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Telecoms & the protection of human rights

Introduction

Recent democratic uprisings in the Middle East have shone a spotlight on the involvement of telecommunications companies ('telecoms') in the suppression of communications and the tracking of the movements of pro-democracy demonstrators. Vodafone's decision to shut down its communications networks in Egypt and to allow transmission of pro-government text messages at the orders of the Egyptian government led to worldwide condemnation.¹ Vodafone argued that it was required to comply with government orders under the terms of its operating license agreement. Telecoms continue to negotiate similar licensing agreements with repressive regimes. Accordingly, many industry participants are vulnerable to accusations of complicity in human rights violations with the resulting reputational and financial impacts.

This investor briefing provides information on the reputational and financial risks facing telecoms and their investors as a result of accepting operating licences that do not provide adequate protection for fundamental human rights. In addition to outlining the existing GNI Framework, this briefing provides details of a five step action plan, developed by the NGO Access (accessnow.org), for telecoms to implement in negotiations for operating licence agreements. Finally we propose suggestions for investor engagement with telecoms on this issue.



Throughout this investor briefing, Vodafone's recent experience in Egypt is used to demonstrate the human, reputational and financial impacts of telecoms failing to integrate international norms into local operating licence agreements. But Vodafone is not alone among international telecoms in accepting such operating licences. Political instability continues across the Middle East and beyond, leading to the possibility of similar events occurring. These facts, together with the reality of competitive pressures within an industry, highlight the need for an industry-wide and multi-stakeholder dialogue to establish industry practices that ensure telecoms will not be hijacked for repression and abuse resulting in unacceptable human and reputational costs.

The growing risk to investors as democratic movements continue

As Vodafone's experience in Egypt demonstrates, telecoms negotiate operating licence agreements with repressive regimes that cede too much control to the government in times of crisis. These provisions expose telecoms to the risk that their networks will be utilised for political oppression and human rights abuses.

In assisting, even involuntarily, government violations of human rights, companies can experience enormous reputational damage and financial loss. The impact of negative publicity and reputational damage should not be underestimated by investors. As the recent scandals surrounding News Corporation's UK subsidiary, News International, have made abundantly clear, negative publicity of corporate behaviour carries with it a significant risk of a public backlash resulting in reputation destruction and tangible financial impact.



Photo: Jonathan Rashad (Creative Commons)

Vodafone in Egypt: A Demonstration of the Risks Facing Investors

- January 2011: Protestors filled Tahrir Square, using their mobile phones and social media to encourage participation in the demonstration and to communicate dangers.
- Recognising the power of telecommunications networks, the Egyptian government ordered all telecoms to shut down their mobile and internet services.²
- Vodafone, with 28 million subscribers in Egypt, complied with the order, as did Mobinil (a division of France Telecom) and Etisalat, resulting in a 90 percent drop in data traffic to and from Egypt.³
- The shutdown greatly impeded efforts to organise the protests, and it stopped victims of violence from making emergency phone calls for rescue.⁴
- After the Egyptian government ordered Vodafone to bring its network back online on a limited basis, the regime sent several pro-government text messages through the Vodafone network.⁵
- In response to condemnation from international human rights organisations, Vodafone argued in a press release that it was legally obliged to comply with the Egyptian government's orders or face possible imprisonment of its employees and suspension of its operating licence.⁶

Impact on Vodafone

Reputational

The reputational damage to Vodafone was swift and widespread. Major media outlets including The New York Times, the BBC and the Financial Times gave significant coverage to the shutdown of the networks, and social media (a source of increasing influence on consumer behaviour as evidenced by the recent mass withdrawal of advertising from the News of the World) was abuzz with condemnation.⁷

Legal

Vodafone is also facing legal costs. A complaint has been filed in Egypt alleging Vodafone's criminal liability in the injuring and killing of protestors.⁸ It has been suggested that Vodafone may also be vulnerable to suit in US courts under the Alien Tort Claims Act for aiding and abetting violations of international law, including human rights law.⁹

Financial

Risks exist for telecoms investing in developing telecommunication infrastructure in countries under terms and conditions which could result in a sudden and costly network shutdown. While Vodafone-specific figures are unavailable, the cost to the Egyptian economy of the internet shutdown has been estimated at \$90 million¹⁰ and the long-term effect on business is unknown. Impacts of the shutdown also extended beyond Egypt. New Zealand customer service calls are dealt with by a call centre in Egypt which was unreachable during the blackout. Vodafone had to hire 100 new workers in New Zealand to handle calls.¹²

The extensive negative coverage and reputational damage led Vodafone to issue a press release arguing that it was required to comply with government orders based on its operating license agreement with the Egyptian government.¹³ But as shown by the mainstream and social media reaction the court of public opinion is unlikely to be appeased by Vodafone's defence of having to comply with the terms of its operating license given the human costs involved.

Despite the events in Egypt and their obvious impacts, it is likely that telecoms will continue to operate under similar licences in other repressive regimes. The risks to telecoms and investors of long-term reputational damage and the possibility of further unanticipated risks (such as Vodafone's involvement in the Libyan state-run mobile phone network¹⁴) means the integration of international norms during the negotiation of operating licence agreements should be a priority for investors and telecoms.

“Vodafone had legal advice to the effect that the Egyptian authorities had the legal power to require compliance. The sanctions for non-compliance with such an instruction are imprisonment and/or suspension of Vodafone's operating license.”

- Vodafone Press Release, 22 February 2011¹¹

A Question of Trust

A telecom's success depends on the trust of its customers:

- Trust in reliable network availability.
- Trust in the protection of customers' privacy.
- Trust in the transparency and accountability of the telecom.

Question for Telecoms: Do you deserve your customers' trust?

Collaborative human rights initiatives

The Global Network Initiative ('GNI') is a multi-stakeholder initiative formed to help promote respect for the rights of freedom of expression and privacy and, in particular, fashion operational guidance for companies and foster collaboration on public policy. It is comprised of companies, NGOs, investors and academics. The GNI Principles provide a framework for the information and communications technology ('ICT') industry to commit to the protection of human rights. Find out more at globalnetworkinitiative.org.

The Global Network Initiative Principles

- In anticipating the growing risk that ICT can be used as a tool for the repression of human rights, a group of investors, ICT companies, academics and civil society organisations launched the Global Network Initiative Principles on Freedom of Expression and Privacy in 2008.¹⁵
- By signing on to the GNI Principles, ICT companies agree to protect basic human rights such as freedom of expression and privacy, as required by international human rights covenants.¹⁶
- ICT companies also agree to the establishment of a multi-stakeholder organisation that will impose "an independent accountability system for assessing company compliance with the Principles."¹⁷
- Signatories to the GNI Principles include Microsoft, Google and Yahoo!¹⁸
- Significantly, no telecoms have signed on to the GNI Principles.

Why are telecoms reluctant to adopt the GNI Principles?

Whilst some of the largest ICT companies such as Microsoft and Google have signed on to the GNI Principles, telecoms have, so far, been reluctant to do so. Several companies have suggested that they would be more receptive to the GNI Principles if they contained telecom-specific action steps for implementing the principles in their sector, rather than being conflated with internet companies.

Proposal for telecoms

To assist telecoms in joining their colleagues in ensuring the protection of fundamental human rights, Access has developed a 5 step Action Plan specifically tailored to the operating model of telecoms ('Telecoms Action Plan'). The Telecoms Action Plan is consistent with and complimentary to the GNI Principles. It is hoped that the Plan will encourage telecoms to become signatories to and implement the GNI Principles.

Telecom Action Plan: Five steps every rights-respecting telecom should take

- 1. Providers should retain complete control over their networks at all times and ensure that users always have access to it.** In practice, this means:
 - a. Resisting any efforts to give governments control over network infrastructure - either technically or through regulatory authority.
 - b. Ensuring that in times of crisis, users always have the right to access the internet and mobile phone services.
 - c. Ensuring that users have the ability to call for emergency assistance at all times, even when they fail to pay their bill, or at moments of crisis.

“ The Armed Forces asks Egypt's honest and loyal men to confront the traitors and criminals and protect our people and honour and our precious Egypt. ”

- Text message from Egyptian government through Vodafone network¹⁹

d. Refusing to act as a spokesperson of a government or the regime in power (e.g. by sending pro- or anti-government text messages). Government use of a network for emergency instructions and AMBER Alert-like messages is acceptable, but these messages must be sent by the provider itself at its discretion, and the sender must be clearly identified.

2. Providers have a duty to protect their users. In practice, this means:

- a. Encrypting and anonymizing user data to ensure user privacy and security both on their personal devices and in centralized databases where user data is aggregated. This includes an obligation to always transmit user data over encrypted channels.
- b. Actively protecting networks from hacks, malware, spam, and other vulnerabilities.*
- c. Reporting any data breaches to users and relevant government authorities with as little delay as possible.
- d. Never providing governments with blanket “backdoor” access to their networks. Government may have legitimate reasons to monitor the communications of suspected individuals for law enforcement and national security purposes. However, any proposed monitoring must be consistent with international human rights law as set out in Step 1b, including ensuring that:
 - Any such surveillance may only be conducted with a warrant or other court order based on probable cause.
 - Providers should only give governments access to individual users (one warrant, one user).
 - Providers should never grant universal access to all of their users’ communications.
 - In giving governments access to user communications, providers should interpret requests as narrowly as possible, require all requests to be made in writing, and require a human employee to be present/involved whenever user data is accessed by government.

3. Providers should uphold principles of non-discrimination and abstain from filtering their networks except for the purposes of network security and management. In practice, this means:

- a. Treating all data traffic on an equitable basis no matter where it originated or the type of data.
- b. Rejecting demands to engage in filtering for political, social, or conflict purposes, including and especially during moments of political turmoil. Any attempt to filter must be strictly consistent with international law and providers should follow the guidelines set out in Step 2d, which pertains to government requests to surveil users.

* Given the very real risk to basic human rights such as freedom of expression, access to information, and privacy, the Telecom Action Plan is strongly opposed to any limitation to access. Any existing agreements currently enabling limitation to access should be renegotiated. The International Covenant on Civil and Political Rights and other international human rights frameworks (such as the European Convention on Human Rights) make clear that any restrictions on these rights must only take place in extremely limited circumstances. Any such restriction must be necessary and proportionate to achieve the relevant aim and via the least restrictive means possible, including for a strictly limited time period i.e. a certain number of minutes or hours.

“ On the 28th January I was in the street protesting with millions of other Egyptians. We all felt really blind then, we couldn't even know what's going on a few metres away from us. All this because the mobile operators and internet service providers shut down both their internet and GSM services. I personally witnessed people being shot a few metres away from me, and I was pretty sure then that none of them will be able to reach a doctor on the phone or call an ambulance! People suffered needlessly - this must never happen again!”

- Tarek Amr,
Egyptian blogger,

- c. Refraining from filtering internet technologies (e.g. VoIP services and circumvention software).
- d. Ensuring that all requests from governments regarding content manipulation (take-downs, filtering, etc.) and network shut downs follow established procedures which comply with Step 3, and disclosing such actions to users as soon as possible (ideally before any such actions occur).

4. Providers should uphold principles of transparency, accountability, appealability, and due process in all of their actions/transactions, as set out in the GNI Principles. In practice, this means:

- a. Disclosing operating licenses wherever possible. When public disclosure is proscribed by law, providers should engage a respected independent body to do a human rights audit.
- b. Having clear guidelines with respect to law enforcement access to user data, and a mechanism to challenge such requests.
- c. Using clear and accessible language in terms of use, privacy policies, and other forms of user guidelines.
- d. Translating terms of use and/or user guidelines into languages of platform's use, and clearly indicate where terms of use vary across jurisdictions.
- e. Having a clear appeals process and responding to appeals promptly.
- f. Offering clear warning and response mechanisms both before and after any proposed account deactivation or content removal, and providing for intermediate steps or an escalation process during the content or account review process.
- g. Providing clear channels through which users can contact the provider with complaints, questions, or other issues.
- h. Accurately advertising the features of services offered (e.g. actual download/upload speeds).

5. Providers should commit to using spectrum allocations in a judicious and equitable manner. In practice, this means:

- a. Sharing spectrum to maximize the benefit to a nation's inhabitants and to promote innovation and economic growth.
- b. Selling or returning at cost to a nation's government unused spectrum that the provider does not plan to use.

In addition, telecoms should engage in multi-stakeholder collaboration including with civil society as a partner in the design and implementation of these Five Steps. They should also establish standing channels of communication with civil society organizations to inform and advise on good practice and human rights issues. Access believes that telecoms should join the Global Network Initiative,** upon which this Telecom Action Plan draws much of its inspiration, and be subject to assessment and evaluation of the implementation of its principles and implementation guidelines.

** The Global Network Initiative is a multi-stakeholder initiative formed to help promote respect for the rights of freedom of expression and privacy and, in particular, fashion operational guidance for companies and foster collaboration on public policy. It is comprised of companies, NGOs, investors and academics. Find out more at globalnetworkinitiative.org.

Investor engagement with telecoms

Recent events in the Middle East have shown both the enormous potential of telecommunications to effect positive change and the risk that people's reliance on modern forms of communication can be exploited to repress and abuse. Apart from the tragic human cost, the possibility that international companies may find themselves unwilling accessories to such crimes carries potential financial costs for those companies and their investors. That such risks are rooted in the terms and conditions routinely accepted by major telecoms demands an industry-wide agreement to act.

Investors need to engage with telecoms to determine:

- Whether their current operating licences in politically unstable countries contain similar terms as those agreed to by Vodafone in Egypt.
- Whether such companies have carried out a human rights assessment of their current operating licence agreements.
- Whether such companies have, in light of recent events, developed a response plan to ensure they do not face accusations of complicity with dictators in human rights abuses if similar events were to occur.
- The companies' willingness to:
 - implement the Telecoms Action Plan;
 - participate in multi-stakeholder collaboration on these issues; and
 - become signatories to the GNI Principles.

Silicon Valley Human Rights Conference, 25-26 October 2011, San Francisco, California

The Silicon Valley Human Rights Conference will examine how the ICT industry can better plan for and manage the human rights implications of their technologies. Centred around private roundtables and public sessions, it will bring ICT entrepreneurs, executives, and engineers together with policy analysts, human rights specialists and technologists to help companies explore the specific challenges the ICT sector faces in making sound business decisions and to recognise the importance of human rights considerations around the world and across the internet. Access encourages investors to attend this conference.

accessnow.org/conference

Further information:

We encourage investors to contact Access and/or FairPensions for further information.

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About Access

Access is a global movement premised on the belief that political participation and the realization of human rights in the 21st century is increasingly dependent on access to the internet and other forms of technology. Founded in the wake of the 2009 Iranian post-election crackdown, Access teams with digital activists and civil society groups internationally to build their technical capacity and to help them advocate globally for their digital rights. Access provides thought leadership and practical policy recommendations in the broader field of internet freedom, and based on that expertise mobilizes its global movement of citizens to campaign for an open internet accessible to all.



About FairPensions

FairPensions (Fairshare Educational Foundation) is a registered charity that promotes responsible investment practices by pension providers and fund managers. FairPensions champions greater transparency and accountability to the millions of people whose long-term savings are managed by institutional investors and other professional agents. FairPensions believes that responsible investment helps to safeguard investments as well as securing environmental and social benefits.

FairPensions is supported financially by a number of leading charitable foundations and counts amongst our member organisations a growing number of globally recognised NGOs and trade unions. Over 8,000 individuals support our work both by taking action directly to advance responsible investment and through personal donations.



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