

Memorandum of Understanding

Re. the complaint submitted by the Centre for Research on Multinational Corporations (SOMO) on behalf of 474 civil society organisations to the Norwegian National Contact Point, in relation to the operations of Telenor Myanmar Ltd – a former subsidiary of Telenor ASA.

In the complaint submitted to the Norwegian NCP on July 27 of 2021, the complainants (474 civil society organisations in Myanmar) contended that Telenor ASA had failed to observe the recommendations of the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) with respect to risk-based due diligence, stakeholder engagement and disclosure in its disengagement from Myanmar through the sale of Telenor Myanmar Ltd.¹

In its response to the complaint, Telenor argued that the company could not stay in Myanmar and comply with international standards, maintain mobile service in the country and guarantee the safety and income of its former employees due to the authorities' failure to protect its citizens' human rights after the coup.

The complainants and Telenor are hereinafter referred to as the Parties.

1) INTRODUCTION

After an extended period in which formal mediation was deferred at the request of Telenor until the company could complete its exit from Myanmar in a way that the company considered safe, an initial mediation facilitated by the Norwegian National Contact Point (NCP) and mediated by Mark Stephens and Anna Triponel took place between the 13th and 15th of June 2022 in Stockholm, Sweden. In advance of the formal mediation, both parties engaged in pre-mediation dialogue.

The mediation entailed the initiation of a meaningful and respectful exchange of information and views on Telenor's human rights due diligence when it entered Myanmar, while operating in Myanmar – both before and after the coup – and around its decision to

¹ For further information on this complaint, see <https://www.responsiblebusiness.no/news/ncp-accepts-specific-instance-offers-good-offices/> and <https://www.responsiblebusiness.no/somo-on-behalf-of-474-csos-in-myanmar-vs-telenor-asa/>

sell Telenor Myanmar (TML). It also discussed the wider digital ecosystem in which Telenor is a part, including services on the internet, and in which users operate.

After that initial mediation in June 2022 in Sweden, the Parties arrived at this preliminary memorandum of understanding that captures the status of the mediation discussions, the agreements and acknowledgements reached thus far, and a path forward for further mediation and agreement. This document is not a final statement between the Parties: it captures the status of the mediation as of June 2022, for the Parties to further build on as part of the mediated process facilitated by the Norwegian NCP and mediated by Mark Stephens and Anna Triponel.

The Parties and the mediators have signed this Memorandum of Understanding. The Parties agree to this Memorandum of Understanding being placed in the public domain in due course, following further joint discussions amongst the Parties.

II) JOINT AGREEMENTS AND ACKNOWLEDGEMENTS

When it comes to the responsibility to conduct human rights due diligence:

1. The Parties recognise that companies' responsibility to conduct human rights due diligence applies to a sales process and agree that the OECD Guidelines on Multinational Enterprises apply to Telenor's decision to sell Telenor Myanmar.
2. The Parties agree that the responsibility to conduct human rights due diligence applied to the sales process regardless of whether the decision to sell was viewed by Telenor as the option that carried the least human rights risks.
3. The Parties acknowledge that under the OECD Guidelines there are differentiated responsibility scenarios in which a company can be contributing to, or directly linked to, an impact caused by a State or ruling authority, or another third party – including other companies. Therefore, the Parties agree that the responsibility to conduct human rights due diligence on the sale applies to Telenor, even when the junta in Myanmar failed to protect human rights and even when other companies have not acted upon their responsibility to respect human rights.

When it comes to conducting human rights due diligence on the decision to sell in this context:

4. The Parties acknowledge that there were severe human rights risks associated with each of the options explored by Telenor in Myanmar following the military coup of February 1st, 2021. All the options considered by Telenor entailed severe risks to customers and to the 734 Myanmar-based employees, as well as risks to local contractors, suppliers and society-at-large.
5. The Parties acknowledge that an assessment of risks to people arising from the decision to sell Telenor Myanmar should prioritise risks based on their severity to people, but they disagree on how this is reflected in Telenor's risk prioritisation in the case of Myanmar.
6. The Parties acknowledge that as a result of the coup, there are currently serious risks to end users in Myanmar connected to how their information and communications technology (ICT) data can be misused against them by the military junta than there were before the coup. The Parties also acknowledge that there are risks to some former Telenor Myanmar employees such as social and physical punishment for association with the military.
7. The Parties acknowledge that end-users are facing both a holistic risk, due to the junta's possible use of users' digital footprints to target them, their family members and their contacts, as well as specific risks connected to traffic and customer registration data held by Telenor Myanmar. Whether Telenor could be viewed as contributing to or directly linked to any adverse impacts arising from misuse of such data pre-sale and post-sale is a question that would lead to differentiated actions on the part of Telenor under the OECD Guidelines.
8. The Parties acknowledge that Telenor Myanmar was one of the many players of the digital eco-system in Myanmar and that the metadata and content data generated by users through internet services external to Telenor also makes up the users' digital footprint. The Parties agree that, under the OECD Guidelines, each of these companies has a responsibility to address the adverse impacts associated with their digital footprint. The Parties acknowledge that users need to be aware of the risks associated with using services on the internet, but that users often lack information about the risks and how to mitigate them.
9. The Parties acknowledge that they hold different views on what kind of stakeholder engagement would have been possible and expected by the OECD Guidelines as part of the human rights due diligence related to the sale of Telenor Myanmar. However, they recognise the need for further clarity on how meaningful stakeholder

engagement with customers can be conducted during a sale process in a challenging operating context.

10. The Parties agree that the risks involved in a sale to an international buyer differ from the risks involved in a sale to a buyer associated with the junta. The Parties agree that the human rights risks from the sale of Telenor Myanmar deepened and became more salient when it was made clear that the regulatory approval was contingent on local ownership.

III) ACTIONS AHEAD

The Parties agreed on the following actions:

- a) **Continued engagement with stakeholders and rightsholders.** The Parties will continue and deepen the meaningful dialogue within the OECD NCP process. This dialogue includes Telenor providing Myanmar civil society representatives with specific information based on Telenor's expertise and experience in Myanmar about the specific actual and potential risks to digital rights and freedoms in Myanmar under the military junta, associated with the digital eco-system and the sale of Telenor Myanmar. The complainants will be able to place the agreed outcomes of those discussions in the public domain on a regular basis – provided this does not put end users and former Telenor Myanmar employees at risk. Any such publication of information will be agreed upon by both Parties.
- b) **Independent ICT Eco-System Study.** The Parties agree that Telenor will support the complainants in enhancing Myanmar civil society's understanding of risks to users related to their digital footprints by providing sufficient funding for the complainants to commission an independent ICT eco-system study on the risks to end users in challenging operating contexts, including Myanmar.

The study will be conducted with the primary objective to protect end users in Myanmar, but should also be relevant to other jurisdictions. It will be conducted by an internationally recognized and independent person or organisation, proposed by the mediators, with credible knowledge of the human rights risks of ICT. The study will also identify other relevant players in the ICT eco-system that have contributed to Myanmar ICT users' digital footprint and could contribute to the identification and mitigation of ICT risks to end-users.

- c) **Myanmar Digital Security Relief Mechanism.** In addition to covering the costs of the study, Telenor commits to support the implementation of the follow up actions recommended by it. The Parties agree that one of these follow-up actions includes an exploration of how an independent Myanmar digital security relief mechanism could be established in the near term with the explicit aim of providing support (financial, legal, training, etc) to Myanmar citizens who are facing risks and impacts associated with their digital footprint.
- d) **Re-visiting of previous risk assessment process.** The Parties agree that Telenor will re-visit the risk-assessment process previously conducted on the risks to employees post-sale to determine whether there are additional risks to former Telenor Myanmar employees resulting from the sale that should be addressed. The process will be informed by the complainants. If new risks are identified, Telenor commits to taking actions to address the risks to people and to make available a safe channel of communication that (former) employees would feel comfortable using.
- e) **Internal assessment of lessons learned.** The Parties agree that Telenor commits to conducting an internal review process which will include responsible market entry and exit assessment based on the learnings from Myanmar. The review will be informed by the dialogue established between Telenor and civil society organisations in Myanmar as part of the OECD process and the outcomes of this review will be used to inform the development of future guidance on the implementation of the OECD Guidelines.
- f) **Creation of lesson sharing opportunities.** The Parties agree to work together to enhance lessons learned and takeaways from Telenor’s disengagement process in Myanmar. The Parties will work together to facilitate and enhance public sharing of the lessons learned, in particular with civil society and rightsholders in Myanmar as well as in other high-risk regions.
- g) **Follow up of this memorandum of understanding.** The Parties agree that, following the signing of this memorandum of understanding, there will be regular check-ins once a month between themselves and with the NCP to follow up on its implementation, with the aim of reaching a full agreement by the end of October 2022. The Parties request that the NCP not close or conclude this specific instance, but that it keep the process open until the Parties reach full or partial agreement or conclude that no such agreement is possible. The Parties agree that, if any party considers that insufficient progress is being made on the commitments contained in this preliminary memorandum of understanding, either Party can request that the



OECD **GUIDELINES**
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NCP proceed with an examination of the case in implementation of the OECD Guidelines.

Signed:

Mediators

A handwritten signature in black ink, appearing to be 'M. Stephens'.

Mark Stephens

A handwritten signature in black ink, appearing to be 'A. Triponel'.

Anna Triponel

Parties

A handwritten signature in black ink, appearing to be 'J. Wilde-Ramsing'.

Joseph Wilde-Ramsing
Senior Researcher
Centre for Research on Multinational Corporations (SOMO)
On behalf of 474 civil society organisations

A handwritten signature in blue ink, appearing to be 'Rita Skjærvik'.

Rita Skjærvik
EVP Group Strategy and External Relations
Telenor

Signed on: 15 July 2022