

To the OECD Norway Contact Point:

Complaint Concerning Use of Telenor Tower for Genocide in Rakhine State

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The following complaint outlines serious breaches of OECD Guidelines for Multinational Enterprises (“the OECD Guidelines”) by Telenor and its Myanmar subsidiary, Telenor Myanmar, in relation to its activities in Myanmar’s Rakhine state. Specifically an incident in Alethanyaw, Maungdaw Township in August 2017 where a tower that is part of Telenor’s cellular network was used to aid the military as it carried out crimes against humanity against the local unarmed civilian population during a campaign of genocide. It is the aim of this complaint to have it thoroughly examined by the Norwegian National Contact Point (NCP) under the Specific Instance Procedure of the OECD Guidelines.

As the Norwegian government is the majority owner of Telenor, Norway has a particular obligation to investigate fairly and without bias Telenor’s connection to the killing in Alethanyaw. Many of the major humanitarian and human rights legal treaties that Norway is a signatory of, call on states to make sure that non-state actors adhere to the human rights obligations the treaties contain, including prohibitions on genocide and torture.

We, the Committee Seeking Justice for Alethanyaw, hope that Norway takes these obligations seriously.

Atrocities committed by Myanmar Security Forces using Telenor Infrastructure

Eyewitnesses from our community, including those interviewed for the report titled “The Killing Fields of Alethankyaw” by Kaladan Press Network released in November 2018¹, recounted how in late August 2017 Myanmar military personnel used a telephone tower in the town of Alethankyaw that is part of Telenor’s Myanmar cellular network, as a “vantage point to kill fleeing Rohingya men, women and children”² The high tower platform provided the Myanmar forces a unique strategic location to shoot at and terrorize Rohingya villagers in a wide radius in the sprawling village.

Soldiers from Myanmar Army Light Infantry Division (LID) 99³ were dispatched to Alethankyaw in the days leading to the first day of the violence on August 25. Starting August 26, soldiers were seen scaling both the Telenor tower and a nearby tower operated by the Myanmar state owned firm MPT, from where they shot at terrorized Rohingya villagers. “Each day we saw three or four soldiers climbing the towers,” a young fisherman who survived the incident told Kaladan Press⁴. This testimony was backed up by other survivors who saw bodies dumped under the Telenor tower⁵.

The testimonies were later cited by the UN Special Rapporteur for Human Rights in Myanmar Yanghee Lee in her report this year, in which she noted 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”⁶. A UN fact finding panel examining what took place in Rakhine State in August 2017 concluded that the military’s campaign against the Rohingya community was a genocide⁷.

Telenor’s flouting of OECD Guidelines, the Global Compact and UN Norms for Business

Professor John Ruggie who served as the UN Secretary General’s Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises defined 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

¹The Killing Fields of Alethankyaw November 2018
<https://www.kaladanpress.org/images/document/2018/KillingFieldsWEB--02.pdf>

² The Killing Fields of Alethankyaw November 2018

³ <https://www.reuters.com/article/us-myanmar-rohingya-battalions-specialre/the-shock-troops-who-expelled-the-rohingya-from-myanmar-idUSKBN1JM1X7>

⁴ The Killing Fields of Alethankyaw November 2018

⁵ The Killing Fields of Alethankyaw November 2018

⁶Report of the Special Rapporteur on the situation of human rights in Myanmar 25 February–22 March 2019 (Advance Unedited Version) https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_40_68.pdf

⁷Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23575>

rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities”⁸. A more traditional legal dictionary definition is that “the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or discharge an obligation”⁹.

Going by either of these definitions, it is clear that with regards to its operations in Rakhine State Telenor failed to carry out the appropriate level of due diligence. As Telenor has been active in Myanmar since at least June 2013, when it won one of two licenses to operate a cellular network that were open for bidding at the time, its staff and senior management, which includes a former Norwegian ambassador to Myanmar Katja Nordgaard¹⁰, could not possibly be unaware of the long standing apartheid-like policies and official discrimination directed at the Rohingya community as part of its campaign of genocide.

Principle Two of the Global Compact states that “Businesses should make sure that they are not complicit in human rights abuses”¹¹. As Telenor claims to adhere to this compact¹², the firm should have done its best to ensure that infrastructure built for its network in contested areas would not be used for human rights abuses, war crimes and acts of genocide.

It is clear however that Telenor, who first launched its network in Rakhine State in May 2016¹³, were not prepared for the eventuality that towers on its network in the state would be used by the military to massacre members of an already seriously oppressed community. A failure to perform due diligence and proper risk assessments resulted in the tower in Telenor’s cellular network being used to kill and drive out unarmed civilians from Alethanyaw.

In Telenor’s statement¹⁴ about the Alethanyaw massacre, it admitted that its personnel were pulled out just before the “clearance operations” in October 2016, as well as in August 2017, both of which the UN FFM declared were “evidence that infers genocidal intent” of Myanmar.¹⁵ Therefore Telenor already knew the risks of the military build up before the August 2017 “clearance operations,” and the strong likelihood there would be further large scale atrocities against the Rohingya. Thus Telenor bears significant responsibility for what took place on its tower.

⁸ His www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf

⁹ Black’s Law Dictionary, 8th edition (2006).

¹⁰ Martov, Seamus (2014, 02.06). “Former Norway Envoy’s Telenor Move Raises Eyebrows”. The Irrawaddy. <http://www.irrawaddy.org/business/former-norway-envoys-telenor-moveraises-eyebrows.htm>

¹¹ <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>

¹² Telenor - UN Global Compact Communication of Progress 2017

<https://www.unglobalcompact.org/participation/report/cop/create-and-submit/advanced/418641>

¹³ “Press Release Telenor expands network to Rakhine” 30 May, 2016 - Yangon <https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>
<https://www.telenor.com.mm/en/article/telenor-expands-network-rakhine>

¹⁴ <https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>

¹⁵ https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/20190916/A_HRC_42_CRP.5.pdf

Another relevant series of guidelines, the UN Norms for Business, states that “Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure the respect of and protect human rights recognized in international as well as national law...¹⁶” As Amnesty International has noted “The UN Human Rights Norms for Business make clear that businesses will have to ensure that they do not aid or abet human rights violations, nor benefit from war crimes such as plunder and pillage, crimes against humanity, genocide, torture, forced labour, hostage-taking, or other violations of international human rights or humanitarian law”¹⁷. Snipers shooting and killing unarmed civilians from a cellular tower during a genocide campaign is clearly a violation of international law.

Furthermore Telenor’s handling of the matter after it became aware of what took place at the tower is also not consistent with both OECD guidelines¹⁸ concerning operating in conflict zones and those relating to disclosure of pertinent information regarding the activities of subcontractors who may have been directly involved in the crimes against humanity that took place.

Telenor in a statement released on 29 November 2018, one week after the publication of the Kaladan Press report, claimed that it had “formally requested that the authorities investigate the alleged accusations.” Given that the Myanmar military have been accused of serious rights abuses, including the widespread killing of unarmed civilians during the offensive in Rakhine State in August 2017, something that was quickly denied by Myanmar civilian authorities, it is extremely unrealistic to expect these same Myanmar authorities, even civilian ones, to investigate the military, who remain very powerful and continue to manage much of Myanmar’s day to day affairs in accordance with the 2008 constitution.

Responding to the report concerning snipers on the tower, Telenor spokesperson Marcus Adaktusson told the German news agency dpa in a story published March 6 2019 that “**Telenor Myanmar has also conducted an inspection of the mentioned site, together with the [network] vendor, but have not found evidence to corroborate the allegations**”. The same day the dpa story was released Telenor revised the original 29 November 2018 statement concerning the tower allegation that was posted on the Telenor website to indicate that the unnamed firm who serves as the tower vendor found a lock for the protective fence around the tower was missing in 2017. This evidence, which is contrary to Adaktusson’s claim, corroborates the allegations.

¹⁶ The UN Human Rights Norms For Business: Towards Legal Accountability
Amnesty International 2004 <https://www.amnesty.org/download/Documents/IOR4200022004ENGLISH.PDF>

¹⁷ The UN Human Rights Norms For Business: Towards Legal Accountability
Amnesty International 2004 <https://www.amnesty.org/download/Documents/IOR4200022004ENGLISH.PDF>
<https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>

¹⁸ Section II.10 of the OECD guidelines states: “Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.”

The admission from Telenor that a “lock for the protective fence was missing in 2017”¹⁹ raises many other questions about what Telenor, who also claim that its staff did not access the tower between August and December 2017²⁰, knows about what happened at the tower.

Telenor has indicated that at the time of the incident the tower in question was built and owned by a “licensed tower company and operated by one of Telenor’s network vendors”²¹, assumed to be Irrawaddy Green Towers²², whose investors include the governments of the UK, France, The Netherlands, Austria, Germany and Belgium as well as the World Bank’s private sector arm, the IFC.

Telenor must 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. This is pertinent information and relevant to the ongoing investigation by UN officials. It is an important question whether the same firms also had contracts to operate the nearby MPT tower. This is particularly relevant as Telenor has claimed in its statement that they determined that there was “potential illegal entry into—and abuse of the tower premises of our vendor”. Without Telenor disclosing this information it is very difficult to determine how this entry took place and whether it was in fact an illegal entry.

During a 2014 investors’ conference presentation Petter Furberg, the then Telenor Myanmar CEO indicated that both Huawei and Ericsson were Telenor’s network vendors in Myanmar²³.

Telenor must also disclose the information about how the land used for the Telenor tower was originally confiscated from local Rohingya villagers by the local Burmese government administration .

Recent events highlight the urgency of investigating Telenor’s complicity in Myanmar military violations in western Myanmar. Telenor’s disclosure that the Ministry of Transport and Communications (MoTC) had directed Telenor Myanmar to cease all mobile internet traffic in nine townships in Rakhine and Chin States on June 21, was yet another example of how the army can dictate at will how and when cellular networks in Rakhine state are used. While Telenor claims to have asked for “further clarification on the rationale for the shutdown”, the reasons for

¹⁹ Updated Telenor Statement on report from Kaladan Press Network - 6 March 2019.

<https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>

²⁰ See Statement November 2018

²¹ Updated Telenor Statement on report from Kaladan Press Network - 6 March 2019.

<https://www.telenor.com/media/announcement/statement-on-report-from-kaladan-press-network>

²² IGT to build and manage telecom infrastructure in preparation for mobile network roll-out Yangon, Myanmar — March 31st, 2014 By IGT Media Relations <https://igt.com.mm/tag/telenor/>

²³ Telenor ASA Presentation on Myanmar Monday 10th February 2014

<https://www.telenor.com/wp-content/.../1532880-Telenor-ASA-10.02.14-72hrs.doc>

the shutdown are in fact abundantly clear. The military wants a free hand to conduct further operations in Rakhine state, including against civilians and mobile data services could be used to provide public visual evidence of their crimes²⁴. The hollow justifications for the shutdown from MOTC referencing “disturbances of peace and use of internet services to coordinate illegal activities” are not credible. As the UN Special Rapporteur on the right to freedom of expression has observed “[a] general network shutdown is in clear violation of international law and cannot be justified by any means... Shutdowns are damaging not only for people’s access to information, but also for their access to basic services.”

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²⁴ <https://www.amnesty.org/en/latest/news/2019/05/myanmar-military-commits-war-crimes-latest-operation-rakhine-state/>