

To the NCP, Norwegian Ministry of Foreign Affairs:

June 10, 2022

We, the Committee Seeking Justice for Alethanyaw, have had the opportunity to go over your findings and have made the following observations.

While the NCP acknowledged that documents generated as part of Telenor's due diligence “indicates that the risks for the Rohingya were not prioritised in Telenor’s due diligence and stakeholder engagement”, the NCP incorrectly concluded that Telenor was not at a fault for failing to foresee that a telecommunication tower in the Telenor network could be used by the military to further inflict suffering and abuse on the Rohingya community. We therefore strongly disagree with the NCP's finding that Telenor was not to blame for failing to conduct due diligence regarding the risks involved in operating in Rakhine state and whether the Myanmar army personnel could use a cellular tower in the Telenor network to shoot at Rohingya villages.

The NCP states in the final statement, *“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's finding in this regard is seriously flawed. There was a significant decline in the security of Rohingya in Rakhine State beginning in 2012 before Telenor formally entered Myanmar. Following a series of violent incidents in Rakhine in early 2012 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. Furthermore, the Myanmar army's long standing persecution of the Rohingya and history of committing abuses against ethnic and religious minorities were also well established. It should have been clear to a firm like Telenor that the Myanmar army also has a long track record of seizing property during times of military offensives or clashes. 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.

The NCP findings on the matter of Telenor’s due diligence appear to be either largely or solely based on what Telenor has claimed or presented. The NCP states in the final statement: *“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. The risk was not addressed in the pre-investment due diligence nor in 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 ICT Sector-Wide Impact Assessment (2015), to which Telenor and various stakeholders contributed.”*

The fact that Telenor's various due diligence reports, including those authored by third parties on Telenor’s behalf, did not foresee that there was a possibility that the Myanmar army would engage in

the “misuse of telecommunications towers”, by sending military personnel to scale the tower and shoot at villagers in Alethanyaw is a clear indication of Telenor’s failure to conduct proper due diligence.

There are a number of high profile and recent case studies involving firms operating in Myanmar, where the army or security forces took advantage of a firm's operations to conduct human rights violations. The use of forced labour, rape and killing in aiding the construction of the Yadana pipeline and the Myanmar armed forces’ use of the pipeline related infrastructure was the subject of John Doe vs. UNOCAL court case launched in 1996¹.

Similarly, the Myanmar operations of the Canadian firm, Ivanhoe Mines, were also the subject of considerable controversy, in particular relating to copper produced at the Monywa copper mine being sold to a number of blacklisted army-controlled entities². In 2012, Myanmar police used the chemical weapon white phosphorus against local largely ethnic Bamar villagers and monks near the site of the Letpadaung copper project³. All three of these case studies should have been highly relevant to Telenor and presumably would have been examined in some detail by an actual due diligence process, were Telenor and their hired consultants interested in conducting such an exercise.

It is also well known that Telenor's wholly owned subsidiary Telenor Myanmar, either directly employed or hired as consultants a number of officials close to the Thein Sein administration who hold biased and discriminatory views towards the Rohingya. People such as Tin Maung Thann, a former executive with the Myanmar Peace Center. While associating with such people as Tin Maung Thann gave Telenor good access to the Thein Sein government and helped facilitate the firm’s successful establishing of a cellular network in the country, it appears Telenor did not screen its senior staff to determine whether they held hostile views of Rohingya and did not consider the Rohingya to be legitimate citizens of Myanmar. The fact that some two years after the events of 2017 senior Telenor staff in Norway were still invoking the much derided Myanmar’s 135 ethnic national races list which does not include Rohingya in communication with UN Special Rapporteurs in an effort to demonstrate Telenor’s commitment to best practices and human rights norms, is a clear indication that Telenor officials had not conducted prior due diligence but also failed to properly respond to the events at Alethanyaw and the situation of the Rohingya overall in a meaningful way.

We also strongly disagree with Telenor’s claim about the vendor Irrawaddy Green Tower's (IGT) supposedly having good relations with the Rohingya community. In a 25 March 2022 Telenor email to the NCP, it was stated “*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*”. IGT was in 2017 a very young company that was only founded in 2012 and could not therefore have had “longstanding ties” to any community in Myanmar. But despite the firm's short history, IGT’s strong relations with the Myanmar army were very obvious. For example, in June 2017, IGT gave a 5 million kyat donation to Lt Gen Myint Maw, the commander of the Naypyidaw Regional Military Command. Although ostensibly the funds were intended for the victims of a recent plane crash, IGT is a vendor to Mytel, largely owned by a Myanmar army-controlled conglomerate, and IGT’s business relationship with Mytel relies on IGT maintaining good relations with the Myanmar military.

¹ <https://earthrights.org/case/doe-v-unocal/>

² <https://www.amnesty.org/en/documents/ASA16/0003/2015/en/>

³ <https://www.amnesty.org/en/documents/ASA16/0003/2015/en/>

Furthermore, as non-citizens subject to apartheid like conditions, the Rohingya in northern Rakhine were not in a position to freely object to IGT's apparent claims to Telenor that the firm had good relations with the Rohingya in Alethankyaw. That Telenor would continue to claim this is an indication of Telenor's wilful blindness and selective memory in this regard. If IGT in fact had good relations with the Rohingya or the people of Alethankyaw, they would have made an effort to prevent the army from using their infrastructure to shoot at Rohingya civilians.

With regards to the IGT's acquisition of land for the tower in question, Telenor has not disclosed enough documents in order to ascertain whether in fact this transaction was conducted in a proper manner. We question the NCP's ability to determine whether this was the case by simply looking at the documents. Does the NCP have the capacity to determine if land documents issued were forgeries? We have serious concerns that Telenor is shielding the identity of the landowner who may have facilitated the Myanmar army's access to the tower.

While the NCP states "*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.*" The NCP does not go further to offer any advice on how firms should deal with victims of military offensives and or genocide and how to ensure such "engagement" would not further traumatize them.

It is also incorrect to suggest that Telenor was prevented from disclosing further details about IGT's obtaining the land for the cell tower in question simply because the members of the Committee Seeking Justice for Alethankyaw (CSJA), did not engage in direct dialogue with the firm. The NCP claims, "The Company therefore has not had the opportunity to communicate more extensively about these issues." The lack of direct contact does not prevent Telenor from disclosing who owned the land where IGT's tower in Alethankyaw was built. In fact, Telenor has an obligation under international law to share this information on the events that took place in Rakhine State in 2017, including in Alethankyaw, as these events are now the subject of genocide hearings at the ICJ in The Hague.

We find it is a glaring omission that the NCP did not request that Telenor preserve documentation and or other records including video or still image files relating to what happened in Alethankyaw. As a company still majority owned by the Norwegian government, who are a signatory of both the Rome Statute and the Genocide convention, Telenor has an obligation under international law to assist international legal investigations into the events of 2017.

Overall, we, CSJA, are disappointed in the Norwegian Ministry of Foreign Affairs' handling of this case. We hoped that the OECD review would be objective, even though Telenor is majority owned by Norway. By focussing only on documents and statements by their Norwegian company and not even bothering to directly meet with CSJA, who could easily have been visited by their embassy in Dhaka, these findings show that Norway has simply attempted to protect its reputation and hide its complicity in genocide against our Rohingya peoples.

This brings shame not only on Norway and its people but on the OECD.

Sincerely,

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