

Grameen Telecom's Rejoinder to the Statement of the Ministry of Foreign Affairs in Regard to the Open letter from Global Leaders

The Ministry of Foreign Affairs has recently issued a statement in response to an open letter from global leaders urging Prime Minister Sheikh Hasina to halt legal proceedings against Nobel laureate Dr. Muhammad Yunus. Grameen Telecom's response to the comments of the Ministry of Foreign Affairs in their statement is as follows:

Professor Muhammad Yunus established the Grameen Bank project in 1976 (which was later given a statutory framework in 1983) with the objective of emancipating the poor especially poor helpless women of rural Bangladesh from extreme poverty by turning them into entrepreneur through a system of microcredit. The world observed with utter amazement and reverence how poor rural women in one of the poorest countries of the world were becoming self-reliant by investing small loans from Grameen Bank in small businesses of theirs with an astonishing loan repayment rate of 99 percent. For his extraordinary work Professor Yunus, along with his creation the Grameen Bank, were awarded the Nobel Prize in 2006. Microcredit as developed by Professor Yunus has become a model for poverty reduction efforts around the world, with especially robust sectors in India, Morocco, the United States, Bolivia, and Kenya.

To complement microcredit's positive impact, Professor Yunus has established nearly other 50 companies in Bangladesh. All of the companies work for social and economic development of the poor especially the rural poor in different sectors like healthcare, nutrition, agriculture, education, garment, solar power, fisheries and livestock. Most of them are structured as social businesses, a model in which no individual gets any dividend or profit from these companies and any profits are reinvested only for attaining their objectives. For example, Grameen Caledonian College of Nursing, the best nursing college of the country, is producing hundreds of trained nurses while Grameen Healthcare Services Ltd. and Grameen Kalyan are running more than 150 health centers across the country giving quality healthcare services to millions of rural people at affordable costs. Grameen Telecom, a partner of Telenor of Norway in the establishment of the legendary Grameenphone, not only helped hundreds of thousands of poor women borrowers of Grameen become self-reliant by selling telephone service in their vicinity but also brought cellular phone service to the remote villages of Bangladesh and connect the villages with the larger world.

Grameen Telecom and the WPPF issue

Grameen Telecom (GTC) was created in 1997 as a not-for-profit company limited by guarantee under Section 28 of the Companies Act, 1994 of Bangladesh. As per the legal status of GTC, profits of the company are not distributable and are reinvested for attaining the social objectives for which the company was established. Employees were well aware of it and did not demand the 5-percent Worker's Profit Participation Fund (WPPF) for more than 10 years while working for Grameen Telecom and even after they retired from GTC. Since the provisions in the Bangladesh Labour Act 2006 are general in nature and premised upon a presumption that the shareholders of the companies would earn profits from the companies' activities and should share a part of that with the employees, those provisions do not apply to non-profit social enterprises, such as GTC. Accordingly, GTC's position was that WPPF requirements did not apply to it.

In the year 2017, some employees of GTC filed civil B.L.A. (I.R) cases under Section 211 under the civil rules of Bangladesh Labor Act, 2006. But the Department of Inspection of Factories and Establishments (DIFE), the government office, instead of explaining to the employees that their claims were not valid, have intentionally and purposefully – with wrong and false information – filed B.L.A (Criminal) case No. 228/2021 against four directors of GTC including its chairman Professor Yunus (who acts in a voluntary capacity without any honorarium) on totally unreasonable grounds including the WPPF issue.

It should be noted here that GTC provides all facilities to its employee by its own policies that were approved by the Board of Directors of GTC. In its criminal case that it filed with the Third Labor Court on September 9, 2021, the DIFE accuses that GTC has violated labor laws on 3 grounds:

Complaint No. 01: Contract based appointment

DIFE raised the objection that GTC, violating Section 4(7)(8) of the labour law, did not make its employees' jobs permanent after end of their probation period.

What GTC had done in this regard

GTC employees are appointed on contractual basis as per the recruitment policy of the company. The reason is that business activities carried out by GTC are contract-based and renewed after a fixed period. Business activities with Nokia Care, Huawei Care and the Village Phone Programme are carried out on a contractual basis and usually the contracts are renewed every three years. Since

activities of the Village Phone programme are conducted on the basis of contracts with these institutions, all employees of GTC are given appointment on three years contract basis. But with recurring contracts with these organizations, tenure of GTC employees' jobs also increased. All employees of GTC used to receive provident fund, gratuity, annual leave encashment, retirement benefit etc. like a permanent employee.

Complaint No. 02: Annual leave encashment

DIFE objected that according to Section 117 Rule 107, the workers/employees working in this establishment had not been paid annual leave with wages, encashment of leave and cash payment against leave as per the provisions of the labour law.

What GTC did in this regard

- GTC's policy on earned leave was formulated in the year 2002, with effect from January 1, 1997 although the Bangladesh Labour Act ("BLA") was enacted in the year 2006.
- According to Section 3(1) of the BLA, an organization may have its own policies but the benefits under these should not be less generous than that those in the labour law.
- GTC's leave policies were formulated with the provision of 30 days earned leave per year, whereas the labour law provides only one day as leave against every 18 working days, i.e. a maximum of 14 days during an entire year. It means GTC gives more earned leave benefit than the labour law.
- In the case of encashment of earned leave in GTC, an employee may encash 30 days' leave during a period of three years, keeping the remaining 60 days' leave stored with the organization.
- In the case of encashment of leave, as per labour law, an employee of GTC is entitled to 14 days leave of which 7 days may be encashed and the remaining 7 days should be kept as deposit. But as per the leave policy of GTC an employee may encash 30 days leave in three years, which means 10 days every year. It is more generous than what the labour law provides.

Our comments

As per Section 117(7) of the BLA, if a worker applies for an earned leave and the owner denies it for some reason, then the unapproved leave will be added as

additional due to the original earned leave of the concerned labourer. Since there is redress in the labour law itself, it can never be considered a criminal offence; it is an administrative and civil case issue as per the labour law.

GTC's earned leave encashment system was put into effect from 1997 and it was more than what is provided under the labour law at the time. Later, following instructions from DIFE in this regard, GTC, in a board meeting held on February 25, 2021, decided to provide the benefit consistent with the labour law with effect from January 1, 2021. GTC informed it to DIFE authority by a letter on August 29, 2021 but DIFE filed a case against GTC on August 9, 2021.

Complaint No. 03: Participation fund and welfare fund committee not constituted as per Section 234 of the labor law

DIFE objected that Workers Participation Fund and Welfare Fund had not been constituted as per Section 234 of the labour law and 5% of the net profit had not been paid to these said two funds and to the fund constituted by the Bangladesh Sramik (Labourer) Kalyan Foundation Law at the rate fixed by the law.

What GTC did in this regard

Since GTC was created as a not-for-profit company under Section 28 of the Companies Act, 1994 of Bangladesh, its profits are not distributed, as explained above, and accordingly, GTC's position was that the requirement to constitute WPPF did not apply to it. Still the workers union at GTC filed cases against the organization from time to time for the benefit. As the case was pending at court (i.e. the issue was *sub judice*), WPPF was not formed. DIFE was informed that the matter was pending at court and measures would be taken as per the rulings of the Court.

Provisions in the law

In Section 236 of the BLA, there are redresses like fine, recovery of money etc.:

- (1) Where any company or Trustee Board fails to comply with the provisions of section 234, the Government may, by order, direct it to do acts in accordance with the provisions within such time as maybe specified in that order.
- (2) If any company fails to act then the Court may fine the person or persons responsible for management of the company for an amount not exceeding 1 (one) lac taka and, in the case of continuous failure, a further amount of

taka 5 (five) thousands for every day from the first day of such failure and direct to pay the total amount of fine within the next 30 (thirty) days.

Provided that if any person contravenes the aforesaid provisions again or fails to comply therewith, twice the amount of fine specified above shall be imposed on him.

(3) If any amount payable under section 234 remains unpaid and any fine imposed under this section is not paid within the time specified in the relevant order, such unpaid amount and fine shall be deemed to be public demand and be recoverable in accordance with the provisions of the Public Demands Recovery Act, 1913.

(4) Any person aggrieved by an order issued under sub-sections (1) and (2) may, within 30 (thirty) days of making such order, apply to the Government for review thereof and the Government shall, on receipt of such application, within not exceeding 45 (forty-five) days, review the matter and make appropriate order.

(5) An order made by the Government under sub-section (4) shall be final.

Our comments

If provisions in Section 234 of the BLA are breached then there are several provisions under Section 236 to redress the issue.

The fact is that there are specific civil remedies in the BLA in relation to the alleged deviations from Sections 4(7)(8), 117 and 234 of the BLA and those remedies can be availed by the employees by filing proceedings against the employer-company. The four individuals, including Professor Yunus, are all non-executive board members and do not have any proprietary interest in the company's affairs. Yet, criminal cases have been filed against them by DIFE. This is extraordinary and demonstrates clear malicious intention to harass them.

What can be considered as criminal offences are mentioned in detail in Chapter XIX of the BLA (titled "Offence, Penalty and Procedure"). Sections 4(7)(8), 117 and 234 under which the complaints are made are not mentioned as criminal offences in that chapter.

Besides, there are procedural irregularities in the complaint, i.e., the requirement under Section 319(5) of the BLA that only the Chief Inspector, or any subordinate with proper authorization from the Chief Inspector, can file a criminal case, has not been satisfied in this case. Furthermore, as per Section 313(2) of the BLA, the Labour Court cannot entertain a complaint from anyone other than the Chief Inspector himself or a subordinate of his with proper authorization from the Chief Inspector. This requirement has not been satisfied either.

Settlement payment made by GTC

From time to time, starting from 2017, a total of 106 employees of Grameen Telecom filed 106 B.L.A (I.R) cases against the organization with the Labour Court. The Grameen Telecom Employee Association (CBA) also filed an industrial dispute case (Case No. 1666/2019) with the Labour Court.

Concealing the information of their industrial dispute case (Case No. 1666/2019) with the Labour Court, the CBA filed the Company matter No. 271 of 2021 on April 4, 2022 before the Hon'ble High Court Division seeking the winding up of the Grameen Telecom. After the Company Matter had been admitted, the management of GTC took a decision not to aggravate this dispute any further and, in order to mitigate the issue, entered into a settlement agreement with GTC employees and the CBA to resolve the matter out of court. The parties submitted a joint application before the Hon'ble High Court Division (under Company matter No. 271 of 2021) and the Hon'ble Court passed the following order on May 23, 2023:

“In view of the fact both the parties of the matter have amicably settled the dispute out of the Court, therefore, this Court is of the view that there is no point of keeping this matter pending. As such, the Court is inclined to dismiss the matter for non-prosecution.

Accordingly, the Company matter No. 271 of 2021 is dismissed on the ground of non-prosecution.”

According to the settlement agreement signed with the employee union (CBA), GTC has already paid, as per Section 234 of Bangladesh Labour Act, 2006, 90 percent of the 5 percent WPPF dues on its net profit from the year 2010 up to 2021-2022 financial year to bank accounts of the employees. Out of the 164 beneficiaries, 156 have already received their payment. Payment to 8 employees could not be made as 4 of them have already died and the other 4 are living abroad. But their shares are in the settlement account and will be paid following appropriate process. A total of BDT 4,370,112,621.00 was paid for this purpose.

However, as a surprising and extraordinary turn of events, law enforcing agencies have raised complaints that there is no provision in BLA, 2006 of distributing GTC's WPPF money directly to the employees by signing settlement agreement with the employee union (CBA) and, by claiming that such a distribution is illegal, have filed a criminal case against GTC. Their allegations are blatantly contrary to the order of the Hon'ble High Court Division, which passed its order taking into consideration the mode of payment agreed by both parties.

On May 30, 2023 Deputy Director of the Anti-Corruption Commission (ACC) Mr. Gulshan Anowar Pradhan filed a case (case No. 12) of money laundering against Professor Yunus and the other seven board members of GTC under Sections 409, 420, 467, 468, 471, 109 of Bangladesh Penal Code and Section 4(2)(3) of the Money Laundering Prevention Act, 2012 complaining that in the 108th board meeting of GTC held on May 9, 2022, participated by GTC chairman Dr. Muhammd Yunus, GTC managing director Mr. Nazmul Hossain and other board members of GTC, a decision was taken to open a bank account with the Gulshan Branch of Dhaka Bank Ltd. But the account was opened the previous day. Besides, in the settlement agreement signed on April 27, 2022 the same bank account was, in fact, opened on 9 May which was practically impossible. They have also alleged "misappropriation" of money by the CBA leaders, lawyers and others concerned in collaboration with the GTC chairman, managing director and other board members.

A major condition in the settlement agreement was that GTC employees will collectively receive an amount of BDT 4,370,112, 612.00. Later a mistake in the earlier calculation was detected and the revised estimate stood at BDT 4,096,922,789.00. Both GTC authority and the CBA accepted the recalculated amount as appropriate. As per the condition in the settlement agreement the money was transferred to the bank account determined by both parties. The Anti-Corruption Commission, without any evidence, claimed that GTC board members made unlawful gains by misappropriation of the money. The allegation is totally false and without any basis in fact whatsoever.

ACC has filed their case based on two things in the settlement agreement. First, an amount of 16,391,389.00 was overpaid. The fact is that after transfer of the total amount to the bank account that was determined for agreement as per the settlement agreement the total amount due became reduced in the recalculation. Before employees received their dues, all of them gave written undertakings to pay 6 percent of their dues to their lawyers as professional fees and other related costs. Although the employees agreed on the recalculated amount of BDT

4,096,922,789.00 instead of BDT 4,370,112,612.00, their lawyers claimed 6 percent on BDT 4,370,112, 612.00, declining to receive 6 percent on BDT 4,096,922,789.00. This would put GTC in a new conflict and, instead of keeping the debate alive until a solution was arrived at or having to go to the court again spending precious time and money, GTC agreed to pay the amount determined earlier. In all payments standard procedures like distribution of the dues through bank accounts and documentation of all matters were followed. It is alleged in the case that the CBA leaders paid a small portion of the money to the lawyers and misappropriated the rest. If the allegation is true then it is very unfortunate. But the GTC board including its chairman and other members did not have even the remotest connection to this transaction because the money, upon written undertakings from all the employees to pay lawyer fees from their individual dues, was transferred from the settlement account to the Union account and neither GTC nor any of its board members had to do anything with the Union account nor has any authority on it.

The second point in the case submitted by ACC is that the agreement between GTC and the CBA was signed on April 27, 2022 and, on the other hand, the bank account opened for distribution of the settlement money was opened on May 8, 2022 although the number of the bank account was mentioned in the settlement agreement. So they claim that the settlement agreement was false and the money was misappropriated by forgery.

The fact is that the settlement agreement was composed on a computer and signed on April 27, 2022 but room was kept blank in the agreement for putting the bank account number when it was received. Later, after the bank account was opened, the account number was written by hand upon consent from both parties. The Managing Director of Grameen Telecom, the president of the employee union and the general secretary of the employee union are signatories to the bank account. Money was transferred to the bank account after the decision of the board on May 9, 2022. Writing the bank account number by hand in a formal agreement on mutual consensus does not make an agreement illegal or prove that it has been forged. Besides, when the settlement agreement was submitted in the company matter case, the Hon'ble High Court took the agreement in cognizance without any question and settled the matter.

On the other hand, in the description of the allegation by ACC, on various occasions, the phrase "as directed by Dr. Muhammad Yunus" has been added. It has been done out of clear malice against him since there is no material to support this statement. All resolutions in GTC are taken on the basis of decision of all of the board-members who have equal decision-making powers.

The tax issue of Professor Yunus

Professor Yunus's personal funds, which have been at the centre of discussion on television and print media, are all his personally earned money, and none of this is from the Grameen Bank or Grameenphone or any of the social-business companies that he founded. His main sources of income are honorarium for his lectures, money earned from the sale of his authored books, and prize monies. All the money earned by him from abroad are brought in to the country through proper banking channels. The tax authority remains fully informed of the matter as all sources of his money and income are presented in his tax returns. Despite frequent audits, no evidence has ever emerged that he has done anything unlawfully with regard to his earnings and the repatriation of them.

He never wanted to be the owner of any asset and does not own any asset anywhere. He wants to remain free from any ownership (land, house, car, shares, etc). So he decided to form two trusts with the money he has earned. These trusts were "Professor Muhammad Yunus Trust, (PMYT)", a usual philanthropic Trust, and the other, a smaller one (6% of the total money), for the benefit of his family members, called the "Yunus Family Trust (YFT)". He incorporated a provision in the trust deed of the Family Trust that one generation after him the remaining fund of this trust must be transferred to the PMYT.

He did it to ensure that the money in the trusts would be safe under the supervision of the trustees during his lifetime and beyond that, and that the trustees would be active in achieving the objectives of the trusts.

If he had kept his money with him he would actually have had to pay less tax, because the rate of personal income tax is lower than institutional tax. His income tax advisor advised that he would not have to pay any gift tax if he donated the money to PMYT because it is a philanthropic trust. With regards to the Family Trust his tax advisor's advice was that in such a case (the case of making some arrangement for the safety of his wealth in his absence) he would not have to pay any tax because based on the law. On the basis of this advice Professor Yunus did not pay any tax at the time of transfer of the money to both trusts. But the concerned tax officer, after Professor Yunus's tax return was submitted, imposed a gift tax since there was a declaration of gift in the tax return.

In consultation with his tax lawyer, Professor Yunus decided to seek a decision from the court in this regard. It is common knowledge that any assessee is entitled to appeal against a tax assessment and demand issued by the tax authority, and there are specific procedural provisions in the tax law for such multi-tiered appeals. Every year, thousands of assessees invoke those procedural

recourses and obtain a final decision after following the process. In the appeal proceedings filed by Prof. Yunus, the court has given its opinion in favour of paying the tax.

There is no question of "evading the tax" as has he has been accused of in the press. It was Professor Yunus who went to the court to seek a decision on whether he had to pay the tax. The government did not go to the court to demand the tax. The tax authority never said, at any stage, that he evaded tax. There is no question of tax evasion here. The question was all about the interpretation of the law relating to the matter. Now that the lower court has given a verdict in favor of paying the tax, Professor Yunus will have the option to pay the tax or go to the higher court to get their judgment on the issue. If the relevant tax law does not require Professor Yunus to pay the tax, then he will have the opportunity to use the money for the benefit of people and the planet in the way he thinks would be best for them. That was his sole concern with regards to the payment of the tax. He does not personally benefit from either paying or not paying this tax.

The issue of the position of managing director of Grameen Bank

There were false claims that Professor Yunus wanted to hold the position of managing director of Grameen Bank (GB). In fact, he was never eager to hold the position. On several occasions he informed the board that he wanted to leave the position, but he was requested by the board of directors of Grameen Bank not to leave the bank. In 1990, the government share in GB was reduced from 60 percent to 25 percent and the borrowers' share was increased from 40 percent to 75 percent. As per the amended ordinance the power of appointing the managing director of the bank was entrusted with board upon prior approval of Bangladesh Bank, the central bank of the country. The board of directors was given the power to formulate all the policies of the bank. The government retained no power in the bank except nominating three directors, including the chairman, on the GB board, which was comprised of 13 directors in total. No obligation to follow the government service rule was mandatory for GB. Like other private banks, the power of appointing the managing director of the bank rested with the board of the bank subject to approval of Bangladesh Bank. Neither the appointment of the managing director nor the power of determining the terms of reference for the position was under purview of the ministry.

However, by raising the question of his age Bangladesh Bank ordered Professor Yunus to resign from the position of managing director in 2011. In response, Professor Yunus submitted a writ petition with the High Court. Upon hearing the case, the High Court rejected his petition on the ground that the petition was not maintainable, i.e. in legal terms, he had no "locus standi" to submit the

petition. He then appealed to the Hon'ble Appellate Division and the Appellate Division also declined his petition on the same ground. Professor Yunus, obeying the decision of the court, immediately resigned from the post of managing director of Grameen Bank.

Considering the situation it appears that the allegations of corruption against the chairman and other board members of GTC are without any substantial evidence and as a result are false, and are framed to malign the good names of these persons. By filing false cases against them there seems to be a deliberate effort to harass Nobel Laureate Professor Muhammad Yunus and other board members of GTC and tarnish their images by trying to hamper the social development works they have been pursuing all of their lives.