



OECD **GUIDELINES**
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT NORWAY

28 October 2020

INITIAL ASSESSMENT: COMMITTEE SEEKING JUSTICE FOR ALETHANKYAW (CSJA) VS. TELENOR GROUP

SUMMARY

The complaint from the Committee Seeking Justice for Alethankyaw (CSJA) alleges non-adherence to the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) in a context of serious violations of international law in Myanmar. The NCP finds that the main issue raised in the complaint is whether the enterprise, Telenor, has conducted ongoing due diligence for responsible business conduct in accordance with the OECD Guidelines.¹

The complaint primarily concerns an incident where an inactive telecommunications tower owned and operated by Irrawaddy Green Towers, a tower infrastructure vendor to Telenor Myanmar, allegedly was used by the military as a vantage point to kill and drive out unarmed civilians from the village Alethankyaw, Rakhine State in August 2017. In addition, the complaint calls for disclosure relating to land confiscation and addresses the issue of Telenor's role in a network shutdown. CSJA asks for a fair and unbiased investigation of the issues raised, and does not seek financial compensation.

The NCP finds that the issues raised in the complaint merit further consideration, and has decided to proceed with the complaint. The OECD Guidelines apply to Telenor Group, a multinational telecommunications enterprise headquartered in Norway, and to its wholly owned subsidiary, Telenor Myanmar. There seems to be a link between the enterprises' activities and issues raised in the complaint. The NCP finds that the complainant, CSJA, has provided sufficient information regarding their identity and interest in the issues raised in the complaint.

¹ According to the Guidelines, due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address actual and potential adverse impacts in their own operations, supply chain and other business relationships

The complaint raises issues that are relevant to the OECD Guidelines, and is substantiated by references to fact-finding reports. It refers to a report from the UN Special Rapporteur on the human rights situation in Myanmar in 2019, which found that “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.”² The UN has established various mechanisms to investigate human rights violations and violations of international humanitarian law by the military in Myanmar.³ The ongoing investigations are mainly aimed at the responsibility of the authorities and military in Myanmar, and would therefore not prejudice further consideration of the complaint.

Finally, the NCP finds that further consideration of the complaint can contribute to the purpose and effectiveness of the Guidelines’, particularly with respect to recommendations on ongoing due diligence in a context of alleged serious human rights violations and violations of international humanitarian law. The NCP has not, in this initial assessment, expressed any view as to whether the enterprise has not acted consistently with the OECD Guidelines.

THE COMPLAINT

On 16 December 2019, the Committee Seeking Justice for Alethankyaw (CSJA) filed a complaint to the Norwegian National Contact Point (NCP), alleging breaches of the OECD Guidelines by Telenor and its subsidiary, Telenor Myanmar Ltd. The complainants allege that in late August 2017, Myanmar military personnel used a telephone tower that is part of Telenor’s Myanmar cellular network “as a vantage point to kill fleeing Rohingya men, women and children” in Alethankyaw. According to the complaint, soldiers from Myanmar Army Light Infantry Division 99 were dispatched to Alethankyaw in the days leading to August 25, 2017, and were seen scaling the Telenor tower, “from where they shot at and terrorized Rohingya villagers.” 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.”⁴

² Report of the Special Rapporteur on the situation of human rights in Myanmar, doc A/HRC/40/68, 5 March 2019, para 36.

³ In March 2017, the UN Human Rights Council established the Independent International Fact-Finding Mission on Myanmar (IIFMM) to establish the facts and circumstances of the alleged human rights violations by military and security forces, and abuses, in Myanmar. The mandate of the IIFMM ended in September 2019. The IIFMM handed over its evidence to the Independent Investigative Mechanism for Myanmar (IIMM), also mandated by the Human Rights Council and operational since 30 August 2019. The IIMM is mandated to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011. In 2019, the Gambia brought a case to the International Court of Justice accusing Myanmar of violating the Genocide Convention in a systematic campaign of ethnic cleansing.

⁴ Complaint from CSJA, p. 2.

The complaint refers to the recent report of the UN Special Rapporteur on the situation of human rights in Myanmar,⁵ the Independent International Fact-Finding Mission on Myanmar,⁶ as well as a statement from the UN Special Rapporteur on the right to freedom of expression.⁷

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”.⁸ They 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.⁹

The complainant 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 who carried out the massacre”. They also 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”. The complainants underscore that recent events highlight the “urgency of investigating Telenor’s complicity in Myanmar military violations in western Myanmar”, referring also to a network shutdown in nine townships in Rakhine and Chin States on 21 June 2017.¹⁰

The complaint concerns whether Telenor Group has operated in accordance with the OECD Guidelines with regards to these issues. The complainants highlight the responsibilities of companies to conduct due diligence, and to ensure that they are not complicit in human rights violations. The complainants refer to due diligence as “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it. The scope of human rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities.”¹¹ The complainants allege that Telenor has acted inconsistently with the OECD Guidelines, Chapter II General Policies, paragraph A13, which highlights that enterprises should “encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.”¹²

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

⁶ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/42/CRP.5, 16 September 2019.

⁷ “[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.](#)”

⁸ Complaint from CSJA, p. 3.

⁹ Complaint from CSJA, p. 4.

¹⁰ Complaint from CSJA, p. 5.

¹¹ Complaint from CSJA, p. 3, with reference to the UN Secretary-General’s Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises.

¹² Complaint from CSJA, p. 4 footnote no. 18.

The aim of the complainant is to have the issues raised in the complaint “thoroughly examined” by the Norwegian NCP. The complainants call for a fair and unbiased investigation as to “Telenor’s connection to the killing in Alethankyaw”.¹³ The complainants do not seek financial compensation.

THE COMPANY’S RESPONSE

The NCP informed Telenor Group about the complaint on 20 December 2019. The company was invited to an orientation meeting with the NCP secretariat to receive information about the OECD complaint mechanism and the process. The meeting was held on 9 January 2020. The NCP received Telenor Group’s written response to the complaint on 17 February 2020.

In its response to the complaint, Telenor addresses its operations in Myanmar. Telenor Myanmar Ltd. is a wholly-owned subsidiary of Telenor Group, and was awarded a license in February 2014 from the Myanmar Ministry of Transport and Communication (MoTC) to provide telecommunications services throughout Myanmar. The company has rolled out its network in all states and regions and has approximately 10,000 towers in its network in Myanmar.¹⁴

Telenor does not contest the factual circumstances raised in the complaint, and addresses these in the response to the complaint as well as in statements published on the Telenor Website. Telenor does not contest that the Norwegian NCP is the correct entity to assess the complaint. Should the NCP consider that the complaint merits further consideration, Telenor asks that the objectives, scope and intended outcomes of a mediation process is clearly outlined in advance.¹⁵

The following is a summary of the Telenor Group’s response to the main issues raised in the complaint. For the company’s entire response, see the Norwegian NCP website.

1. DUE DILIGENCE AND OPERATING IN CONFLICT-AFFECTED AREAS

In its response to the complaint, Telenor Group describes its risk-based approach and due diligence when operating in a conflict-affected area. Before entering Myanmar in 2014, Telenor conducted its own due diligence and commissioned a number of third party pre-investment due diligence processes. These covered human rights, labour rights, corruption and environmental sustainability. As part of this effort, Telenor engaged third parties including Business for Social Responsibility (BSR). At the onset of setting up operations, Telenor Myanmar established a community outreach team with eight “state liaison officers” representing different ethnicities and covering the different conflict states. Between 2014 and 2018, Telenor Myanmar Ltd. held community engagement meetings, including in Rakhine State.¹⁶

Telenor informs that the Alethankyaw tower, which the complaint concerns, is owned and operated by Irrawaddy Green Towers, one of the companies selected by Telenor Myanmar Ltd.

¹³ Complaint from CSJA, p. 1.

¹⁴ Telenor’s response, p. 2 – 3.

¹⁵ Telenor’s response, p. 6.

¹⁶ Telenor’s response, p. 2 – 3.

following Telenor's vendor due diligence process. Irrawaddy Green Towers was required to sign Telenor's Agreement on Responsible Business Conduct, which obliges the vendor to comply with Telenor's Supplier Conduct Principles. The tower was erected in 2016 but was not operational until March 2018. The network rollout was delayed due to the conflict in the area. Between August 2016 and April 2017, and between August and December 2017, entry into the area was not allowed for Telenor personnel based on Telenor Myanmar's assessment of the safety and security situation.¹⁷ After becoming aware of the report regarding the incident in August 2017, Telenor conducted inspections on the tower site. The vendor found that a lock for the protective fence was missing in 2017. None of the inspections carried out subsequently reported signs of unusual activity, according to Telenor.¹⁸

In Telenor's view, their due diligence has been comprehensive and in accordance with the OECD Guidelines. Telenor asserts that maintaining ordinary infrastructure for civilian use is not an activity that causes or contributes to adverse impact. According to Telenor, the alleged military use of the tower in late August 2017 was an unauthorised and possibly illegal intrusion of civilian infrastructure and it would have been impossible for Telenor or the vendor to prevent the acts that occurred. Telenor claims that the adverse impact is not linked to Telenor through a business relationship, and that the tower company does not have a business relationship with the military relevant to the incident in August 2017. Telenor believes that the incident should be investigated by relevant authorities. Following reports on the killings in Alethankyaw, Telenor asked the Myanmar authorities – with involvement of independent NGOs – to investigate the allegations that the tower was used by the military. Telenor continues to advocate for the incident to be investigated by relevant authorities, and repeated this request to the MoTC in January 2020.¹⁹

2. LAND USED FOR TELECOMMUNICATIONS TOWERS

Telenor describes the focus in Telenor Myanmar Ltd. on identifying and avoiding any land grabbing issues in connection with renting land for towers. The company follows a three-step process to check and verify the identity of the land owner, documentation of land ownership and neighbour consent. Telenor Myanmar Ltd. conducts sample, unannounced inspections and has established a complaint system. The network vendor, Irrawaddy Green Towers, began its site acquisition process for the tower in Alethankyaw in May 2016. A site was selected following an assessment of the site acquisition report and technical site survey report, involving documentation of proof of ownership, township approval and a village recommendation letter for specific land use. Between 2015 and 2019, Telenor Myanmar Ltd.'s Supply Chain Sustainability team conducted inspections across all locations. 423 out of these were conducted in Rakhine state, of which two were in Maungdaw. Telenor finds no indication of complaints regarding land confiscation nor objections that the towers be built.²⁰

¹⁷ Telenor's response, p. 3 – 4.

¹⁸ [Telenor statement on report from Kaladan Press Network](#), 20 November 2018.

¹⁹ Telenor's response p. 5 – 6.

²⁰ Telenor's response p. 3 – 4.

3. GOVERNMENT ORDERS TO CLOSE MOBILE NETWORK

When it comes to the network shutdown, Telenor refers to statements on their website, also when it comes to the network closure on 21 June 2019.²¹ According to this statement, Telenor received a directive from the MoTC directing all mobile phone operators to temporarily stop mobile internet traffic in nine townships in Rakhine and Chin States. In the directive, the MoTC references disturbances of peace and the use of internet services to coordinate illegal activities. 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 telecommunications services should be maintained for humanitarian purposes, especially during times of conflict.

THE NCP'S ASSESSMENT

The complaint alleges serious breaches of the OECD Guidelines by Telenor and its subsidiary, Telenor Myanmar, focusing on an incident in Alethankyaw, Maungdaw Township, Rakhine State in August 2017. The Committee Seeking Justice for Alethankyaw (CSJA) alleges that a telecommunications tower owned and operated by a Telenor Myanmar network vendor was used by the military as a vantage point to kill and drive out unarmed civilians from Alethankyaw. The complainants claim, among other things, that Telenor has failed to carry out the appropriate level of due diligence and has not handled the incident in accordance with the OECD Guidelines.

The NCP finds that the complainant has provided sufficient information about their identity and interest in the issues raised in the complaint. The eight complainants are members of CSJA and former residents of the village Alethankyaw, Maungdaw Township. They currently reside in a refugee camp in Bangladesh. The NCP knows the identity of the members of the CSJA, and their representative, Tin Soe, Executive Editor of the Kaladan Press Network. The complainants seek a fair and unbiased investigation of the issues raised in the complaint.

The OECD Guidelines apply to Telenor Group, a multinational telecommunications enterprise headquartered in Norway, and its wholly owned subsidiary, Telenor Myanmar Ltd. The incident raised in the complaint involves the use of a tower owned and operated by a network vendor, Irrawaddy Green Towers. Telenor confirms that Telenor Myanmar Ltd. had a business relationship with the network vendor at the time of the incident.

The details provided in the complaint are relevant to the question of whether the Telenor Group has operated in accordance with the OECD Guidelines. The complainants highlight the responsibility of companies to exercise ongoing due diligence, to avoid complicity in human rights violations, and to disclose pertinent information relating to land use and subcontractors. The complaint specifically refers to the responsibilities of companies in conflict zones and Chapter II, paragraph A13 of the OECD Guidelines, which reads:

²¹ Telenor [statement on the 21 June 2019 network shutdown](#);
Telenor [statement on internet services restricted in five townships in Myanmar, 3 February 2020](#).

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

The NCP finds that the main issue in the complaint is whether Telenor has exercised ongoing due diligence in accordance with the OECD Guidelines. In addition to the sections of the Guidelines referred to in the complaint, Chapter IV Human Rights is relevant to further examination of the issues raised. Enterprises are expected to:

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

The Commentary to Chapter IV Human Rights elaborates on how human rights due diligence may be operationalised, also in situations of armed conflict:

40. 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.

45. The process entails assessing actual and potential human rights impacts, integrating and acting upon findings, tracking responses as well as communicating how impacts are addressed [...]. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve.

The complaint is substantiated with references to reports from the Special Rapporteur on the situation of human rights in Myanmar, the Independent International Fact-Finding Mission on Myanmar, as well as eye witness accounts reported in "The Killing Fields of Alethankyaw November 2018".

In 2018, the UN-mandated Independent International Fact-Finding Mission on Myanmar established consistent patterns of human rights violations and abuses in Rakhine, Kachin and Shan States, in addition to serious violations of international humanitarian law, principally committed by the Myanmar security forces. The mission found that the violence in Rakhine State constituted a non-international armed conflict, at least since 25 August 2017. According to the report, thousands were killed and nearly 725,000 Rohingya had fled to Bangladesh by mid-August 2018. More than 70 percent of the 392 villages destroyed were in Maungdaw. The report concludes that members of the military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes.²²

For nearly three decades, five consecutive Special Rapporteurs on the situation of human rights in Myanmar have presented an annual report to the UN General Assembly and the UN Human Rights Council on the human rights situation. In her report of 5 March 2019, the Special Rapporteur highlights the commercial interests of military-owned and military-affiliated entities

²² Report of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/39/64, 12 September 2018, para 10, 31 to 33, 35, 36 and 42.

as a concern for human rights in Myanmar, and urges private companies to follow the UN Guiding Principles on Business and Human Rights.²³ The Special Rapporteur addresses in detail the events of 25 August 2017 in the Alethankyaw village:

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.²⁴ 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 [...].²⁵

In September 2019, the Independent International Fact-Finding Mission on Myanmar established consistent patterns of serious human rights violations and abuses by military officials, and found that “the Rohingya people remain at serious risk of genocide under the terms of the Genocide Convention.”²⁶ Human Rights Council Resolution 39/2 on the situation of human rights of Rohingya Muslims and other minorities in Myanmar establishes an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings. The Independent Investigative Mechanism for Myanmar became operational on 30 August 2019.²⁷

In November 2019, the Gambia launched a case against Myanmar in the International Court of Justice (ICJ), accusing Myanmar of violating the 1948 Genocide Convention in its treatment of the Rohingya minority. Aung San Suu Kyi, Myanmar’s State Counsellor, rejected allegations of genocide in a hearing in December 2019. In January 2020, the ICJ ordered Myanmar to “take all measures within its power” to protect members of the Rohingya community from genocide, and to report regularly about its progress.²⁸

²³ Report of the Special Rapporteur on the situation of human rights in Myanmar, doc A/HRC/40/68, 5 March 2019, para 9 to 16.

²⁴ Kaladan Press Network, <https://kaladanpress.org/images/document/2018/KillingFieldsWEB--01.pdf> (2018).

²⁵ Report of the Special Rapporteur on the situation of human rights in Myanmar, doc A/HRC/40/68, 5 March 2019, para 36.

²⁶ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, doc. A/HRC/42/CRP.5, 16 September 2019, para. 242. See also paras. 58, 240, 242 and 667.

²⁷ UN Human Rights Council, [Independent Investigative Mechanism for Myanmar](#).

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](#).

Ongoing fact-finding reports and court proceedings highlight the gravity of the situation in Myanmar, and the risk for future violations of international law. The complaint concerns how an enterprise should conduct due diligence and covers other issues than ongoing court proceedings, which concern the actions of the military and the government of Myanmar. The NCP finds that the court proceedings thus do not prejudice handling this specific instance.

THE NCP'S DECISION AND NEXT STEPS

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.²⁹

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 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. In accordance with the NCP's Procedural Guidelines for Handling Specific Instances, this may include collecting further information or statements from the complainant and the company, holding meetings between the NCP and each party and seeking advice from independent experts. The process may also entail fact-finding, including 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.

Before issuing this initial assessment, the NCP gave the parties the opportunity to comment on a draft statement.

All official documents relating to the complaint can be found on the Norwegian NCP's website, including this initial assessment, the complaint and the companies' response. The initial assessment will be included in the OECD Database on Specific Instances for the OECD Guidelines.

²⁹ See *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises* (para 25) for the issues to be considered by NCPs in making an Initial Assessment of whether the issue raised merits further examination. See also the Norwegian NCP's [Procedural Guidelines for Handling Specific Instances](#).