



OECD Norwegian National Contact Point  
Attn: Head of Secretariat Bente Follestad Bakken  
Email: Bente.Renee.Bakken@mfa.no

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Response to Complaint No. 2 From Industri Energi and The  
Coordination Council of DNO Yemen Labor Union (“Yemen  
Union”) dated 14 September 2018

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Oslo, 12 October 2018

Dear Ms. Follestad Bakken,

DNO ASA (“DNO”) hereby responds to the Norwegian National Contact Point’s (“NCP’s”) correspondence dated 14 September 2018 in which is enclosed a second complaint from Industri Energi and the Yemen Union (“Second Complaint”). The Second Complaint, including its attachments, contains virtually identical requests to their first complaint which was submitted on 8 November 2016 (“First Complaint”) and where a closing statement was made by the NCP on 22 March 2018 (<http://www.responsiblebusiness.no/2018/03/22/slutterklaering-industri-energi-dno-asa/>).<sup>1</sup>

For the reasons described below, DNO respectfully declines to participate in another exercise covering the same subject matter.

#### **A. About DNO and DNO’s Operations in Yemen**

As stated in the First Complaint, DNO ASA (“DNO”) is a Norwegian oil and gas operator focused on the Middle East-North Africa region and the North Sea. Founded in 1971, DNO is listed on the Oslo Stock Exchange. DNO holds stakes in onshore and offshore licenses at various stages of exploration, development and production in the Kurdistan region of Iraq, Norway, Oman, the United Kingdom and Yemen. DNO conducts its activities in Yemen through its subsidiary DNO Yemen AS (“DNO Yemen”).

One of the governing principles of DNO, as expressed in its Code of Conduct, is to comply with applicable laws and regulations. In labor relations, this means that we respect the local labor law that applies where we operate. As stated in the Code of Conduct, DNO uses the UN Global Compact as a reference for responsible business conduct. The third principle of the UN Global Compact is that businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

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<sup>1</sup> The 9 April 2018 date cited by complainants is inaccurate in this respect.

DNO Yemen has operated in Yemen since 1998, at various times holding interests in several oil fields in the country, most notably Blocks 32, 43 and 47. The proceeds of the operations are divided between the Yemen Government and the contracting companies according to individual production sharing agreements (“PSAs”). Since the first commercial discoveries were made on DNO Yemen’s licenses, DNO Yemen’s operations have returned more than USD 1.5 billion to Yemen and its people. By early 2015, DNO Yemen had 242 employees, 97.5 percent of whom were Yemeni nationals. Some employees were stationed in the main office in the capital Sana’a, but most on Blocks 32 and 43, some 600 kilometers from Sana’a. In addition to contributing to the economic development of Yemen and the training of its employees, DNO Yemen provided financial assistance to a number of local charities such as the Yemeni Cancer Foundation, local schools, the Sana’a orphanage and the Yemen Smile Trust, a charity that provides cleft palate surgery in Yemen.

However, DNO Yemen’s operations were disrupted, and ultimately rendered impossible, by political instability and insecurity in Yemen. Civil war, airstrikes, bombings, terrorist attacks, attempts at extortion including by security forces, inability to safely and timely move staff and supplies to our operating sites, paralysis of decision making on the part of governmental bodies and kidnappings became a direct threat to DNO Yemen, its employees and its operations and forced the company to cease its activities in the country. With no relief in sight, and no early prospect of reversal of the chaotic and dangerous conditions in the country, in the spring of 2015, DNO had no other choice than to reduce its workforce on Blocks 32, 43 and 47. DNO Yemen subsequently relinquished Blocks 32 and 43 in November 2016 and handed back the licenses and assets to the Yemen Government.

As set out in the First Complaint, the circumstances on the ground in Yemen in the spring of 2015 rendered impossible any face-to-face discussions between the employee representatives and members of management who were authorized to take decisions. The circumstances that DNO Yemen was faced with were beyond extraordinary. With terrorist attacks, civil war, airstrikes, poor lines of communication and management prevented from re-entering the country, meaningful discussions were not practically possible without risking the personal safety of employees and the DNO Yemen representatives.

## **B. The Issues in Dispute in the First Complaint**

As part of the First Complaint, DNO argued (based on the NCP’s initial assessment) that the only issue of dispute between the Norwegian union Industri Energi on behalf of the Yemen Union and DNO was whether DNO Yemen should have initiated discussions with employee representatives in Yemen before the final decision to reduce the workforce was taken.

The NCP disagreed.

As part of its Closing Statement, the NCP reviewed all of the arguments expansively brought forth by the complainants and found as follows:

- DNO Yemen failed to provide adequate notice to its employees in contravention of the OECD Guidelines, Chap. V(6);
- DNO Yemen complied with the expectations of the OECD Guidelines supporting the right of employees to unionize;

- It is too late for the Yemen Union to bring up new arguments (after the mediation was completed) as to whether DNO Yemen breached the PSAs for Blocks 32 and 43 by pulling out of Yemen [in fact, a specific dispute resolution mechanism exists within each PSA which mandates that any dispute concerning the PSA be exclusively decided by the International Chamber of Commerce arbitration and that process is underway]; and
- It is not within the mandate of the OECD Guidelines to assess whether the terminations were illegal in the first instance as this is a question for local law.

Although DNO does not agree with all portions of the report and believes there to be inconsistencies in the decision, it nevertheless noted the findings and the recommendations which accompanied them. DNO considered these matters to be closed thereafter, apart from implementation of the recommendations made by NCP.

### **C. The Issues in Dispute in the Second Complaint**

The Second Complaint brings no new arguments to warrant the initiation of yet another mediation which has not already been brought up in the First Complaint. In fact, the complainants take pains to quote portions of their original complaint and how the NCP responded to them.<sup>2</sup> With only a slight variance, essentially the same provisions of the OECD Guidelines are alleged to have been breached by DNO Yemen. Further, 11 out of 18 exhibits presented are identical to the exhibits submitted in the First Complaint (the only additions containing the illegitimate Houthi Supreme Court decision which was rendered in December 2017, prior to the publication of the NCP's final report in the First Complaint, and references to other companies which were also already mentioned in the First Complaint). For all intents and purposes, therefore, the Second Complaint is identical to the First Complaint.

DNO having fully participated in the first mediation and taken on board each of the recommendations made by the NCP, and Industri Energi on behalf of the Yemen Union having had the ability to entirely express its views already, DNO sees no need – and finds no benefit to either DNO or its former workers -- in pursuing a repeated exercise.

The complainants allege that “DNO has shown little interest for negotiation.”<sup>3</sup> This is patently untrue and cannot be allowed to stand. DNO Yemen has made (and continues to make) several attempts to connect with former Yemeni workers – all have been rebuffed or rebuked. In November 2017, DNO Yemen took the initiative to engage directly with Union representatives (who are made up of former DNO workers) to attempt to settle end of service gratuities owed. Unfortunately, what DNO Yemen perceived to be confidential settlement negotiations were shared externally by the Yemen Union to Industri Energi, who promptly published the discussions – inaccurately – not only with respect to statements made by DNO Yemen but also by the Yemen Union. At the next meeting, DNO Yemen confronted the Yemen Union with the breach of confidentiality who immediately promised to maintain confidential discussions going forward. Yet again, however, the participants tape recorded or videoed the session in violation of their promises, which led to the abrupt end of the discussion.

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<sup>2</sup> Second Complaint, pp. 2-3.

<sup>3</sup> Second Complaint, p. 14.

Since that time, DNO Yemen twice more reached out to both the Yemen Union and former workers directly to seek an equitable conclusion. Some former workers have indeed come forward on their own initiatives and have been paid out their entitlements. Those who have not apparently cling to the persistent but unrealistic belief that the illegitimate decisions of the Houthi courts which have mandated that terminated employees can be forcibly reemployed into non-existing jobs will somehow transpire. Such decisions were made in total disregard of clear legislation which sets maximum compensation for workers who are subject to termination and makes no provision for mandatory specific performance. Despite the attempts that DNO Yemen has made to deliver the entitlements owed to former workers, these workers insist that their higher interest is in continued employment – a condition which DNO Yemen (having relinquished its licenses due to the extended length of civil disturbance in the country) is simply unable, even if it were willing, to fulfill.

The complainants further state that the offers DNO Yemen makes are perceived as a “trick”, amongst other reasons due to the fact that the Houthi court verdicts promise them much more.<sup>4</sup> That a rebel institution subject to UN sanctions would seek to favor the communities is not surprising; yet again, the Houthi court decisions are entirely outside of Yemeni law.

Contrary to suggestions made that when it comes to the judicial institutions it makes “no difference” who holds power in any way, the rebels were a pervasive force at the time the Yemen Union case was initiated within Houthi-controlled territory on 6 February 2016. Interferences included: (1) court decisions and sessions continually postponed, (2) militants physically blockading the chairman of the court from entering the court, (3) replacement of the entire arbitration committee at the very end of the proceedings with judges of questionable legal competence who were appointed by three employees from the Labour Ministry in Sana’a having no legal qualifications of their own, (4) a spontaneous judgement against DNO by the new committee only two weeks after their appointment and with no new hearing taking place, and (5) an execution verdict demanding that the judgement be executed when the arbitration committee had no authority to do so.<sup>5</sup> This, coupled with decisions on all three levels of court that awarded remedies which are not provided for under Yemeni law and which grossly ignored Yemeni due process requirements meant that DNO Yemen simply could not abide by the decisions as rendered.

The offers which DNO Yemen have made and will continue to make are fully in accordance with Yemeni law and the rights to which the former Yemeni workers are entitled. These offers do not, however, include promises of continued employment which cannot be made or met no matter how many third-party discussions are held. These discussions are further beyond the realm of the OECD Guidelines and further NCP interventions will not make a positive contribution to the issues raised. In fact, further NCP interventions give false hope to the Yemen Union and the former workers they represent that the impossible can be made possible.

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<sup>4</sup> Second Complaint, p. 14.

<sup>5</sup> Although DNO Yemen was very much aware of this interference, the fact that the Houthi rebel group controlled all aspects of government and public life meant that a reference to the illegality would not only have fallen on deaf ears but would have physically endangered anyone associated with DNO Yemen. As such, DNO Yemen concluded that it was better to “wait out” the political environment in the hope that an unbiased and objective judiciary which was willing and able to apply established Yemeni law would be reinstated once civil war conditions had abated. With the issuance of the UN Sanctions, the Houthi court decisions were further determined to be void *ab initio*.

#### D. Lack of Faith in NCP Process

In addition to the significant overlap in issues with the First Complaint, about which the NCP has already issued a Closing Statement, an offer of “good offices” by the NCP will further not make a positive contribution to the issues raised given the previously demonstrated lack of adherence to the tenets of the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (“Implementation Procedures”) and the Procedural Guidelines for Handling Specific Instances – NCP Norway (“Norwegian Procedural Guidelines”) which NCP is tasked to uphold.

Although the NCP is not a judicial body, it has similarly committed to deal with issues raised in a manner that is impartial, predictable, equitable, compatible with the OECD Guidelines, in an efficient and timely manner and “in accordance with applicable law”.<sup>6</sup>

During the course of the First Complaint:

- What was intended to be an impartial NCP mediator was placed by NCP in the NCP examination team after the mediation failed -- DNO objected thereto;<sup>7</sup>
- The NCP advised that a final statement would be written first before the parties even had an opportunity to be heard – again, DNO objected thereto;<sup>8</sup>
- Once it had agreed to allow final submissions, the NCP required DNO, as respondent to the allegations made by Industri Energi and the Yemen Union, to provide its final statement before receiving the complainant’s final allegations, enabling the complainants to revisit their positions and add new ones;<sup>9</sup>
- Prior to DNO even having entered its final submission, the NCP engaged with the media in news articles in E24 and Nettavisen (<http://e24.no/energi/dno-nekter-aa-betale-arbeidere-i-jemen/24174970> and <http://www.nettavisen.no/na24/dno-nekter-a-betale-arbeidere-i-jemen/3423385245.html>), where members of the OECD panel are quoted commenting on the dispute between Industri Energi and DNO, in direct contradiction with the

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<sup>6</sup> Implementation Procedures, p. 72, para. C; Norwegian Procedural Guidelines, pp. 2-3.

<sup>7</sup> See NCP email sent to DNO and Industri Energi on 23 October 2017 in contradiction with Norwegian Procedural Guidelines, p. 9 (“*If an NCP member has acted as mediator in the case, he or she will not participate in the further examination unless both parties consent*”).

<sup>8</sup> See NCP email sent to DNO and Industri Energi on 23 October 2017 in contradiction with Norwegian Procedural Guidelines, pp. 9-10 (“*The examination is likely to involve the NCP collecting further information or statements from the complainant(s) and the company. The examination may also involve further meetings between the NCP and the parties.*”).

<sup>9</sup> See NCP emails sent to DNO and Industri Energi on 25, 26 and 31 October 2017 (“*DNO is not allowed to decide whether Industri Energi is required to submit a final statement before DNO*”; “*There is nothing in the guidelines to suggest that Industri Energi must submit their final statement first.*”) in contradiction with applicable fairness and due process principles which can be found in the Norwegian law on civil procedure sections 1-1 (the parties shall have access to and be given the opportunity to defend against the counterpart’s arguments and evidence), 5-2, 6-3 and 9-2; Norwegian Administrative Act and ECHR art. 6 (the right to a fair trial). See also NCP email sent to DNO and Industri Energi on 10 November 2017 (“*The NPC has noted that Industri Energi wishes to submit a final statement. The deadline is set for fourteen days after the NCP has received the final statement from DNO. Thereafter, DNO will be given appropriate time to submit comments to Industri Energi’s final statement.*”).

confidentiality restrictions imposed on the parties, tenets of impartiality<sup>10</sup> and inviting serious prejudice in the realm of public opinion.<sup>11</sup>

As stated above, DNO does not believe, from a substantive point of view, that the allegations brought forth in the Second Complaint fall within the ambit of the OECD Guidelines. Even if they did, given the transgressions already experienced -- and in particular the NCP's willingness to engage with the media to explain alternative methods of pursuing DNO -- DNO has no confidence that the NCP is able to operate in an impartial manner with respect to this matter as its mandate requires.<sup>12</sup>

### **E. Lack of Good Faith in Bringing the Second Complaint**

The Norwegian Procedural Guidelines set the standards for parties to an OECD complaint:

"The NCP depends on the parties to the process cooperating in good faith, however. Among other things, that means to respond on time, to maintain confidentiality where necessary, to refrain from giving inaccurate descriptions of and making threats or initiating reprisals against other parties to the process, and to engage in the process with a sincere wish to arrive at a solution. Failure to cooperate with the NCP is not in keeping with the expectations set out in the Guidelines and will be emphasised in the final statement, if one is issued."<sup>13</sup>

As part of the NPC's Closing Statement, the NPC mediator confirmed that DNO engaged and cooperated in the First Complaint --including four meetings in a mediation process which was ultimately not successful -- in good faith as expected by the OECD Guidelines.

In bringing the Second Complaint, undermining DNO's legitimate attempts at conciliation, and continuing its campaigns in the media with press enlisted for this purpose, Industri Energi and the Yemen Union clearly are not interested in cooperating in good faith or acting in the best interests of DNO Yemen's former workers whom they claim to represent. DNO will regardless continue to reach out and seek resolution with any former Yemeni worker who reaches out in good faith to receive their entitlements in accordance with Yemeni law.

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<sup>10</sup> See Norwegian Procedural Guidelines, p. 2 (*"The NCP is subject to the impartiality provisions of the Public Administration Act (1967)"*).

<sup>11</sup> See Norwegian Procedural Guidelines, p. 9 (*"All parties should be aware of the effect any public statements may have on the mediation process."*); Implementation Procedures, p. 83 (*"NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties..."*). In response to DNO's objections, NCP did not recognize any obligations towards impartiality or reputational loss/prejudice and minimized any confidentiality obligations. See NCP email sent to DNO and Industri Energi on 31 October 2017 regarding the contents of the media statements (*"...[U]pon request, it was also stated that civil proceedings would be an alternative for the complainant in relation to Norway, but that this would be complicated. The NPC cannot see that this is in breach of the confidentiality undertaking."*).

<sup>12</sup> Implementation Procedures, Procedural Guidance, p. 71.

<sup>13</sup> See Norwegian Procedural Guidelines, p. 3.

DNO has respected, and will continue to respect, the OECD Guidelines. However, the NCP's "good offices" focused on OECD Guidelines which have already been determined by the NCP in the First Complaint not to apply at this point, will not make a positive contribution in this regard.

Sincerely on behalf of DNO ASA,

A handwritten signature in blue ink that reads "Ute A. Joas Quinn". The signature is written in a cursive, flowing style.

Ute A. Joas Quinn  
General Counsel and Corporate Secretary, DNO ASA