



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

National Contact Point
for Responsible Business
Conduct Norway

Oslo, 27 September 2021

INITIAL ASSESSMENT

**THE CENTRE FOR RESEARCH ON MULTINATIONAL CORPORATIONS (SOMO) ON
BEHALF OF 474 MYANMAR-BASED CIVIL SOCIETY ORGANISATIONS**

VS.

TELENOR ASA

The objective of an Initial Assessment under the Procedural Guidelines is to determine whether the issues raised in the specific instance merit further examination. If so, the National Contact Point (NCP) will offer or facilitate access to consensual and non-adversarial procedures, such as dialogue or mediation ('good offices') to the parties. The NCP has at this stage made no determination as to whether the company has acted consistently with the OECD Guidelines. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a mediation.

EXECUTIVE SUMMARY

On 27 July 2021, the Norwegian NCP received a complaint from the Centre for Research on Multinational Corporations (SOMO) on behalf of 474 civil society organisations ('the Complainants') relating to the operations of Telenor Myanmar Ltd. The Complainants contend that Telenor has failed to observe the recommendations of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) with respect to risk-based due diligence, stakeholder engagement and disclosure in their disengagement from Myanmar.

The NCP has considered the admissibility criteria of the Initial Assessment process and has determined that the issues raised in the submission merit further consideration and will offer its good offices to the parties.

SUBSTANCE OF THE SUBMISSION

On 27 July 2021, the Norwegian NCP received a complaint from SOMO on behalf of 474 Myanmar-based civil society organisations (CSOs). The complaint alleges non-adherence to the OECD Guidelines by Telenor ASA in relation to its disengagement from its Myanmar operations.

Telenor Myanmar commenced operations in 2014 and currently serves more than 18.2 million customers in Myanmar. On 8 July, Telenor announced that it had entered into an agreement to sell 100 per cent of Telenor Myanmar to M1 Group, a Lebanese investment holding company.¹ According to the submission, the owners of M1 Group have a history of business in authoritarian countries and face unresolved allegations of corruption and terrorist financing.²

The Complainants contend that Telenor's sale of its Myanmar business to M1 Group fails to meet the standards of responsible disengagement set out in the OECD Guidelines in three key respects:³

- First, that Telenor has failed to conduct appropriate risk-based due diligence and has failed to seek to prevent or mitigate adverse human rights impacts to its customers potentially arising from the sale of its Myanmar operations.
- Second, that Telenor has failed to meaningfully engage with relevant stakeholders in relation to the sale of Telenor Myanmar to M1 Group.
- Third, that Telenor has not acted in accordance with OECD standards on disclosure and communication about due diligence in relation to its decision to disengage from its Myanmar operations.

The complaint alleges that Telenor Myanmar has failed to uphold several provisions of the OECD Guidelines. According to Chapter II (General Policies), enterprises should:

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

¹ The Centre for Research on Multinational Corporations (SOMO), 27 July 2021, 'Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises', p. 3.

² The Complainants state that two lawsuits have been commenced against MTN Group Limited (MTN). M1 limited, a subsidiary of M1 Group Limited, held 6.44 percent of shares in MTN. See p. 6 – 7 of the complaint.

³ The Complainants also contend that the enterprise has failed to act in accordance with the United Nations Guiding Principles on Business and Human Rights ('UNGPs'). The NCP considers submissions relating to alleged non-observance of the OECD Guidelines, and the OECD Guidelines were updated in accordance with the UNGPs in 2011.

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) of the OECD Guidelines provides that:

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

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

f) foreseeable risk factors; [...]

Chapter IV (Human Rights) of the OECD Guidelines provides that enterprises should:

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

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

The submission also refers to the OECD Due Diligence Guidance for Responsible Business Conduct (2018), highlighting the guidance it provides on responsible disengagement.⁴

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

- 1) Suspension of the sale of Telenor Myanmar to M1 Group until such time as Telenor conducts human rights due diligence in accordance with the OECD Guidelines.
- 2) For Telenor to disclose information on human rights due diligence (if any) that it conducted in relation to the sale of Telenor Myanmar to M1 Group. Alternatively, for Telenor to conduct comprehensive risk-based human rights due diligence on the sale, including to prevent and mitigate actual and potential adverse human rights impacts that they cause or to which they contribute, or alternatively to seek to prevent or mitigate adverse impacts to which they are directly linked (including, for example, to suspend the sale of Telenor Myanmar until a more responsible buyer is identified).

⁴ See OECD (2018), 'Due Diligence Guidance for Responsible Business Conduct', p. 80: "In these situations, enterprises should also consider and address the potential adverse impacts of a decision to disengage. If an enterprise determines that disengagement is the most appropriate action, there are a range of actions that it may take to ensure that its process for disengagement is responsible".

- 3) For Telenor to meaningfully engage with key stakeholders on the sale of Telenor Myanmar (including, for example, CSOs, journalists and their mobile users).
- 4) For Telenor to be more transparent about human rights due diligence (if any) that it has conducted and its reasons for leaving Myanmar.
- 5) Generally, to act in accordance with its obligations under the OECD Guidelines and UNGPs in relation to responsible disengagement.

RESPONSE FROM THE COMPANY

Telenor responded to the submission from SOMO on 12 August 2021. As an initial comment, Telenor expresses serious concerns with respect to the challenging situation in Myanmar following the military takeover. Telenor underscores that the situation in Myanmar is a result of the military takeover and not Telenor's decision to sell Telenor Myanmar. According to Telenor, the decision to disengage has been extremely challenging and was taken only as a last resort. Telenor carried out "thorough assessments on the available alternatives prior to the decision to sell."⁵ The company states that the ability to continue adherence to responsible business conduct, international law and human rights principles were key factors in these assessments. The security and safety of Telenor personnel and their continued employment were also important factors.⁶

In their response, Telenor describes their efforts with respect to the issues raised in the submission on three accounts:

- 1) *Transparency on the situation.* Telenor describes being as transparent as possible on the Myanmar operations, and that the ability to be transparent was limited by the new regime. Telenor refers to efforts to be transparent when it comes to the directives forcing Telenor Myanmar to amongst others shut down the internet.⁷ Telenor describes being open and transparent about its human rights successes and challenges, including through its Sustainability briefings, held annually since 2014.⁸
- 2) *Stakeholder engagement.* Telenor describes "continuous and comprehensive stakeholder engagement at a local and international level" and collaborating with partners to contribute positively to the people of Myanmar.⁹ As a publicly listed company, Telenor refers to being legally prevented from discussing the direct sale of Telenor Myanmar with CSOs or other interest groups under stock exchange rules. Following the announcement of the transaction, Telenor invited and held meetings with local and international CSOs. Telenor describes local discussions with Myanmar CSOs since engaging in Myanmar.¹⁰

⁵ Response to complaint, Telenor ASA, 12 August 2021, 'RE: Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises', p. 1.

⁶ Response to complaint, p. 1.

⁷ [Directives from authorities in Myanmar - February-August 2021 - Telenor Group.](#)

⁸ Response to complaint, p. 3 – 4.

⁹ Response to complaint, p. 4.

¹⁰ Response to complaint, p. 4.

- 3) *Assessments on how to proceed.* As a result of the military takeover and following a comprehensive assessment of the developments since the takeover, Telenor concluded that the expected adverse impacts of the new regime in a scenario of continuing operations were irremediable. The sale of Telenor Myanmar was considered as the least detrimental solution and would allow for continued connectivity for subscribers and enterprises depending on it, continuous deployment of staff and an operator independent of the new regime.¹¹

Telenor is of the view that the submission should be dismissed. They do not dispute that SOMO may have an interest in the matter. Telenor states that there is no link between the severe human rights violations caused by the military and the operations of Telenor. Further to this, the company is of the view that considering the specific instance will not contribute to the purpose and effectiveness of the OECD Guidelines. With reference to Chapter IV (Human Rights) of the OECD Guidelines,¹² Telenor describes facing conflicting requirements following the military takeover:

*Telenor ended up in a situation where it going forward no longer would be allowed to respect human rights principles and international law as a result of being faced with legal obligations enforced by the military regime [...]. Telenor has come in a position where it was going forward no longer viable to continue operations in line with its policies and internal and external requirements as a result of the military takeover and was forced to sell as a last resort.*¹³

Telenor states that they have “used all efforts to remedy the situation” and continue their operations in Myanmar.¹⁴ In concluding the response to the submission, Telenor states that the decision to sell Telenor Myanmar was not motivated by financial or strategic motives but was taken as a last resort. Telenor considered that the sale of Telenor Myanmar would secure access to service for 18 million subscribers, hospitals and banks, a fourth operator independent of the military regime and continued employment for the employees of Telenor Myanmar.¹⁵

PROCEEDINGS OF THE NCP TO DATE

The Norwegian NCP received the submission from SOMO on behalf of 474 CSOs on 27 July 2021. The Complainants requested for the NCP to expedite its initial assessment, given that an agreement to sell Telenor Myanmar to M1 Group had already been signed and the deteriorating human rights situation in the country.¹⁶

¹¹ Response to complaint, p. 5.

¹² OECD (2011), OECD Guidelines for Multinational Enterprises, Commentary on Human Rights, para. 38.

¹³ Response to complaint, p. 6.

¹⁴ Response to complaint, p. 2.

¹⁵ Response to complaint, p. 7.

¹⁶ Complaint, p. 4.

In accordance with the Norwegian NCP's Procedural Guidance for handling specific instances,¹⁷ the NCP shared the complaint with Telenor ASA on 27 July 2021, requesting a response within ten working days. Telenor requested an extension of the deadline to respond to the complaint. On 12 August 2021, the NCP received Telenor's response to the submission.

On 7 September 2021, the NCP shared a draft version of the Initial Assessment with the parties with a request to submit comments within ten working days. The parties were asked to restrict their comments to factual errors. The parties had no comments to the Initial Assessment and confirmed their willingness to accept the good offices of the NCP. On 27 September 2021, the NCP published the Initial Assessment and the submissions from the parties on its website: www.responsiblebusiness.no.

INITIAL ASSESSMENT BY THE NCP

The OECD Guidelines are recommendations from governments to multinational enterprises operating in or from adhering countries.¹⁸ They are addressed to all the entities within the multinational enterprise (parent companies and/or local entities).¹⁹ According to the OECD Guidelines, issues should primarily be dealt with by the NCP of the country in which the issues have arisen.²⁰ Telenor ASA is a majority state-owned multinational telecommunications company headquartered in Oslo, Norway.²¹ Telenor Myanmar is a wholly owned subsidiary of Telenor ASA headquartered in Yangon, Myanmar. Myanmar is not a signatory to the OECD Guidelines, and the Norwegian NCP is thus the correct entity to consider the submission.

The Norwegian NCP has determined that the submission merits further consideration. This decision has been taken following an elaboration of the six criteria below, as outlined in the commentary to the OECD Guidelines' Procedural Guidance, para 25 and the Procedural Guidelines for handling specific instances of the Norwegian NCP. In doing so, the NCP has sought to determine whether the issues are "bona fide", in other words real or authentic, and relevant to the implementation of the OECD Guidelines.²²

1. WHAT IS THE IDENTITY OF THE PARTY CONCERNED AND WHAT IS THEIR INTEREST IN THE MATTER?

SOMO is an independent, not-for-profit organisation registered in Amsterdam, The Netherlands, focusing on the impact of the activities of multinational enterprises on people and the

¹⁷ National Contact Point Norway (2014), [Procedural Guidelines for Handling Specific Instances](#).

¹⁸ OECD Guidelines, Foreword, p. 3.

¹⁹ OECD Guidelines, Chapter I, para. 4.

²⁰ OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, para. 23.

²¹ Telenor Group, 'Major Shareholdings', 30 June 2021, [Major Shareholdings - Telenor Group](#). As of 30 June 2021, the Government of Norway held 53.97 per cent of total shares in Telenor.

²² OECD (2019), Guide for National Contact Points on Coordination when handling specific instances, p. 5.

environment. SOMO monitors the implementation of the OECD Guidelines and advocates for strong corporate accountability frameworks to address global governance gaps. SOMO has filed the complaint on behalf of 474 Myanmar-based CSOs. The local CSOs are anonymous due to the human rights situation in Myanmar. The identities of the CSOs have, however, been disclosed to the NCP, and the NCP has reviewed the list of organisations on a confidential basis.

SOMO is acting on behalf of 474 CSOs in Myanmar. The CSOs, and the people and causes they represent and/or defend, are or may be impacted by the operations of Telenor Myanmar. The NCP considers that the Complainants have a legitimate interest in the issues raised.

2. ARE THE ISSUES RAISED MATERIAL AND SUBSTANTIATED?

The NCP interprets “material and substantiated” to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines.

The submission alleges that the sale of Telenor Myanmar to M1 Group contravenes Telenor’s responsibilities under the OECD Guidelines. The issues raised relate to the OECD Guidelines’ Chapter II (General Policies), Paragraphs A10 and A14, Chapter III (Disclosure), Paragraphs 1 and 2 f and Chapter IV (Human Rights), Paragraphs 1 and 5. SOMO substantiates the issues raised in Section 2.2 of the submission, and the NCP finds that the issues raised are plausible also after taking careful note of the company’s response.

The NCP considers that the issues raised in the complaint are material and substantiated sufficiently for the purpose of an initial assessment.

3. DOES THERE SEEM TO BE A LINK BETWEEN THE ACTIVITIES OF THE ENTERPRISE AND THE ISSUES RAISED?

For the NCP to accept the complaint for further consideration, the “issues raised” must concern provisions of the OECD Guidelines. Chapter II of the OECD Guidelines provides that enterprises should:

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

The Complainants submit that the due diligence conducted by Telenor in relation to the sale of Telenor Myanmar (if any) did not comply with the OECD Guidelines because it failed to identify, prevent and mitigate actual or potential impacts of the transaction.²³ They contend that Telenor has failed to observe Chapters II, III and IV of the OECD Guidelines with respect to risk-based due diligence, stakeholder engagement and disclosure in their disengagement from Myanmar.²⁴

²³ Complaint, p. 9.

²⁴ Complaint, p. 3. See also p. 5 – 10 of the complaint.

The NCP considers that there is a link between the activities of the enterprise and the issues raised. The NCP has made no determination as to whether the OECD Guidelines have been observed.

4. WHAT IS THE RELEVANCE OF APPLICABLE LAW AND PROCEDURES, INCLUDING COURT RULINGS?

The OECD Guidelines provide that they “extend beyond the law in many cases.”²⁵ In rare instances, domestic law requirements may conflict with the recommendations of the OECD Guidelines. In such situations, the Guidelines provide 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.”²⁶ In undertaking an initial assessment, the NCP does not assess whether or how enterprises have accomplished this. However, such issues may be explored in a good offices phase.²⁷

While the issues raised relating to Telenor Myanmar differ from ongoing international procedures relating to the human rights situation in Myanmar,²⁸ fact-finding by the UN and other bodies may provide useful orientations for the NCP in handling the submission.²⁹ In a report from July 2020, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises clarifies practical steps and measures that States and enterprises may take in conflict-affected regions, including heightened human rights due diligence.³⁰

5. HOW HAVE SIMILAR ISSUES BEEN, OR ARE BEING, TREATED IN OTHER DOMESTIC OR INTERNATIONAL PROCEEDINGS?

On 16 December 2019, the Committee Seeking Justice for Alethankyaw (‘CSJA’) filed a specific instance against Telenor to the Norwegian NCP. CSJA claims, among other things, that Telenor failed to carry out appropriate human rights’ due diligence in its Myanmar operations. The NCP determined that the issues raised in the submission merited further consideration and is currently

²⁵ OECD Guidelines, Chapter I, para. 2.

²⁶ OECD Guidelines, Commentary on Human Rights, para. 38.

²⁷ OECD (2018), Guide for National Contact Points on the Initial Assessment of Specific Instances, p. 9.

²⁸ On 14 November 2019, the International Criminal Court (ICC) authorised the prosecutor to proceed with an investigation for the alleged crimes within the ICC’s jurisdiction in Myanmar following a request to open an investigation into alleged crimes committed against the Rohingya people from Myanmar.

²⁹ In August 2019, M1 Group was named in the UN Independent International Fact-Finding Mission on Myanmar. The Mission recommended that: “[...] no business enterprise active in Myanmar or trading with or investing in business in Myanmar should enter into or remain in a business relationship of any kind with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them (including subsidiaries) or their individual members.” Human Rights Council, ‘The economic interests of the Myanmar military: Independent International Fact-Finding Mission on Myanmar’, A/HRC/42/CRP, 5 August 2019, p. 100. Available at: [Microsoft Word - A_HRC_42_CRP_3_Corr.Clean.docx \(ohchr.org\)](#).

³⁰ Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, ‘Business, human rights and conflict-affected regions: towards heightened action’, A/75/212, 21 July 2020. Available at: [A/75/212 - E - A/75/212 -Desktop \(undocs.org\)](#).

handling the specific instance. The NCP is of the view that the procedures and outcomes of the specific instance ‘CSJA vs. Telenor’ would not prejudice the handling of this specific instance.³¹

6. WOULD CONSIDERING THIS SUBMISSION CONTRIBUTE TO THE PURPOSE AND EFFECTIVENESS OF THE GUIDELINES?

The question for the NCP to consider here is whether accepting the specific instance would contribute to the purpose and the effectiveness of the OECD Guidelines. The OECD Guidelines aim, among other things, to promote positive contributions by enterprises to economic, environmental and social progress worldwide. The Guidelines also seek to minimise and resolve difficulties to which multinational enterprises’ various operations may give rise.³²

The specific instance concerns a serious situation following a military takeover. The NCP is of the view that accepting this submission and offering good offices to the parties may contribute to resolving the issues raised by SOMO and the CSOs that SOMO represents. This in itself is an important contribution to the effectiveness of the OECD Guidelines and in line with their purpose. Further, the NCP procedure in this specific instance may contribute to the understanding within Telenor and other businesses of the OECD Guidelines’ recommendations for human rights due diligence, and how they may be observed in a challenging context of a military takeover. This, too, may offer important contributions to the purpose and effectiveness of the OECD Guidelines.

CONCLUSION

The NCP has considered the above admissibility criteria of the Initial Assessment process and has determined that the issues raised in the submission merit further consideration and will offer its good offices to the parties. The conclusion of the NCP in this Initial Assessment is based on the information received from both parties. The NCP has not hereby expressed any view as to the correctness of the statements or the validity of the documentation provided, nor on their possible impact on the issues raised in the specific instance. Neither has the NCP made any determination as to whether the OECD Guidelines have been observed.

NEXT STEPS

The NCP finds that this submission merits further consideration. Both parties have stated in their initial submissions that they will participate in the NCP procedure if the specific instance is deemed admissible by the NCP. The NCP will inform the OECD Secretariat and the Initial Assessment will be added to the OECD Database of specific instances.

³¹ Information on the specific instance is published on the website of the Norwegian NCP. See [Committee Seeking Justice for Alethanyaw \(CSJA\) vs. Telenor – Ansvarlig Næringsliv \(responsiblebusiness.no\)](#).

³² See the OECD Guidelines, Foreword and Preface.