



Telenor ASA
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Date 13/11/2019

Ms Yanghee Lee
Special Rapporteur on the situation of human rights in Myanmar

Your ref: OTH 47/2019

Mr David Kaye
Special Rapporteur on the promotion and protection of the rights to
freedom of opinion and expression

Cc
Karim Ghezraoui
Officer in Charge
Special Procedures Branch
OHCHR
Email: registry@ohchr.org

Dear Yanghee Lee, David Kaye and Karim Ghezraoui,

Thank you for your letter dated 13 September 2019.

Your letter states that you are seeking clarifications on information you have received concerning the shutdown of mobile internet services in northern Rakhine State and Southern Chin State in Myanmar. We are pleased to address your request in this letter.

As an introduction we would like to provide a brief overview Telenor's human rights commitment and its presence in Myanmar.

At Telenor Group, respect for human rights is integral to our business, clearly stated in our code of conduct and policies, and approached with a focus on continuous improvement. As a global company, Telenor acknowledges that we do face human rights challenges in markets where we operate, and we work to understand and mitigate negative human rights impacts related to our business, including when handling requests from authorities.

Telenor is a member of the Global Network Initiative (GNI), and processes government requests in accordance with the GNI principles. We follow domestic legal processes, request governments to explain the legal basis of requests and seek ways to avoid or minimize the impact of government restrictions on privacy and freedom of expression.



Telenor Myanmar (TML) is a wholly-owned subsidiary of Telenor Group and was awarded a license in 2014 from the Myanmar Ministry of Transport and Communication (MoTC or Ministry) to provide telecommunications services throughout Myanmar.

Since starting operations in Myanmar, Telenor's ambition has been to provide mobile telecommunication services to all people living in Myanmar, with the strong belief that connectivity is a key enabler for reducing inequality and enhancing economic growth. For the last five years, TML has rolled-out its network in all states and regions, and today TML's network covers more than 92 percent of the population. In Rakhine State TML has over 90 percent population coverage.

As requested, we have provided further information below on each of the 6 matters raised in your letter.

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations regarding the internet shutdown in northern Rakhine State and southern Chin state.

On 20 June 2019, MoTC issued a direction to TML and three other telecoms companies - Ooredoo, MPT and MytTel - under section 77 of the Myanmar Telecommunications Law of 2013 to temporarily suspend communications services relating to mobile data and Internet in seven townships in Rakhine State and one township in Chin State from 2200hrs MMT on 21 June 2019 onwards (the "Suspension Order").

TML believe that Section 77 can best be translated into English as follows: «*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 interest*».

The Suspension Order cited continuing unrest in the region since 2017, alleging terrorist attacks by the Arakan Rohingya Salvation Army ('ARSA') and, more recently, the Arakan Army ('AA'), on police and military targets. The Suspension Order stated that supporters of these organizations had been using mobile telephones to gather information on the Myanmar security forces in Rakhine State. Notably, the suspension order did not direct the suspension of voice and SMS services and these remain unaffected.

Following receipt of the Suspension 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 as much as possible. Telenor ASA's cross-functional Group Authority Request Team (GART) worked in close cooperation with TML as per Telenor's Authority Request procedures to achieve this objective. Telenor Group's Steering Committee was briefed as part of these



procedures. Please see further information about the GART and Telenor's Authority Request process below.

Despite this effort, the Ministry did not indicate any relaxation with respect to its Suspension Order and TML concluded that it had a legal obligation to comply with the Suspension Order within the deadline. The Ministry did not direct the complete cessation of telecommunications services and, therefore, TML continued to provide voice and SMS services to all those in the designated areas.

As soon as TML complied with the Suspension Order, Telenor ASA issued a statement on its global website to ensure transparency. The statement explained what action TML had taken and why, noting that TML had asked the Myanmar authorities for further clarification on the rationale for the shutdown and emphasized that freedom of expression through access to telecoms services should be maintained for humanitarian purposes, especially in times of conflict. Telenor ASA's statement also explained that TML had put forward arguments to ensure proportionality and limitations to the scope and time of the shutdown, and that both Telenor ASA and TML were actively looking to restore affected services as soon as possible. TML also communicated directly to its affected customers through SMS that their internet had been shut down.

We estimate that as a result 111,000 of TML's customers lost access to data and the internet. In total, more than one million residents in the affected areas are reported to have lost access to the internet.

In our dialogue with the Government of Myanmar, we have raised our concerns and repeatedly requested for the network to be opened as soon as possible to limit negative impact on the local population. Please see press releases on our website, here: <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/>.

We were pleased to see some positive developments with the lifting of the internet shutdown in five of the nine affected townships in Rakhine and Chin on 31 August. TML and Telenor ASA will continue the dialogue with the authorities of Myanmar and urge for the restoration of Internet services also in the remaining four townships.

Telenor ASA and TML continue to engage with other stakeholders, including civil society organizations both locally and internationally, and the UN, and encourage an open discussion on the impacts of network shutdowns. Telenor ASA has also on several occasions reached out to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to request a dialogue and to receive further expert guidance, and is looking forward to a positive response regarding this request.



2. Has the Government of Myanmar responded to requests for clarification or your arguments regarding proportionality and limitations to the scope and time of the shutdown?

TML has had continuous and constructive dialogue with the MoTC in an effort to highlight concerns as well as to offer support for possible solutions that would have lesser adverse impacts on human rights in terms of proportionality and duration of the shutdown. The Government of Myanmar has not responded to our communications in writing.

3. Please provide information as to what human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights and as you have committed as a member of GNI, have been undertaken by your company to identify, prevent, mitigate, and remedy the impact that shutting down internet services could have caused on human rights in northern Rakhine and southern Chin in Myanmar.

Telenor employs an ongoing process of human rights due diligence to identify, prevent, mitigate and account for how to address human rights impacts – in alignment with the UN Guiding Principles on Business and Human Rights. It is set out in the Group Policy Sustainability and is mandatory at both Group and Business Unit (BU) level. Privacy and Freedom of expression have been identified as salient issues for Telenor. In order to mitigate human rights risks, Telenor developed the Group Manual Human Rights Due Diligence, setting out specific requirements, and a Human Rights Due Diligence Toolkit, providing specific guidance for implementation.

At Telenor the GNI Principles are implemented through the Authority Request Manual (AR Manual). This sets Group-wide requirements for handling Authority Requests (AR). Group Privacy is responsible for its implementation Group-wide, and Data Protection Officers (DPOs) are responsible for implementation at BU level. In challenging cases a Local Authority Request Team (LART), consisting of experts from Privacy, Legal, Sustainability, Security, Communication, and Public & Regulatory Affairs, assesses the request and escalate if needed to the BU CEO. A Single Point of Contact (SPOC) in Group Privacy, engages with the BUs, [receives escalations] and summons the Group Authority Request Team (GART) as required. For any cases that are particularly challenging (i.e. where there are gaps in the legal framework) or of high risk, the GART will escalate the request to the Group Authority Request Steering Committee to make a decision, in collaboration with the BU CEO. If the request cannot be resolved at this level, Group CEO will decide on necessary actions. BUs undergo AR assessments annually and report such assessments to Telenor Group.

As per the AR Manual, Telenor's BUs are required to conduct an assessment of the legal basis, human rights impact, and necessity and proportionality upon receiving an authority request. This includes an assessment of the severity, meaning we consider the scope, scale and irremediability of the



impacts. This was also done in this instance by both TML and Telenor Group when the directive was received by TML.

Once it was decided that TML had to comply with the Directive, Telenor Group and TML has continued to take steps to reduce the impact whilst maintaining transparency. This includes the introduction of lower rates for international calls to certain countries (including Malaysia, Thailand, China, S Korea, USA and Bangladesh) for our customers affected by the shutdown to compensate for web-based calls. We also work to update our customers and the broader public on the status of the shutdown and continue to engage with civil society organizations at the local and international level to ensure they are part of this process.

4. Please provide information as to how Telenor is acting in accordance with Principle 23 of the UN Guiding Principles, that is, it seeks to honor the principles of internationally recognized human rights when operating in a country which might curtail human rights.

Before Telenor entered Myanmar, Telenor conducted its own due diligence and commissioned a number of third party pre-investment due diligence, including on the corporate responsibility risks and opportunities. This covered human rights, labour rights, corruption and environmental sustainability. The latter was conducted by BSR, a leading nonprofit focused on corporate sustainability since 1992 with expertise working with business on a wide range of issues associated with the environment, human rights, economic development, and governance and accountability.

The exercise concluded that Myanmar was ‘on a positive trajectory towards increasing economic and political reform and that the country was in the early stages of a nation-building process. Positive signs abound, including new foreign investment and labor laws, political reform, increased freedom of expression, relaxed trade restrictions and reconciliation processes in ethnic areas. In this context, a key BSR conclusion is that appropriate localization and disciplined execution of existing Telenor CR policies, principles and procedures will form a strong foundation for risk management. However, Telenor also has an opportunity to demonstrate competitive advantage during the license bid process and help Myanmar realize the full potential of increased connectivity by taking a strategic, integrated and localized approach to CR. This approach would be founded on a compelling communication of how Telenor can contribute to social and economic development in Myanmar and support the longer term development of the country. In the inevitable contest between ‘responsible investment’ and ‘crony capitalism’ in Myanmar, Telenor can attach itself to the former camp and demonstrate how foreign investment can support the Government’s social, economic and political reform objectives’

In response to the pre-investment due diligence and as part of Telenor’s preparations before entering Myanmar, we focused on addressing six sustainability factors to help us ensure we would honor the principles of internationally recognized human rights: institutional capacity development, the legal framework around the whole operation, corruption issues, land issues, health and safety for people and then finally the ongoing conflict in specific areas.



They 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. Steps that Telenor took to address the six areas include:

Institutional capacity building: Telenor was supportive of international organisations that were helping the government in Myanmar to increase their capacity in the telecoms sector. It was particularly the World Bank as well as GSMA that had been helping the MoTC to increase the capacity. Telenor supported this process through the GSMA.

Legal framework: 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 AR. 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.

On the Telecom Law (Law No. 31/2013) specifically, this was passed by the parliament in October 2013, and was drafted in order to update Myanmar's telecommunications sector and to provide a legal framework for the introduction of foreign private investment in the industry. It repealed the Myanmar Telegraph Act 1895 (the 1895 Act) and the Myanmar Wireless Telegraph Act 1934, although under section 85 (b) of the 2013 Law, rules, notifications, orders and directives issues under the old legislation may continue to be applicable insofar as they are not inconsistent with the new law. There are also additional rules and regulations in the relation to the 2013 Law, which are at varying stages of coming into force. The first of these are the Licensing Rules, which were introduced by Notification No 16/2014 on 14 October 2014 (the 'Notification'). The telecom rules have been developed by the telecom ministry together with the World Bank.

Corruption: This has been a significant issue in Myanmar and Telenor has a zero tolerance policy for corruption. TML has implemented a comprehensive anti-corruption compliance programme, which involves the establishment of robust policies and manuals, regular risk assessments, training and awareness building, monitoring and strong leadership. Internally in Myanmar all employees go through corruption training as part of the codes of conduct e-learning. All leaders go through the dilemma training with respect to situations where this can arise and we are continuously repeating this in town hall meetings or other internal meetings the message of zero tolerance for corruption. In addition towards our suppliers TML vets all suppliers from an integrity perspective and contractually



prohibits all forms of corruption in our supply chain. TML is continuously working with our suppliers in teaching and training and is developing material that they can use for their partners and in business in local language. TML also participates physically in reviewing applications and meeting the partners for instance in the application submission process – all of this to ensure that also at the supplier TML is handling this at a zero tolerance level.

Land issues: TML had (and continue to have) a high focus, through its processes, to identify and avoid any land grab issues as TML was going through and renting land for towers. This is included in the contractual obligations towards the tower companies. TML is, both with the tower companies and in TML, checking and verifying according to a three step process which is focused on the identity of the land owner to help ensure they know who they are dealing with; are sure that there is documentation of ownership of the land; and thirdly that they are sure they have neighbour consent to ensure that neighbours are also fully aware of what's going to happen. TML also established a complaint system which allows people either to phone or send complaints through email to TML. In addition TML conducts unannounced inspections to verify all this information according to our three step process.

Health and safety: The same principles are followed across the Telenor Group and it is built on Telenor's three main principles: Conduct a risk assessment. Develop training programs etc. for the suppliers and sub-suppliers to ensure that they are able to live up to these standards and then follow up with audits. In cases where the findings show deviations from Telenor's standards the focus is on continuous improvements through for instance training of employees of sub-tier suppliers.

Conflict: 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. Given the fact that some of these areas are partly self-governed, Telenor actively worked both with the government and the ethnic groups in these areas to prepare for our rollout and our business; in all cases we also had to have a very high attention on personnel safety being for our own staff or for our sub-contractors.

When TML set up in Myanmar it established a community outreach team which consisted of eight 'state liaison officers'. They are local people with local ethnicity living in these different conflict states. TML has state liaison officers working in Kachin, Shan, Kayah, Kayin, Mon and also Chin states. Their job is to ensure that Telenor can better understand how TML's operations are affecting their communities (both positively and possibly negatively) and to offer a communication link for the communities to Telenor. In addition, in the conflict states TML held several hundred ethnic state relationship meetings where they talked about what Telenor will do in Myanmar and also listening to their concerns and potential issues.



We would also like to note, that in particular relation to authority requests, our Authority Request Manual requires that a legal assessment of a request shall encompass the national constitutional and administrative law tradition and give appropriate weight to internationally recognized rule of law requirements, including:

- The law providing the legal basis must be publicly available
- The law providing the legal basis must set forth limitations to the rights of individuals sufficiently clearly to give individuals and adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to make a request (foreseeability).

Where domestic context renders it impossible to meet the responsibility as set out in the UN Guiding Principles on Business and Human Rights, Telenor 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 GNI.

5. Please provide information as to what human rights due diligence steps were undertaken by your company prior to launching operations in Myanmar, considering the existence of Section 77 of the Telecommunications Law and other problematic laws relevant to the provision of information and communications technology services, as well as violence and armed conflict in Rakhine and other parts of the country.

In 2012, it was estimated that around 6 percent of Myanmar's population owned a mobile phone, and only around 1 percent had broadband internet access.

To address this challenge and accelerate the country's political and economic reform, the government of Myanmar announced a significant liberalization of its telecommunications market, through which it created two new operating licenses for international telecommunications companies.

As outlined above, in order to understand the potential sustainability risks and opportunities of operating in Myanmar, Telenor commissioned BSR to undertake pre-investment due diligence, covering human rights, labor rights, corruption, and environmental sustainability.

Following the BSR due diligence report, Telenor Group and TML have implemented a number of policies, processes and initiatives including:

- Extensive community consultations with regards to network build-out and potential land issues through the SLOs;



- Integrity Due Diligence processes on vendors and partners (for further information, please visit the Telenor Group website: <https://www.telenor.com/sustainability/responsible-business/anti-corruption/in-our-supply-chain/>)
- ABC contracts on vendors and business partners (for further information, please visit the Telenor Group website: <https://www.telenor.com/sustainability/responsible-business/supply-chain-sustainability/the-requirements>)
- Lighthouse projects to provide ICT training (for further information, please visit the TML website; <https://www.telenor.com.mm/en/about/digital-literacy>);
- Training programs for safe internet (for further information, please visit the TML website: <https://www.telenor.com.mm/en/about/safe-internet>);
- Support for MBA programs (for further information, please visit the TML website <https://www.telenor.com.mm/en/about/mba-scholarship>)

Telenor ASA and TML continue to work with the risks identified then as well as in our ongoing due diligence and have taken many steps to further improve our processes and follow up. This includes issues related to supply chain sustainability, privacy and freedom of expression, land rights and conflict areas, as well as wider sustainability challenges such as corruption, child labour, employee safety and security, and the environment. Progress on these and other on-going issues is reported in the Annual Sustainability Briefings held since 2014. For further information, please visit:

<https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/>

6. In light of the Government's demands that Telenor interrupt mobile services in parts of Myanmar under Section 77 of the Telecommunications Law, how is your company planning to mitigate and remedy future requests in the country?

Respect for [human rights](#) is important to how we operate. Our long standing commitment and systematic work is guided by international frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Global Networking Initiative (GNI) Principles. In Telenor, we understand the [significant opportunities](#) that access to mobile and internet brings to people in our [9 markets](#). At the same time, it is important for us to understand and address the risks we face that may impact people's rights negatively. Privacy and freedom of expression are two rights that are key to our core business of communications, and it is important to us that our customers and stakeholders know that we do our best to respect these rights. We are dedicated to the professional, secure and respectful handling of personal data in our day-to-day business operations. Our responsibility



naturally extends to situations where law enforcement agencies (LEAs) and other authorities request access to personal data or information from our networks.

We outline what this means in practice and how we respond on our website under the section Handling Access Requests from Authorities:

<https://www.telenor.com/sustainability/responsible-business/privacy-and-data-protection/handling-access-requests-from-authorities/>

In Telenor Group, we believe that it is important to address challenges related to authority requests with external stakeholders. As stipulated in the UN Guiding Principles on Business and Human Rights, governments have a duty to protect human rights. In Telenor we believe this duty extends to authorities and their requests for personal data or access to our networks. We recognize the legitimate needs on which these requests are based and see that good processes for releasing information are important to minimize risks to people's rights. That's why we place importance on the positive dialogue with relevant authorities in our markets, and we encourage authorities to join the international discussions on these issues.

Also, we find great value in working with peers, sharing experiences and learning about how other companies handle particular dilemmas, as well with other stakeholders such as civil society, investors and academics to help us bring important insights as to how current practice of laws actually impacts people on the ground. As mentioned earlier, Telenor is a member of the GNI, a multi stakeholder initiative that works to address privacy and freedom of expression particularly related to authority requests. As part of our membership with the GNI, we have committed to implement the GNI Principles and undergo an independent assessment every two years to assess progress on this commitment.

In Telenor Group, we place importance on being open about how we address authority requests, the challenges we face, the requirements we have in place and the dialogue in which we engage. We are continually working to improve our disclosure of information and hope that you will find relevant information on this page.

You can find our annual reporting on human rights, including privacy and freedom of expression, in our latest [Sustainability Report](#), and specifically on how we handle authority requests in our [Authority Request Disclosure Report](#). Should stakeholders require additional information, Telenor is open to such requests.

We also believe that information on the legal frameworks that apply in our markets is valuable. To complement existing overviews by other operators and the [GNI Principles](#), we have provided such an overview for ten of our markets. The research is conducted by international law firm Hogan Lovell.



Finally, we seek to be open about major events to the extent we are able. Typically we communicate about interruptions to our companies' services, due to authority requests. Our policy is to be open, but there are times when we are legally prohibited from sharing information about requests or in which the risk is found to be too great. We truly regret any inconvenience any such interruption may cause for our customers and society at large, and always work hard to restore services as soon as we can.¹

For Myanmar in particular, Telenor Group believes that continued investment and engagement in the country is the best option in relation to human rights, although we are also cognizant to the fact that there are critical challenges that will have to be addressed on a continued basis. As part of our mitigating actions we plan to provide further human rights training to our staff in TML, and also continue to engage in dialogue with the authorities and civil society organizations, and work to encourage the government to establish laws that clearly regulate when and how they can direct companies to comply with requests that may impact customer's right of privacy and freedom of expression. As highlighted earlier in this letter the MoTC lifted the internet shutdown in five of the nine affected townships in Rakhine and Chin on 31 August. Telenor Group sees as a positive development. Restoration of peace and stability in the townships was given as reason by the MoTC. From the outset of the Internet shutdown, we have conveyed that freedom of expression through access to telecoms services should be maintained for humanitarian purposes, especially during times of conflict. TML and Telenor ASA will continue the dialogue with the authorities of Myanmar and urge for the restoration of Internet services also in the remaining four townships.

We believe some of the key challenges that Telenor face in Myanmar, including network shutdown are not relevant to Myanmar alone, but rather a global issue that will also need to be addressed at a global level. This is why we are members of initiatives such as the Global Network Initiative, the ITU and the GSMA; as well as participate in the UN Global Compact, and we hope to use these platforms to raise awareness of these challenges and to engage in effective policy discussions that can help impact decision making on the ground.

Your Sincerely,

Anne Kvam
Chief Corporate Affairs Officer
Telenor Group

On behalf of CEO

¹ For further information, please visit our website: <https://www.telenor.com/sustainability/responsible-business/privacy-and-data-protection/handling-access-requests-from-authorities/>