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

Response to NCP Draft Initial Assessment of Complaint No. 2 from Industri Energi and The Coordination Council of DNO Yemen Labor Union ("Yemen Union")	Oslo, 17 December 2018

Dear Ms. Follestad Bakken,

DNO ASA ("DNO") hereby responds to the Norwegian National Contact Point's ("NCP's") correspondence dated 26 November 2018 in which is enclosed your draft Initial Assessment of the second complaint lodged by Industri Energi and the Yemen Union ("Second Complaint") and in which a request is made to both parties to correct any factual errors prior to publication of the Initial Assessment.

The NCP bases its (self-termed solely procedural) decision that the Second Complaint "merit[s] further examination" on a core factual error of DNO's position which renders the Initial Assessment faulty from the outset.

A. Factual Errors in the Initial Assessment

The NCP makes a preliminary determination that there is a question of fundamental breach of the Guidelines Chapter I, para. 2[1] based on an assumption that DNO has not complied with domestic law:

> "It is not for the NCP to interpret domestic law – that is a task for the domestic judiciary. The fact of the matter is different in the present complaint, where the question is whether DNO's **failure to comply with a final judgement by a domestic court** in the host country amounts to a breach of the fundamental principle expressed in the Guidelines Chapter I, para. 2." (emphasis added).

The NCP bases the above assessment on the following factual (mis)characterization of DNO's response to the Second Complaint as follows:

[1] "Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law." (OECD Guidelines, Chapter I, para. 2).

> "DNO maintains in its response that it is not willing nor able to fulfil the **Yemeni judgement**." (emphasis added).

This is not, in fact, what DNO has maintained and your assessment disingenuously twists the wording of DNO's response and is unacceptable. To clarify the words NCP quotes, DNO referred in its response to the inability of DNO Yemen to fulfil the wistful wishes of former DNO Yemen workers who unrealistically continue to seek employment whilst DNO Yemen is no longer a license holder (and thus an employer) in the Yemeni blocks which used to employ them:

> "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 fulfil.**" [2] (emphasis added).

As described in some detail, with factual evidence in support, DNO went on to describe the interferences of the Houthi rebels (banned by UN sanctions) in controlling and essentially taking over the judiciary in Sana'a located in the middle of Houthi-controlled territory, while the internationally (and Norwegian) recognized Hadi government and Supreme Court sits in Aden (see map below):

[2] DNO response, dated 12 October 2018, p. 4.

Despite these explanations, the NCP simply accepts without question that any decision made by the Houthis is to be considered a "final judgement by a domestic court", apparently in the same sense that a decision by Al Qaeda (also present in Yemen) would apparently also carry such credibility. Such a determination cannot be allowed to stand and is, in any event, beyond the competency of the Norwegian NCP to opine upon. To decide otherwise would indeed amount not only to a determination but also to an overriding of both Yemeni and international law, which both the NCP and the Guidelines insist is not their role or function.

B. Lack of Faith in NCP Process

Without commenting on the NCP's substantive determination to proceed with the Second Complaint (with which DNO clearly disagrees), DNO comments once again from a procedural perspective on its lack of faith in the NCP process, particularly in light of the "short shrift" made of DNO's repeated concerns regarding the handling of the First Complaint. Aside from the utter lack of regard for the enterprise perspective, the rationale provided for finding "all" of DNO's concerns "baseless" again misconstrues the objections made by DNO in its 12 October 2018 letter:

- **Placement of mediator in the NCP examination team**. DNO's objection concerned the diametrically opposed role of a mediator as a facilitator with the role of an evaluative decision maker (such as arbitrators or, in this case, the examination team) in contravention of Norwegian Procedural Guidelines as well as the NCP Mediation Manual prepared by The Consensus Building Institute (e.g., pp. 41-42). The NCP's simplistic response that "the mediator was chosen by the parties" does not assuage this concern.
- **Lack of opportunity to be heard**. The NCP's conclusion that the parties were ultimately heard <u>after</u> DNO complained of wrongdoing does not erase the wrongdoing itself in contravention of the Norwegian Procedural Guidelines.
- **Respondent forced to respond prior to Complainant**. The opportunity given to the complainant (Industry Energi) to "game" the system by allowing it to revisit their positions and add new ones after hearing from the respondent (DNO) first is against any (quasi)judicial process to which the NCP may wish to model itself. Simply counting the number of rounds entirely misses the point.
- **Counselling the media to sue DNO**. DNO fails to understand which "statutory duty" requires a convening body who wishes to offer its "good offices" to advise the public to sue <u>any</u> participant in a mediation process -- be they respondent or complainant. To state that no information was shared about the mediation itself is neither a justification nor a retraction of the NCP's own clear guidance to the contrary regarding the press under the Norwegian Procedural Guidelines.

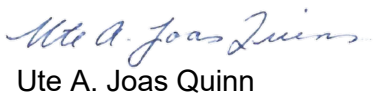
The utter lack of acknowledgement that the NCP has not followed its own guidelines on any point raised by DNO and thus provide some hope that it might seek to improve in the second round makes clear that there is no intention to do so.

Moreover, as DNO has previously stated, DNO Yemen and the Yemeni Union are currently in the midst of settlement negotiations in which DNO Yemen has made a generous offer in full compliance with Yemeni law and which the Yemeni Union is currently considering. A renewed NCP action undermines the parties' legitimate attempts at conciliation and will most certainly greatly prolong a resolution for DNO Yemen's former workers rather than assist it while equally prolonging the economic hardships facing these individuals under current conditions in Yemen.

As such, in the face of a serious lack in NCP procedural attention, a misconstrued recitation of facts in coming to its Initial Assessment, and the ongoing active negotiations between the parties, the NCP should conclude from its Implementation Procedures (p. 83) that "an offer of good offices [**will not**] make a positive contribution to the resolution of the issues raised and [**will**] create serious prejudice for [both] parties."

DNO once again declines to participate in another NCP mediation and reserves all rights to take appropriate action should the NCP remain steadfast in its – perhaps well meant but nonetheless flawed and unacceptable -- insistence to proceed with the Second Complaint to the detriment of positive and constructive interactions already ongoing between the parties.

Sincerely on behalf of DNO ASA,



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