 2017. Any infrastructure, including houses, apartment

⁴⁹ For a full overview of "cause", "contribute" and "directly linked" issues, see question 29 of OECD Due Diligence Guidance for Responsible Conduct.

⁵⁰ 'Activities' can include both actions and omissions. See Commentary 42 to Chapter IV (Human Rights).

⁵¹ Complaint from CSJA, p. 2.

⁵² Complaint from CSJA, p. 3.

⁵³ According to the KPN report (2018), the official population of Alethankyaw was 11,347 in August 2017 and most of the 1,416 households were Rohingya. According to the report, government security forces began their assault early in the morning of August 25. At least 52 villagers were killed by gunfire. See p. 11, p. 19 – 20.

⁵⁴ The report includes a section entitled "Telenor and complicity"; see KPN Report, p. 58- 59.

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 2017.⁵⁵

In her report of 5 March 2019, the UN Special Rapporteur for the situation of human rights in Myanmar refers to the events involving the telecommunications towers on 25 August 2017:

The Special Rapporteur continues to be disturbed by details still emerging of the horrific violence that took place in northern Rakhine after 25 August 2017. Reportedly, troops from Light Infantry Division 99 were deployed to the village of Alethankyaw in Maungdaw in the days prior to 25 August 2017. On 25 August, these troops killed at least fifty men, women and children.⁵⁶ The following day, snipers were positioned on rooftops, a Myanmar Post and Telecommunications tower and a Telenor tower, and shot villagers as they fled. Bodies were reportedly disposed of by troops in wells and under the Telenor tower. The village was then burned on 29 August, with only the Rakhine parts of the village left untouched. The alleged use of the towers by snipers highlights the paramount importance of thorough and ongoing human rights due diligence being undertaken by companies and investors [...].⁵⁷

The IIFMM has furthermore shed light on one aspect of what due diligence entails when it comes to the risk of doing business with the military or linked entities in Myanmar:

No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces in Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members, until and unless they are restructured and transformed as recommended by the Mission.⁵⁸

Telenor states that they did not know of the misuse of the tower in August 2017 until the KPN report was published in November 2018. In the 2018 Sustainability Briefing on Myanmar, Telenor describes viewing the escalating developments in Rakhine State with grave concern. When the crisis hit in 2017, Telenor stated that their first action was to evacuate all staff and vendors in the area.⁵⁹ Telenor states the following in the Sustainability Report for 2018:

⁵⁵ Telenor response to complaint, p. 5.

⁵⁶ Kaladan Press Network (2018).

⁵⁷ Report of the Special Rapporteur on the situation of human rights in Myanmar, doc A/HRC/40/68, 5 March 2019, para 36.

⁵⁸ Report of the detailed findings of the independent international fact-finding mission on Myanmar A/HRC/39/CRP.2 17 September 2018, para 1675, para 1717.

⁵⁹ Telenor Myanmar Sustainability Briefing (2018).

In terms of our own operations in Northern Rakhine, focus has been on providing telecommunications services to all, regardless of background. We have sought to be diligent in our own operations and supply chain follow-up. We are also concerned by the claims in a Kaladan Press Network Report that a tower operated by a tower vendor to Telenor Myanmar was broken into and scaled by military snipers during the 2017 unrest.⁶⁰

In the 2019 Sustainability Briefing on Myanmar, Telenor again expressed concerns about the allegations in the KPN report. The briefing includes a timeline of events. Telenor stated that the UN Special Rapporteur on Human Rights in Myanmar noted the allegations in the KPN report. The tower owner visited the site in December 2017 and found no irregularities apart from that a lock for the protective fence was missing. When security permitted, Telenor conducted an independent inspection. There were no significant findings apart from the unlocked gate. Telenor stated that towers are generally locked to prevent unauthorized entry.⁶¹

Telenor confirms that the Alethanyaw tower is owned and operated by IGT, one of the companies selected by TML following Telenor's vendor due diligence process.⁶² Telenor notes the following regarding stakeholder engagement in Rakhine state and in relation to the tower:

Telenor engaged with representatives of ethnic groups throughout its rollout in Myanmar, including 12 of 17 townships in Rakhine State. These 12 included Maungdaw township – the same township where the incident was reported. Telenor's stakeholder engagement included ethnic groups within reach of Maungdaw town – the principal city of Maungdaw township. Telenor selected IGT for tower construction in Northern Rakhine, inter alia, as it had good relations with both Rohingya and non-Rohingya communities in the area due to their longstanding engagement with both communities. For RA0224, IGT engaged the immediate neighbours of the plot of land in Alethanyaw village on which the tower was built, as part of legal requirements.⁶³

The Complainants state that IGT was a very young company that was only founded in 2012 and therefore could not have "longstanding ties" to any community in Myanmar. The Complainants write that "despite the firm's short history, IGT's strong relations with the Myanmar army were very obvious."⁶⁴ In response to this, Telenor states that although the tower company was formally established in 2012/13, it was known to have hired local resources who had long-standing relationships in Rakhine. Telenor states that the company "was considered independent with a commitment to responsible business within the industry in Myanmar".⁶⁵ Telenor notes that IGT

⁶⁰ Telenor Sustainability Report (2018), p. 18.

⁶¹ Telenor Myanmar Sustainability Briefing (2019).

⁶² Telenor response to complaint, p. 3 – 4.

⁶³ E-mail from Telenor to the NCP, 25 March 2022.

⁶⁴ CSJA letter to NCP, 10 June 2022.

⁶⁵ E-mail from Telenor to the NCP, 4 July 2022.

received support from the International Finance Corporation and the Dutch development bank, FMO, who published an overview of the bank's due diligence of the company in 2015.⁶⁶

IGT was required to sign Telenor's ABC Agreement, which obliges the vendor to comply with the Supplier Conduct Principles. The tower was erected in 2016. Power equipment was installed in February 2017 and the site was equipped with a fence and gate. Between August 2016 and April 2017, and August and December 2017, entry into the area was off limits for Telenor personnel based on the safety and security assessment. The tower became operational in March 2018.⁶⁷

IGT is the largest independent tower company in Myanmar and builds towers that can be used by multiple operators.⁶⁸ IGT was owned by Irrawaddy Towers Asset Holding Pte. Ltd. (Singapore), which is owned by Alcazar Capital Limited, Alcazar Projects Ltd and the M1 Group. IGT has a master lease colocation agreement with Telecom International Myanmar Company Limited (MyTel). MyTel is a national telecommunications operator owned by Myanmar Economic Corporation (MEC), Viettel and a consortium of Myanmar companies. MEC and Myanmar Economic Holdings Limited are the principal conglomerates of the Tatmadaw (military).⁶⁹ Vietnam's Viettel – wholly owned by the country's Ministry of Defence – owns 49 per cent of Myanmar National Tele & Communications (MNTC). Star High Public Company, which owns another 28 per cent of MNTC, is owned by the Myanmar army through a holding company, Myanmar Economic Corporation (MEC).⁷⁰ The IIFFMM states that this “makes MyTel essentially a joint venture between the militaries of Myanmar and Vietnam.”⁷¹

As regards TML's business relationships, the NCP has not received any information underpinning that TML itself had any contractual relationship with MyTel, or the Tatmadaw, of relevance to leasing the tower in question. Although IGT had a business relationship with MyTel, the Alethankyaw tower site was not, according to the information received by the NCP, covered by MyTel's colocation agreement with IGT.

The complaint alleges that Telenor should have known about the risk of misuse of the tower, and therefore bears responsibility for what happened. The allegation is not that Telenor caused the

⁶⁶ See [Irrawaddy Green Towers - FMO](#) and International Finance Corporation [Disclosure - Irrawaddy Towers \(ifc.org\)](#).

⁶⁷ Telenor response to complaint, p. 3 – 4.

⁶⁸ Independent international fact-finding mission on Myanmar, The economic interests of the Myanmar military, A/HRC/42/CRP.3, p. 100.

⁶⁹ Independent International Fact-Finding Mission on Myanmar, The economic interests of the Myanmar military, A/HRC/42/CRP.3, p. 4, p. 90 and p. 100. Available at: [Microsoft Word - A_HRC_42_CRP_3.Corr.Clean.docx \(ohchr.org\)](#). See also [“IGT” and “MyTel” signs Master Lease Agreement for 677 sites Colocation – IRRAWADDY GREEN TOWERS – IGT](#).

⁷⁰ The IIFFMM report on the Economic interests of the Myanmar military para 6 notes that the Myanmar Economic Corporation (MEC) is owned and influenced by senior Tatmadaw leaders, including the Commander-in-Chief Senior General Min Aung Hlaing and the Deputy Commander-in-Chief Vice Senior General Soe Win, responsible for gross violations of international human rights law and serious violations of international humanitarian law.

⁷¹ See e.g. A. Burkitt-Gray, “Military dominates Myanmar's fourth telecom licence” (Capacity Media, 13 January 2017).

adverse impact associated with the alleged misuse of the tower by the Myanmar military. When it comes to the question of whether an enterprise has *contributed* to adverse impact, the OECD Due Diligence Guidance for Responsible Business Conduct (2018) highlights that several factors may be assessed. One is the extent to which the enterprise encouraged or motivated the adverse impact by another entity. Another factor is the extent to which the enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability. A third factor is the degree to which any of the enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.⁷²

The NCP is not of the view that Telenor contributed to the adverse impact. Telenor did not encourage or motivate the perpetrators, i.e. the military. Further, documentation reviewed by the NCP indicates that neither Telenor nor third parties – prior to the atrocities committed in August 2017 – identified the risk of adverse human rights impacts associated with misuse of telecommunications towers for military purposes comparable to the facts of the case at issue. The risk was not addressed in the pre-investment due diligence nor in the due diligence by Telenor or third parties as the situation in Myanmar deteriorated. Significantly, use of telecommunications infrastructure for harmful purposes is not addressed in the Myanmar ICT Sector-Wide Impact Assessment (2015), to which Telenor and various stakeholders contributed.⁷³

The Complainants contend that the misuse was foreseeable, citing the significant decline in the security of Rohingya in Rakhine State beginning in 2012 and highlighting that the difficulties facing the Rohingya became the subject of intense debate both internationally and inside Myanmar:

Beginning in 2012 Amnesty International, Human Rights Watch and the UN Special Envoy for the Situation of Human Rights in Myanmar all released reports which highlighted that the Rohingya were stateless people who were subjected to official state sanctioned discrimination in Rakhine State. These groups and others issued warnings noting that there were clear signs violence could be carried out en masse against the Rohingya community [...]. Telenor was well aware of violent anti-Rohingya incidents that took place in 2016 in Rakhine and due to these incidents had in fact withdrawn staff from Rakhine State.⁷⁴

The NCP recalls that the OECD Guidelines call on enterprises to prevent and mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts. This expectation does not intend to shift responsibility from the entity causing the adverse impact. The Commentary to Chapter IV of the Guidelines elaborates on this:

⁷² OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 70.

⁷³ Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB), and Danish Institute for Human Rights (DIHR), Myanmar ICT Sector-Wide Impact Assessment (2015).

⁷⁴ Letter from CSJA to the NCP in response to draft Final Statement, 10 June 2022.

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. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to *use its leverage* to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.⁷⁵

Although Telenor has not contributed to the adverse impact, the company is directly linked to it through a tower vendor. In such cases, the OECD Guidelines call on enterprises to use their leverage, acting alone or in co-operation with others, to seek to prevent or mitigate adverse impact. Telenor has documented efforts to prevent adverse impact directly linked to business relationships, including IGT, by including human rights in agreements with its suppliers and following this up through inspections. Whether a closer engagement with the Rohingya community would have led to a better-informed risk-assessment regarding the issues raised in the complaint is possible, but the documentation available to the NCP is not conclusive on this point. At the material time, the NCP finds that it was not reasonable to expect Telenor to foresee the misuse of telecommunication tower by third parties for harmful purposes. Today, however, this is a known risk that must be included in the company’s risk-assessment and addressed in human rights due diligence by the ICT sector in conflict and other high-risk contexts.

The NCP agrees, however, with the complainants that Telenor’s handling of the matter after becoming aware of what took place at the tower is not consistent with the recommendations in the OECD Guidelines.⁷⁶ Stakeholder engagement is key to the entire due diligence process and is especially critical where adverse impact has occurred. Telenor did not, however, reach out to or seek to engage with the affected stakeholders in the aftermath of the incident. In its report to the General Assembly 21 July 2020 the UN Working Group on Business and Human Rights on Business, human rights and conflict-affected regions⁷⁷ states:

52. Human rights due diligence should be ongoing, given that risks may change over time as the business operations and context evolve. This is all the more so in conflict-affected contexts. Businesses should ensure that they have adequate processes in place to respond to changing circumstances and the corresponding impacts of their actions, underlining the need for robust stakeholder engagement and grievance mechanisms. This sometimes

⁷⁵ See Commentary 43 to Chapter IV (Human Rights). Highlight by the NCP.

⁷⁶ Complaint from CSJA, p. 4.

⁷⁷ Issue of human rights and transnational corporations and other business enterprises (2020), A/75/212. Available at: [N2019021.pdf \(un.org\)](https://www.un.org/ruhr/N2019021.pdf).

seems counter-intuitive for business which, in a volatile environment, might be tempted to limit interactions with “the outside” in order to be shielded from the conflict or not to be seen as conferring legitimacy on a specific group. However, this narrow approach creates many problems and may well expose the business to more risks.

53. Stakeholder engagement needs to be broad in conflict-affected contexts, in order to mitigate the lack of information, the polarization and the high level of mistrust which usually exist among groups and communities, and to get a sense not only of the facts but of the perception of the situation by different stakeholders.

The OECD Due Diligence Guidance for Responsible Business Conduct (2018) provides detailed guidance on stakeholder engagement. The guidance furthermore notes that even if an enterprise has not caused or contributed to an adverse impact, the enterprise may still take a role in remediation. Where relevant, the enterprise may for instance provide information which can facilitate investigations or dialogue. The type of remedy that is appropriate will depend on the nature and extent of the adverse impact and may include apologies, restitution or rehabilitation, financial or non-financial compensation, and other measures.⁷⁸

Telenor has generally had extensive consultations with different stakeholders in Myanmar but has not documented engagement with the Rohingya affected by the misuse of the tower in 2017. Telenor was indeed interested in dialogue with the complainants in the present Specific Instance, but, it seems, not until the NCP Specific Instance procedure commenced. Apart from this, Telenor recommended the authorities to investigate the issues, with the involvement of independent NGOs. However, the allegations concern the alleged actions of the Myanmar military and encouraging investigations by the authorities must therefore be deemed inadequate. The complainants highlight the inadequacy of such investigations:

The CSJA members do not accept Telenor's statement that they will ask the perpetrator of the genocide, the Burmese government, to investigate the role of the Telenor tower in the Alethanyaw massacre. The committee wants an independent investigation without involvement of Burmese authorities, to find out the truth of what happened and how Telenor ignored its responsibilities.⁷⁹

The IFFMM came to similar conclusions regarding such investigations based on an examination of eight inquiry efforts established by the Myanmar government:

None meets the standard of an impartial, independent, effective and thorough human rights investigation. To the mission's knowledge, none has led to any prosecution for gross human rights violations and redress for victims. The reason is simple: this is not possible in Myanmar [...]. Even though the primary responsibility for investigation and prosecuting crimes under international law lies with the Government of Myanmar, it has demonstrated

⁷⁸ OECD (2018), Due Diligence Guidance for Responsible Business Conduct, p. 34 and p. 90.

⁷⁹ Letter from CSJA to the NCP, 19 December 2019.

that it is unable and unwilling [...]. The impetus for accountability must come from the international community.⁸⁰

In 2020, Telenor commissioned a third-party Human Rights Impact Assessment in response to the escalation of challenges in Myanmar. The report was in the process of being finalized and ready for publication when the military coup took place 1 February 2021. Telenor states that they had started following up on several of the recommendations included in the assessment.⁸¹

The NCP is of the view that although Telenor did not cause or contribute to the adverse human rights impact, the company is directly linked to it through its tower vendor. Although it was not foreseen at the time, the misuse of telecommunications towers for harmful purposes is now a known risk in the ICT sector and should be addressed in human rights due diligence processes in conflict zones and other high-risk areas. Telenor has informed the NCP that this risk has subsequently been incorporated into Telenor's risk assessments and is now considered a more foreseeable risk than it was beforehand. The NCP furthermore recognises that leverage may be limited when the actions are committed by a third party over which the company has limited, if any, influence. Companies may still implement, and require suppliers to implement, enhanced security measures and engage with affected parties with a view to preventing and mitigating adverse impacts on human rights, which as in this case may be of the most severe nature.

3.2.2 LAND ISSUES – DISCLOSURE AND RELATED MATTERS

According to Chapter II (General Policies) of the OECD Guidelines, enterprises should take fully into account established policies in the countries in which they operate and consider the views of other stakeholders. In this regard, enterprises should:

A. 13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.

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.

Chapter III (Disclosure) sets forth the expectation that disclosure policies of enterprises should include, but not be limited to, material information on: [...]

f) foreseeable risk factors;

⁸⁰ Report of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/39/64, 12 September 2018, 96 – 98.

⁸¹ Telenor comments to draft Final Statement, 9 June 2022.

g) issues regarding workers and other stakeholders.

According to Chapter IV (Human Rights) of the OECD Guidelines, enterprises should respect human rights, which at a minimum should reference internationally recognised human rights.⁸² According to Article 17 of the Universal Declaration of Human Rights, everyone has the right to own property alone as well as in association with others, and no one shall be arbitrarily deprived of his property.⁸³

The complainants contend that Telenor has failed to disclose the activities of subcontractors and request Telenor to disclose information on how the land used for the tower originally was confiscated from local Rohingya villagers by the local Burmese government administration.⁸⁴

Land issues are contested in Myanmar. Under the Constitution of Myanmar, the government is the ultimate owner of all lands. Legal reform in 2012 introduced a system similar to a private property regime. The Vacant, Fallow and Virgin (VfV) Lands Management Law regulates a range of lands including unused plots and abandoned lands. Regardless of these developments, the IFFMM has found that “key issues in Myanmar are still linked to large-scale tenure insecurity and poorly kept land ownership records”.⁸⁵

According to Telenor, the main land use for a mobile telecommunications operation is to set up ground-based telecommunications towers. Telenor has approximately 10,000 towers in its network coverage throughout Myanmar. Telenor describes the focus in TML 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.⁸⁶

Between 2015 and 2019, Telenor states that the TML Supply Chain Sustainability team conducted 14,000 inspections across all locations. 423 out of these were conducted in Rakhine state, of which two were in Maungdaw township. Telenor finds “no indication during these processes in Rakhine

⁸² See Chapter IV (Human Rights) of the OECD Guidelines, Commentary no. 39.

⁸³ Universal Declaration of Human Rights. Available at: [udhr.pdf \(un.org\)](https://www.un.org/development/dpd/humanrights/udhr.pdf).

⁸⁴ Complaint from CSJA, p. 4.

⁸⁵ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/42/CRP.5, 17 September 2019, para 428.

⁸⁶ Telenor response to complaint, p. 3.

state of complaints in relation to land confiscation for building of towers.”⁸⁷ According to Telenor, IGT began its site acquisition process for the tower in question, labelled 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.⁸⁸

Of the 1,600 towers built between 2014 and 2015, ten sites were abandoned due to uncertainty of ownership. Telenor describes how moving out of more central areas of Myanmar increased the risk of exposure to land rights issues. Telenor identified some cases where land ownership may be particularly difficult to establish as people had been displaced due to the ethnic conflicts. Increased risk mitigation was to a large extent built around SLOs and the land leasing process.⁸⁹

The NCP notes that Telenor identified land issues as one of six key issues in their pre-investment due diligence. The legal documentation related to the land issues for the Alethankyaw tower has been presented to the NCP. In general, the NCP emphasizes the importance of engaging with vulnerable groups also when it comes to land issues, in particular groups that are de-facto stateless and therefore not likely to have formal land claims. Such engagement must take particular care, however, not to put already marginalized groups at greater risk. Telenor has provided information regarding the business relationship with IGT and land issues. The complainants did not wish to engage in dialogue with Telenor citing a lack of trust, and the company therefore has not had the opportunity to communicate more extensively about these issues in the Specific Instance process. The possibility for the NCP to investigate the issues further is limited.

3.2.3 INTERNET SHUTDOWN ORDERS

According to Chapter II (General Policies) of the OECD Guidelines, enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

- B. 1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.

⁸⁷ Telenor response to complaint, p. 4.

⁸⁸ Telenor response to complaint p. 4.

⁸⁹ Telenor Myanmar Sustainability Briefing (2015) and Telenor Group Sustainability Seminar (2016).

The responsibility of enterprises to respect human rights includes the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). According to Article 19 of the ICCPR, everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

According to the complaint, Telenor complied with orders from the Ministry of Transport and Communications (MoTC) to cease all mobile internet traffic in nine townships in Rakhine and Chin States on 21 June 2019. The complaint states that internet shutdowns damage access to information and access to basic services⁹⁰ and is a violation of international law.⁹¹

The UN Special Rapporteur for the situation on human rights in Myanmar notes the following concerning the internet shutdowns in Rakhine and Chin States in June 2019:

For restrictions on the right to freedom of expression to be lawful, they must be provided for in law, applied only in specific circumstances to protect the rights and reputation of others or to ensure national security, public order, public health or public morals and be necessary and proportionate. Proportionality should be interpreted to mean, in part, the least restrictive means to achieve any of the above legitimate aims. The Special Rapporteur notes that the broad-based Internet bans in Rakhine State do not appear to meet these tests. In March 2020, Government authorities blocked access to more than 221 ethnic news websites in Rakhine State under section 77 of the Telecommunications Law [...].⁹²

The Myanmar ICT Sector-Wide Impact Assessment (2015) noted that the lack of a clear legal framework places mobile operators and Internet Service Providers at substantial risk of being ordered to shutdown networks or services without clear legal justification.⁹³ Section 77 of the Telecommunications Act of Myanmar reads:

With the approval of Union Government, the Ministry can instruct the operator to temporarily suspend the telecommunication services, restrict the specific communication service and collect the necessary information and communications, temporarily surrender any Telecommunication Equipment, in the situation to do such action for public interests.

When Telenor entered Myanmar, there was an awareness that the requirements of domestic law were not in line with international standards. Telenor states the following regarding the legal framework and license agreement upon entering Myanmar:

⁹⁰ Complaint from CSJA, p. 6.

⁹¹ “[A] general network shutdown is in clear violation of international law and cannot be justified by any means.” UN OHCHR, DisplayNews, 7 January 2019, “[UN expert urges DRC to restore internet services.](#)”

⁹² UN General Assembly, Situation of human rights in Myanmar, A/75/335, 1 September 2020, para 24 – 30.

⁹³ See Discussion of HSE and Community Issues in the Telecoms Sector at Myanmar-responsiblebusiness.org.

When Telenor entered Myanmar the country was going through radical reform with an enormous number of new laws being drafted and approved. Many of the existing laws were outdated and in some cases conflicting with each other. TML has worked with the government of Myanmar to help improve the level of sufficient safeguards in the absence of proper legislation for AR⁹⁴. As an example for where laws and rules were still lacking, such as for lawful intercept, Telenor ensured open dialogue with the ministry to address the importance of having very good processes in place for handling lawful intercept in Myanmar. TML also ensured that the license agreement included provisions stating that until appropriate laws were in place, they would only entertain authority requests with regards to customer information if life is threatened, without a court order. More recently, TML has actively advocated for the draft Cyber Security Law to also regulate procedures for authority requests on customer data and lawful intercept. TML has also provided training in the past couple of years to government bodies on privacy and cybersecurity, and engages with civil society, including the Digital Rights Forum, to provide input to other relevant laws that are being developed in Myanmar.⁹⁵

Where the domestic context renders it impossible to meet the responsibility as set out in the UN Guiding Principles on Business and Human Rights, Telenor states that they will take steps to engage with, and seek advice from, internal functions as well as with expert stakeholders, including Government, civil society and multi-stakeholder initiatives including the Global Network Initiative (GNI).⁹⁶

According to Telenor, the MoTC issued a direction to TML and three other telecommunications companies – Ooredoo, MPT and MyTel – under section 77 of the Telecommunications law – to temporarily suspend communications services relating to mobile data and internet in seven townships in Rakhine state and one township in Chin State from 2200 hrs MMT on 21 June 2019 onwards (the “Suspension Order”).⁹⁷ Following receipt of the Order, TML communicated with the Ministry on 20 June and 21 June 2019 in an effort to get the Ministry to retract the directive or, at least, to limit the scope and the duration of the shutdown. The Ministry did not indicate any relaxation with respect to the Suspension Order. TML concluded that it had a legal obligation to comply with the Suspension Order within the deadline. TML continued to provide voice and SMS services in the designated areas. Upon complying with the order, Telenor ASA issued a statement on its website on 21 June 2019, referencing mitigation efforts:

From the time of receiving the directive, Telenor Myanmar has been asking for further clarification on the rationale for the shutdown and emphasised that freedom of expression through access to telecoms services should be maintained for humanitarian purposes, especially during times of conflict. Arguments to ensure proportionality and limitations to

⁹⁴ Authority requests from telecommunications companies.

⁹⁵ Telenor response to UN Special Rapporteurs (2019), p. 6.

⁹⁶ Telenor response to UN Special Rapporteurs (2019), p. 8.

⁹⁷ Telenor response to UN Special Rapporteurs (2019), p. 2.

the scope and time of the shutdown have also been put forward by Telenor Myanmar, and will be further highlighted as part of continued dialogue with the authorities.⁹⁸

Telenor estimated that as a result of the Suspension Order, 111,000 customers lost access to data and the internet. In total, more than one million residents in the affected areas were reported to have lost access to the internet. The internet shutdown was lifted in five of the nine affected townships in Rakhine and Chin on 31 August 2019. Telenor describes continued efforts to lift the shutdown through stakeholder engagement and reaching out to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for guidance.⁹⁹

The NCP finds that Telenor identified the risks relating to the legal framework in Myanmar governing internet shutdowns and other matters and sought to influence this framework. Telenor has provided the NCP with an overview and examples of mitigating steps taken since the first order to shut down the internet was received in June 2019. Telenor communicated its concerns to the authorities and kept customers informed and engaged in public advocacy and with the GNI and industry initiatives.

The NCP encourages Telenor and other companies to take note of the recommendations from the Office of the High Commissioner for Human Rights (OHCHR) when it comes to the risks of, and responding to, internet shutdown orders. OHCHR recommends companies to carry out human rights' due diligence with regard to potential adverse impacts from network shutdowns when entering or renegotiating licence agreements with governments at all levels and to explore all legal options for challenging requests for shutdowns.¹⁰⁰

4 CONCLUSIONS AND RECOMMENDATIONS FROM THE NCP

The goal of the Specific Instance procedure is to help the parties involved to resolve the issues raised. The complainants expressed willingness to cooperate with the NCP but did not wish to engage in dialogue or mediation regarding the issues raised in this Specific Instance, citing a lack of trust in the company. The NCP underscores that dialogue between the parties is the best way to reach a full resolution of the issues raised. The NCP has, however, extended its good offices to each party with a view to handling the complaint in accordance with the OECD Guidelines.

The OECD Guidelines call on companies to carry out human rights due diligence to identify, prevent, mitigate adverse human rights impacts and communicate about how this is addressed. In contexts where national laws and regulations are in conflict with international standards, the

⁹⁸ [Network shutdown in Myanmar, 21 June 2019 - Telenor Group.](#)

⁹⁹ Telenor response to UN Special Rapporteurs (2019), p. 3.

¹⁰⁰ See <https://www.ohchr.org/Documents/Press/Internet-shutdowns-and-human-rights.pdf>.

OECD Guidelines set forth that enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

The main issue in the complaint concerns due diligence and allegations concerning the misuse of a telecommunications tower in 2017. The NCP has not found grounds to conclude that Telenor has caused or contributed to what happened in August 2017 in Alethankyaw, involving the misuse of a telecommunications tower owned and operated by a TML vendor. The NCP recalls that enterprises are called on to prevent and mitigate adverse impacts *even if they have not contributed to these impacts* when the impacts are directly linked to business operations, products or services by a business relationship. The OECD Due Diligence Guidance for Responsible Business Conduct (2018) notes that even if an enterprise has not caused or contributed to an adverse impact, the enterprise may still take a role in remediation. Where relevant, the enterprise may for instance provide information which can facilitate investigations or dialogue.

The misuse of the tower was not identified in Telenor's risk assessments, and the NCP has assessed whether it should have been identified. In the view of the NCP, this risk was not reasonably foreseeable at the time. Today, however, the risk of misuse of telecommunications infrastructure for harmful purposes is a risk that is known and therefore must be identified and mitigated in Myanmar and other high-risk contexts. Telenor has informed the NCP that this risk has subsequently been incorporated into Telenor's risk assessments and is now considered a more foreseeable risk than it was beforehand.

When it comes to the issues raised in the complaint concerning disclosure regarding land use and compliance with internet shutdown orders, the NCP finds that Telenor identified these risks in pre-investment and ongoing due diligence. Efforts to mitigate these risks relating to land rights include a three-step process for addressing land issues and inspections, but the possibility for the NCP to fully resolve this issue is limited. Mitigation efforts relating to internet shutdowns include repeated and transparent engagement with the authorities regarding the legal framework and shutdown orders, and efforts to keep other opportunities for communication as open as possible during the shutdown.

The NCP has determined that Telenor in general has sought to respect human rights and carry out due diligence in accordance with the OECD Guidelines. The NCP notes that Telenor has made considerable efforts to identify, prevent and mitigate human rights risks and communicate about these in Myanmar through public briefings and reporting. Human rights policies are included in contracts with vendors and business partners and followed up. Telenor has engaged with stakeholders in Myanmar and internationally. The NCP also found room for improvement in view of the context that evolved in Myanmar. Telenor did not reach out to or seek to engage with the affected stakeholders in the aftermath of the incident raised in the complaint. In general, the NCP observes that engagement with stakeholders has not sufficiently prioritised the most vulnerable groups; in this case, the Rohingya.

The escalation of the conflict in Myanmar constitutes a context where the risks of adverse impacts on human rights are severe. Telenor was in a context that requires enhanced due diligence, not least in the build-up to the events in August 2017 in Rakhine State and the aftermath. In the context of Myanmar, enhanced due diligence calls for identifying the risk of complicity with human rights violations and due diligence with respect to the risk of doing business with the military or entities linked to the military. It may call also for more proactive and regular reporting when it comes to prevention and mitigation efforts concerning risks relating to business relationships. It calls for stakeholder engagement where the most vulnerable and severely impacted groups are given particular attention and are prioritized for engagement.

The OECD Guidelines and accompanying guidance call for enhanced, proactive and reactive due diligence in conflict-affected areas. To this end, the NCP recommends taking note of the recommendations in the report from the UN Working Group on Business and Human Rights on Business on human rights and conflict-affected regions and states in particular with respect to responding to changing circumstances and ensuring robust stakeholder engagement and grievance mechanisms. The NCP recommends Telenor to consider following up with the complainants outside this NCP process with a view to taking a role in remediation. The NCP also makes a general recommendation to Telenor to ensure that the most vulnerable groups are given particular attention and prioritised in future stakeholder engagement.

Characteristics of due diligence – essentials

Due diligence is risk-based. The measures that an enterprise takes to conduct due diligence should be commensurate to the *severity* and *likelihood* of the adverse impact. When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive.

Due diligence does not shift responsibilities. Each enterprise in a business relationship has its own responsibility to identify and address adverse impacts. The due diligence recommendations for the OECD Guidelines are not intended to shift responsibilities from governments to enterprises, or from enterprises causing or contributing to adverse impacts to the enterprises that are directly linked to adverse impacts through their business relationships. In cases where impacts are directly linked to an enterprise's operations, products or services, the enterprise should seek, to the extent possible, to use its leverage to effect change, individually or in collaboration with others.

Due diligence is informed by engagement with stakeholders. Stakeholder engagement is characterised by two-way communication. It involves the timely sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. Meaningful engagement with relevant stakeholders is important throughout the due diligence process.

For a complete list of due diligence essentials, see the OECD Due Diligence Guidance for Responsible Business Conduct, pp. 16 – 18

ANNEX 1. ISSUES FOR EXAMINATION

Issues for examination: Committee Seeking Justice for Alethankyaw (CSJA) vs. Telenor Group

On 15. October 2020 the Norwegian National Contact Point (hereinafter “NCP”) issued its Initial Assessment of the complaint from Committee Seeking Justice for Alethankyaw (hereinafter “CSJA”) against Telenor Group (hereinafter “Telenor”) and decided to proceed with the complaint. In the Initial Assessment the next steps were indicated:

The complainant has expressed willingness to cooperate with the NCP, but does not at present wish to engage in dialogue with the company. The absence of dialogue between the parties may limit the opportunities for arriving at a resolution of the issues raised, but the NCP will extend its good offices to each party with a view to handling the complaint in accordance with the Guidelines. The process may include a third-party examination of the issues raised, and/or developing a Terms of Reference for a fact-finding report, in dialogue with each party.

Information meetings on next steps were held with Telenor on 17. November 2020 and with CSJA on 18. December 2020.

According to the Procedural Guidelines adopted by the NCP, the NCP will – in this situation – examine the complaint to assess whether it is justified, i.e. whether the expectations in the OECD Guidelines for responsible business conduct (hereinafter “the Guidelines”) have been complied with in full or in part, or whether the conduct is deemed to constitute non-compliance. The NCP should consider making recommendations to Telenor on how to improve its conduct to be in compliance of the Guidelines.

The first step of the procedure is information gathering from the complainants and the company, which may also involve further meetings with the parties. Such meetings will have an agenda and minutes will be taken. All information and documentation received will be shared with the parties unless good cause is made for information to be withheld.

The NCP’s examination will be based on the expectations set out in the Guidelines. The issues to be examined are whether there is a link between Telenor’s operations in Myanmar and the issues raised in the complaint, and whether Telenor has exercised ongoing due diligence for responsible business conduct in accordance with the Guidelines.

The NCP invites Telenor to provide the NCP with information and documentation with a view to assist the NCP in its examination of the complaint. It is recalled that the complaint addresses issues related to the “dual use”, i.e. both civil and military use, of the telephone tower in Alethankyaw, the shutdown of the network on 21 June 2017 and land issues. Telenor’s information and documentation should cover the following:

- The award of the license to Telenor Myanmar Ltd in 2014, and Telenor's business relationships in Myanmar that may be of relevance to the issues raised in the complaint¹⁰¹.
- Information on Telenor's RBC policy at the time of entering into Myanmar, including strategy for risk-based due diligence for RBC.
- The risk-based due diligence assessments for RBC undertaken by Telenor before and after the attack on Alethankyaw in August 2017.¹⁰²
- How was Telenor's corporate policies (on issues such as labour, human rights, disclosure and corruption) made public and communicated to suppliers/clients/the host government, (including conditions around responsible business conduct in business contracts).
- Any steps and actions taken by Telenor, alone or in cooperation with others, to avoid contributing to adverse impacts within its own activities and/or seek to mitigate such impacts that may be directly linked to its business operations and/or services.

The NCP would like to receive information about these issues in a meeting with Telenor. In such a meeting, or following such a meeting, the NCP's request for documentation will be specified.

The information gathered through this first step will be the basis for the NCP's further examination, including gathering of further information and explanations from the CSJA. There may also be necessary to seek further information and documentation from Telenor. The NCP may also seek advice and guidance from e.g. Government agencies and independent experts.

The NCP has engaged the independent consultant Ms. Anna Triponel as an advisor to the NCP in this matter. <https://triponelconsulting.com/about/>

The Procedural Guidance also opens up for further information gathering from persons concerned, other experts, and others, as well as field visit. As explained in the Initial Assessment, this may also include a third party examination. Such steps will, if necessary, be decided at a later stage.

¹⁰¹ This should also include information on Telenor's points of contact in the Myanmar government at the time of the project planning and also at present

¹⁰² This should include issues raised in the complaint, such as human rights due diligence issues, issues on land rights and the decision process regarding sites for the telecom-towers

ANNEX 2. FOLLOW-UP QUESTIONS TO TELENOR

The Complainants submitted a number of questions to the NCP regarding the specific instance on 18 September 2020. These formed a basis for formulating the following detailed questions to Telenor, that were forwarded to Telenor and were the subject of meetings between the NCP and Telenor from June to October 2021.

Overall question: Did Telenor carry out human rights' due diligence in line with the OECD Guidelines for Multinational Enterprises? How did Telenor define conflict-affected areas, and did the due diligence in these areas include heightened attention to individuals belonging to groups requiring particular attention and periodic review of human rights risks?

Issue I. Due diligence in conflict-affected areas and tower incident in Alethankyaw in August 2017

1. Telenor refers to pre-investment due diligence by BSR and other third parties and internal due diligence. Please describe due diligence by other third parties and Telenor, focusing on any relevant changes in efforts to identify, prevent and mitigate risks from 2014 to 2017.
2. In the pre-investment due diligence, BSR summarized the status of different conflicts in Myanmar. How did BSR describe the status and situation of the Rohingya? Did BSR and/or other third parties make specific recommendations when it comes to engaging in areas with a significant Rohingya population? If so, what were these, and how were they followed up?
3. In Sustainability Briefings on Myanmar, Telenor describes increased measures to protect staff in conflict areas and extra efforts to ensure human rights and land rights were not violated in ethnic states.
 - a. Did Telenor or third parties identify any human rights risks for individuals belonging to specific groups in Rakhine State? If so, what risks, and how were they addressed?
 - b. Were the State Liaison Officers (SLOs) accessible to the Rohingya, and were there any specific measures in place to engage with the Rohingya in Rakhine? If so, what community engagement meetings or consultations were held with Rohingya regarding land and/or other issues initially and as the conflict escalated? How were any issues raised addressed?
 - c. Did Telenor consider the potential for linkages to adverse impact on the human rights of the Rohingya following violence in Rakhine State in 2012 and escalations since then? If so, what efforts were made to mitigate any risks?

4. Myanmar's security laws continued to give the army considerable powers during conflict and crisis also after the 2015 elections. The army was, and is, also deeply involved in commercial activities. What risks did Telenor identify in human rights due diligence in this regard, and how were these risks planned to be mitigated?
5. Did Telenor consider human rights risks relating to potential misuse of ICT infrastructure, products or services in situations of armed conflict? If so, what efforts were made to prevent the use of infrastructure, products or services for harmful purposes?
6. Telenor describes inspections on the tower site following the incident in August 2017. The vendor found that a lock for the protective fence was missing in 2017. According to Telenor, none of the inspections carried out subsequently reported signs of unusual activity.
 - a. Which vendor conducted inspections of the tower site, and on what date was the lock for the protective fence found missing? Who did the follow-up investigation(s), and what was the outcome of the investigation(s)?
 - b. What measures were implemented to prevent further misuse of Telenor infrastructure in Myanmar and how is this monitored?
 - c. Is Telenor aware of any video cameras on the tower recording entry of Tatmadaw troops or other security personal to the tower in August or September 2017, or other footage? If so, what is captured on such documentation?
7. Telenor describes asking the Myanmar authorities to investigate the August 2017 incident in Alethankyaw. International mechanisms including the IFFM have expressed a lack of confidence in the impartiality of government-initiated human rights investigations.
 - a. To what extent did Telenor review its Human Rights Due Diligence after the incident in August 2017? If so, how were the risks described and what measures were implemented to prevent and mitigate them?
 - b. What was the text of the communication from Telenor requesting an investigation of the August 2017 incident by Myanmar authorities? Has Telenor called for any independent, international investigations?
 - c. Did Telenor consider any other activities and/or responses, including any contributions to remedies for victims? If so, what were they?
 - d. Does Telenor, TML and/or subcontractors have any agreements with either the government or military in Myanmar that would preclude sharing any evidence of war crimes, genocide or other violent acts with international mechanisms set up to investigate the events of August and September 2017?

Issue II. Land used for telecommunications towers

8. Telenor describes employing a land rights acquisition and compensation policy in Myanmar. According to Telenor, Irrawaddy Green Towers (IGT) began its site acquisition process for the tower in Alethankyaw in May 2016. A site was selected following an assessment of the site acquisition and technical site survey report, involving documentation of proof of ownership, township approval and a village recommendation letter for specific land use. The NCP requests copies of this documentation.
 - a. According to Telenor, IGT was required to sign Telenor’s Agreement on Responsible Business Conduct, obliging the vendor to comply with Telenor’s Supplier Conduct Principles. When was the Agreement on Responsible Business Conduct with IGT signed? Were any adjustments made to the agreement since it was signed, and if so, what were these adjustments? How has the agreement been followed up?
 - b. Who are the landowners of the land on which the Alethankyaw tower was built? Did IGT receive neighborhood consent from all residents living in the immediate vicinity of the tower? How many of them were Rohingya?
9. In their follow-up questions to Telenor in September 2020, CSJA claims that IGT signed a Master Lease colocation agreement with Mytel, a cellular operator jointly owned by the Vietnamese and Myanmar military, a month before the incident in Alethankyaw in 2017.
 - a. Are there any linkages between the landowners of the land for the Alethankyaw tower and the military and/or government departments controlled by the military?
 - b. Did or does IGT engage in tower sharing with companies linked to the military, and if so, how has Telenor considered this risk?

Issue III. Government orders to close mobile network (internet shutdown)

10. In their response to the complaint from CSJA, Telenor refers to statements on their website concerning their response to internet shutdown orders in Myanmar.
 - a. How were the risks relating to internet shutdown orders assessed in Telenor’s pre-investment due diligence, and what leverage was exercised in relation to the legal framework? What other steps has Telenor taken to mitigate any risks caused by government orders to close mobile networks? What is the process in place to follow when faced with a request for a network shutdown?
 - b. Has Telenor exercised leverage in cooperation with other entities to promote Internet Freedom through respect of freedom of expression, assembly and association online in Myanmar? How?

Follow-up questions

11. What prior experience with consultations did IGT have with the Rohingya, and did/how did IGT consult with them in the rollout in Maungdaw Township?
12. Was Telenor involved in, and/or has Telenor implemented, recommendations from the [Myanmar ICT Sector-Wide Impact Assessment](#) from 2015?
13. In the meeting, Telenor said that it had no right to investigate what had happened in August 2017, e.g. by engaging with Rohingya refugees. We would like to understand better why Telenor reached this conclusion, and whether this conclusion also encompassed other types of communication with, and outreach to, Rohingya communities.