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May 3, 2013

Mr. Jon Fredrik Baksaas
President and Chief Executive Officer (CEO)
Telenor Group
Snarøyveien 30
N-1331 Fornebu, Norway

Cc: Ms. Mai Oldgard, Vice President, Head of Group Corporate Responsibility
Ms. Sidsela Nyebak, Corporate Responsibility Manager

Re: Investing in the Burmese Telecommunications Market

Dear Mr. Baksaas,

Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in about 90 countries. We have been reporting on the situation in Burma for more than two decades.

We are writing to express our concerns about the human rights implications of investing in the Burmese telecommunications market without adequate safeguards. We understand that Telenor has been pre-qualified to apply for two nationwide telecommunications licenses the government will award this year.¹ As you further consider and plan for your potential entry into Burma, we urge you to adopt safeguards to avoid contributing to human rights abuses. We request that you publicly report on the steps Telenor will take to respect human rights in Burma, including by responding to the specific inquiries we detail below.

Development of Burma's information and communications technology (ICT) and telecommunications sectors could enhance economic growth and civic participation in a country that has been closed and repressive for

¹ Republic of the Union of Myanmar, "Telecommunication Operator Tender Evaluation and Selection Committee Nat Pyi Taw, Announcement of Pre-qualified Applicants that May Submit Applications for Two Nationwide Telecommunications Licenses in the Republic of the Union of Myanmar," April 11, 2013, http://www.mcit.gov.mm/sites/default/files/press_release_-_announcement_of_pre-qualified_applicants.pdf (accessed April 11, 2013).



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decades. Human Rights Watch has long believed that open telephone and Internet communication services, including those operated by private companies, have an enormous potential to allow people to exercise their human rights. However, this potential will be realized only if corporations safeguard the ability of people to use ICTs freely and without fear of reprisal and if governments fulfill their human rights obligations. Otherwise, ICTs can become powerful tools for censorship and surveillance.

Burma's democratic reform process remains incomplete and serious human rights abuses continue to occur.² Burma also has a troubling history of human rights violations linked to restrictions on the use of ICTs and telecommunications services. The former military government imposed a range of draconian measures to silence dissent and control the flow of information in Burma, including limits on access to technology, harsh penalties for online expression, and by instituting a nationwide Internet shutdown during the 2007 popular protests.³ During the 2007 shutdown, phone services belonging to journalists, opposition figures, and students were also cut.⁴ Fear of surveillance, online and offline, has historically been pervasive in Burmese society, particularly among those who may hold controversial views or engage in activities seen as threatening to military interests. Activists and others speaking out against military rule were routinely locked up in Burma's prisons for years.⁵

Since the formal end of military rule in 2011, the government has largely lifted online censorship, released several hundred political prisoners, and taken steps to lower the cost of mobile phones, amid a broader set of planned media reforms.⁶ However, positive changes to date have been incomplete and insufficient, and possibly reversible since they have not been codified into law. The long-term strength of reforms is in question due to the fact that the military still retains significant political power in practice and under the 2008 Constitution. Harsh laws and regulations enacted by the former military government remain in place, including laws that prohibit users from freely accessing content online, even if the enforcement of these laws has greatly diminished since the end of military rule. For example, it is illegal to own an unregistered fax machine or modem, to set up an unregistered computer network, to contribute to the diminishment of respect for the military, to spread "false news," and to post anything on the

² "Burma: Rights Abuses Endanger Reform," Human Rights Watch news release, February 1, 2013, <http://www.hrw.org/news/2013/02/01/burma-rights-abuses-endanger-reform>.

³ Open Net Initiative, "Burma (Myanmar)," August 6, 2012, <https://opennet.net/research/profiles/burma> (accessed April 8, 2013).

⁴ "Phones Cut at Myanmar Opposition HQ," AP, September 13, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/13/AR2007091301012.html> (accessed April 8, 2013).

⁵ Human Rights Watch, *Burma's Forgotten Prisoners*, September 16, 2009, <http://www.hrw.org/reports/2009/08/08/burma-s-forgotten-prisoners>.

⁶ For results of recent testing on Internet filtering conducted by the OpenNet Initiative, see Irene Poetranto, "Update on information controls in Burma," October 23, 2012, <https://opennet.net/blog/2012/10/update-information-controls-burma> (accessed May 2, 2013).

Internet that the government might deem detrimental to the security of the country.⁷ As long as such laws exist, there is a significant risk that the government or military can selectively enforce those laws to silence bloggers and activists, perhaps with the help of technology companies. Recent reports that several journalists covering Burma have had their email accounts hacked also lend further credence to fears about surveillance.⁸

Human Rights Watch has directly communicated these concerns to Burmese officials involved in the telecom legal reform process. Nonetheless, the legislative process for the draft telecommunications law is neither open nor transparent. As a result, it remains difficult to assess whether the proposed law will provide adequate protections for the rights to freedom of expression, access to information, and privacy. Companies should consider the possibility that the current legal framework for the telecommunications sector may not significantly improve with respect to protections for human rights. Corruption also remains a considerable risk, with the former Telecommunications Minister Thein Tun now the subject of a corruption probe that may widen to involve other telecommunications officials.⁹

As the United Nations recognized in 2011, companies have a responsibility to ensure that their operations do not contribute to abuses, and to avoid complicity in government violations of human rights.¹⁰ Such risks are present in Burma. “Human rights due diligence” is essential so that companies can understand and address the harm they cause, and avoid complicity in government abuses. Such due diligence is especially important considering the rights to freedom of expression and privacy are not yet adequately protected in Burmese law or practice.

We would welcome information on any human rights policies or procedures that Telenor will implement to safeguard users in Burma, and any information about communications that the company has had with the government to safeguard human rights. In addition, we have specific recommendations and questions about your company's prospective operations in Burma, as outlined below. We note that these recommendations are consistent with guidance as articulated in the UN “Protect, Respect, and Remedy” Framework and Guiding Principles on Business and

⁷ See for example The Electronic Transactions Law, *State Peace and Development Council*, No. 5/2004, <http://www.wipo.int/wipolex/en/details.jsp?id=11042> (accessed April 10, 2013); Computer Science Development Law, *State Law and Order Restoration Council*, No. 10/96, 1996, <http://www.wipo.int/wipolex/en/details.jsp?id=6434> (accessed April 8, 2013).

⁸ Thomas Fuller, “E-Mails of Reporters in Myanmar Are Hacked,” *New York Times*, February 10, 2013, <http://www.nytimes.com/2013/02/11/world/asia/journalists-e-mail-accounts-targeted-in-myanmar.html> (accessed April 10, 2013); Shawn Crispin, “Increasing Cyberattacks Threaten Free Press in Burma,” *Public Broadcasting Service, MediaShift*, February 25, 2013, <http://www.pbs.org/mediashift/2013/02/increasing-cyberattacks-threaten-free-press-in-burma056.html> (accessed April 8, 2013).

⁹ Gwen Robinson, “Probe hits opening up of Myanmar telecoms,” *Financial Times*, January 28, 2013, www.ft.com/intl/cms/s/0/f80589cc-689b-11e2-9a3f-00144feab49a.html (accessed April 10, 2013).

¹⁰ See John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, “Protect, Respect and Remedy: a Framework for Business and Human Rights,” UN Doc. A/HRC/8/5, April 7 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (accessed April 10, 2013).

Human Rights, as well as industry-specific standards such as those articulated by the Global Network Initiative (GNI).¹¹

- 1. Human Rights Due Diligence and Impact Assessments.** We urge your company to assess and address potential human rights harm. Such due diligence requires assessment of the human rights risks raised by potential business activity. Considering the uncertainty over the long-term strength of political and legal reforms, assessments should include a scenario where the legal framework or government practices do not substantially improve with respect to protections for human rights, including for freedom of expression and privacy.

What steps have you taken or are you planning to take regarding potential impacts of the company's proposed activities on human rights in Burma, including impact on the rights to freedom of expression, access to information, and privacy?

- 2. Industry Dialogue Commitments.** As a member of the Telecommunications Industry Dialogue on Freedom of Expression and Privacy, Telenor has also committed to implementing the Industry Dialogue's Guiding Principles, providing a further rationale for taking proactive steps to address concerns regarding risks in Burma.¹²

As a member of the Telecommunications Industry Dialogue, how will you implement the Telecommunications Industry Dialogue on Freedom of Expression and Privacy Guiding Principles in your approach to entering Burma?

- 3. Strategies to Mitigate Human Rights Risk Before Entering the Market.** We urge your company to develop strategies to mitigate the human rights risks identified through your assessments as you structure your entry into Burma from the outset. For example, in negotiating terms of an operating license or in a separate agreement, companies could clarify and specify the procedure authorities will follow to request assistance with surveillance or limitations on expression, providing a stronger basis for challenging

¹¹ See UN Office of the High Commissioner for Human Rights (OHCHR), "Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework," UN Doc. HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed April 10, 2013); GNI, "Core Commitments," undated, <http://www.globalnetworkinitiative.org/corecommitments/index.php> (accessed April 10, 2013).

¹² GNI, "Key Telecommunications Players Collaborate with the Global Network Initiative on Freedom of Expression and Privacy Rights," March 12, 2013, <https://globalnetworkinitiative.org/news/key-telecommunications-players-collaborate-global-network-initiative-freedom-expression-and> (Accessed May 2, 2013).

inappropriate requests. Such safeguards are particularly important given that much of the regulatory framework for electronic privacy, surveillance, and national security has not yet been finalized through current legal reforms.

If your company is awarded a telecommunications license, what steps will you take to anticipate and prevent harm to human rights in how you structure your entry into Burma?

- 4. Requests for Censorship and Illegal Surveillance.** We urge companies entering Burma to adopt policies for how they will resist government requests to assist with censorship or illegal surveillance. Companies should put in place internal procedures that will guide how they will respond to inappropriate requests, including policies for how a company may try to narrow requests that may be inappropriate or challenge requests that go beyond what is allowed under local law.

If your company is awarded a telecommunications license, what policies and procedures will the company implement to resist illegitimate government requests for censorship or illegal surveillance?

- 5. Requests for Network Shutdown.** We urge companies entering Burma to have in place policies and procedures for how they will respond to government requests to shut down telecommunications networks, in whole or in part. This step is especially important given the precedent set by the Internet shutdown during the 2007 popular protests. Company policies should take into account current Burmese law, which grants the government broad powers to declare public emergencies to respond to threats to security and sovereignty of the state, with scant safeguards against misuse of these powers.

If your company is awarded a telecommunications license, what policies and procedures will the company implement to respond to government requests for shutdown of telecommunications services or networks?

- 6. Ongoing Assessment and Due Diligence.** Companies should also be attuned to changing political, legal, or operational circumstances and have mechanisms in place to address new or emerging risks. Assessment and due diligence should continue on an ongoing basis so companies can effectively adjust their policies.

If your company is awarded a telecommunications license, what further steps will you undertake under the responsibility of all businesses to respect human rights? Will you conduct a robust due diligence review to identify and address relevant human rights risks associated with key business decisions, including, for example, risks that arise in the context of making security arrangements or acquiring land for installations?

- 7. Vetting Potential Business Partners.** We urge companies to address human rights risks that may arise through business partnerships, broadly defined. Companies should vet potential business partners to ensure partners are not implicated in serious human rights abuses or corruption in Burma. We also urge your company to secure critical commitments to human rights from business partners.

As you plan for your potential entry into Burma, what due diligence have you conducted regarding potential business partners (broadly defined) and how will you ensure respect for freedom of expression and privacy, as well as other rights, in such partnerships? To the extent you are partnering with local Burmese business entities, how have you vetted potential partners to ensure they are not implicated in serious human rights abuses or corruption? Will you include contractual provisions regarding respect for human rights (including worker rights) and prevention of corruption, and how will you monitor and report on compliance?

- 8. Transparency.** We urge companies entering Burma to increase transparency around government restrictions on human rights, including the rights to freedom of expression and to privacy. Increased transparency can help discourage extralegal, illegitimate, or overbroad requests from the authorities to restrict freedom of expression and privacy. It is also an approach consistent with the US government's standards for reporting and disclosure that is required by any company seeking to invest at least \$500,000 in Burma.¹³

If your company is awarded a telecommunications license, will you publish the terms of any operating agreement and information on any joint ventures or consortiums formed to operate in Burma? If your company is awarded a telecommunications license, will you commit to publicly reporting on the number of government requests to limit access to

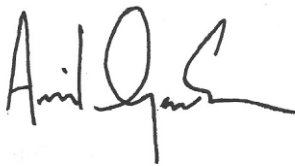
¹³ See US Department of State, "Reporting Requirements on Responsible Investment in Burma" February 2, 2013, <http://www.humanrights.gov/2013/02/22/reporting-requirements-on-responsible-investment-in-burma/> (accessed April 8, 2013).

information, requests for subscriber information, or requests for assistance with interception of communications you have received, and how you responded to these requests?

The Burmese government has made development of the ICT and telecommunications sector a priority because it believes that increased access to ICTs is essential to economic growth. This represents a rare opportunity for the government and companies to safeguard human rights while fostering development. Absent important legal reforms and other critical safeguards, however, the telecommunications sector could become a focal point for human rights problems.

We look forward to your responses to our inquiries and recommendations. We would also welcome the opportunity to discuss these issues with you further. Should you have any questions, please do not hesitate to contact our Senior Researcher for Internet and Human Rights, Ms. Cynthia Wong.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvind Ganesan', with a stylized flourish at the end.

Arvind Ganesan
Director
Business and Human Rights
Human Rights Watch