



Oslo 18 June 2025

Final Statement

PAX and others vs. Aker BP ASA and Aker ASA

As stated in the Procedural Guidelines of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, following conclusion of a Specific Instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available. As Specific Instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

This final statement describes the issues raised, the procedures initiated by the NCP to examine the issues and the conclusion of the NCP. It also includes recommendations to the enterprises on the implementation of the Guidelines.

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1. Executive summary

1. On 31 May 2022, the Norwegian NCP received complaints against Aker BP ASA and Aker ASA from the following eight organisations: the Civil Society Coalition on Natural Resources, Global Idé, Liech Victims Voices, Norwegian Church Aid, Norwegian People's Aid, PAX, South Sudan Council of Churches and Swedwatch ('the complainants'). The complainants claimed that Aker BP ASA and Aker ASA have failed to comply with the OECD Guidelines for Multinational Enterprises (the Guidelines) as regards the following matters: 1) inadequate human rights due diligence in connection with the merger between Lundin Energy's Norwegian oil and gas business, 2) failure to meaningfully engage with stakeholders, and 3) facilitation of ongoing (unremediated) adverse impacts.
2. The NCP considered the admissibility criteria for the initial assessment and concluded that parts of the complaints merited further examination. The issues to be considered by the NCP in this Specific Instance were delimited to the companies' human rights due diligence in connection with the merger. The NCP considered that an offer of dialogue between the parties about the questions relating to the companies' due diligence may contribute to the purpose and effectiveness of the Guidelines.
3. The Parties accepted the offer of good offices from the NCP and agreed on a framework for the mediation. The mediation was held on 23 – 25 August 2023 in Oslo and was facilitated by external mediators. The parties did not reach an agreement. The Specific Instance was thus referred to the NCP for further examination, in line with the NCP case-handling procedures.
4. The issue to be assessed by the NCP is whether the human rights due diligence conducted by Aker BP ASA and Aker ASA in connection with the merger between Lundin Energy's Norwegian oil and gas business (i.e. Lundin Energy Norway AS, among other entities) – as the complainants submit – failed to observe the expectations set out in the OECD Guidelines. The companies' conduct must be assessed based on the 2011 version of the Guidelines because the merger process was completed in June 2022, i.e. prior to the 2023 amendments of the Guidelines.¹
5. The NCP has reviewed the submissions from the parties and concludes that Aker BP failed to carry out human rights due diligence in line with the OECD Guidelines in the Specific Instance. While the Aker companies have carried out business-related, financial and legal due diligence in relation to the transaction, and this has also encompassed some aspects of human rights due diligence, the due diligence has not adequately and independently addressed the risks of adverse impacts of the transaction on the victims' right to an effective remedy.
6. Based on the examination of the Specific Instance in relation to the Guidelines, the NCP recommends Aker BP to carry out human rights due diligence related to the transaction in line with the Guidelines, including meaningful stakeholder engagement and assessment of its role in relation to the potential negative impact of the transaction on the victims' right to an effective remedy. Based on this due diligence, Aker BP should, where appropriate, seek to take a role in remediation. The NCP takes note of the fact that the Aker companies have

¹ References to the Guidelines are to the 2011 version unless otherwise specified.

taken positive steps in terms of updating policies with respect to human rights due diligence, also in the context of mergers and acquisitions, and recommends their effective implementation.

2. Background and procedures

2.1. The NCP and its role

7. The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards. The Guidelines are supported by National Contact Points (NCPs), established by adhering governments to promote and implement the Guidelines.
8. According to the Guidelines, the NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in Specific Instances. Where the issues raised merit further examination, the NCP will offer its good offices to help the parties involved to resolve the issues. The Norwegian NCP handles Specific Instances in accordance with the Procedures in the OECD Guidelines and its case-handling procedures.²

2.2. The parties

9. The complainants are three South Sudanese organisations: the Civil Society Coalition on Natural Resources, Liech Victims Voices and the South Sudan Council of Churches, and five European organisations, namely: PAX, Global Idé, Norwegian Church Aid, Norwegian People's Aid, and Swedwatch (the complainants). The complaints were submitted on behalf of an estimated 200,000 South Sudanese people, described as victims of gross and systematic human rights violations.
10. Aker ASA is an industrial investment company with ownership interests in oil and gas, renewable energy and green technology, industrial software, seafood and marine biotechnology. The company is headquartered at Fornebu (outside Oslo, Norway), and is listed on the Oslo Stock Exchange. Aker ASA is one of the principal shareholders of Aker BP ASA (Aker BP), holding its shares through the company Aker Capital AS. Aker BP engages in exploration for and production of oil and gas. The company is headquartered at Fornebu (outside Oslo, Norway) and is listed on the Oslo Stock Exchange.

2.3. Submissions from the parties

11. On 31 May 2022, the Norwegian NCP received two submissions from the complainants accusing Aker BP and Aker ASA of failing to observe the Guidelines in connection with Aker BP's merger with Lundin Energy's Norwegian oil and gas business (Lundin Energy Norway AS).

² [Case-handling procedures](#)

12. In their initial submissions to the NCP, the complainants argued that Aker BP's acquisition of Lundin Energy Norway from Lundin Energy, is directly linked to Lundin Energy's alleged future inability to remediate severe adverse human rights impacts, and that the merger thus had a potential negative impact on the victims' right to an effective remedy. According to the complaint, the agreement between Aker BP and Lundin Energy entails that the latter on one side retains all liabilities and covers all costs relating to the company's activities in Sudan, but on the other side would be left with insufficient means to be able to address the alleged (unremediated) impacts after the merger. They submit that Aker BP and Aker ASA have failed to observe Chapter IV (Human Rights) of the OECD Guidelines based on i) failure to conduct human rights due diligence; ii) failure to meaningfully engage with stakeholders about the merger and iii) facilitation of ongoing (unremediated) impacts.
13. Aker BP and Aker ASA submitted a joint response to the complaints on 24 June 2022. The companies stated several reasons why they are of the view that the complaints are not suited for further consideration as a Specific Instance, summarized as follows. The Aker companies highlight that the complaint concerns the lack of remedy for alleged human rights violations that have long ceased and state that there were no human rights violations linked to any of the companies (Lundin Energy's E&P business) acquired by Aker BP. They state that they carried out human rights due diligence linked to the companies they purchased. The issues linked to Lundin Energy are subject to ongoing criminal proceedings in Sweden. They consider that any examination of the issues covered in the complaints would be problematic without the involvement of Lundin Energy and while the issues are being litigated in a Swedish court. They observed that the complainants had not availed themselves of the possibility of a Specific Instance procedure with the Swedish NCP, where the issues concerning Lundin Energy could have been addressed directly.
14. The companies furthermore state that the transaction did not limit or reduce any potential liability for or responsibilities of Lundin Energy for past activities in Sudan. Finally, the companies highlight that Lundin Energy would retain significant assets after the transaction. Lundin Energy would continue as a listed company in Sweden under its new name, Orrön Energy AB, with plans to develop the renewables business further. Orrön Energy would continue to own and operate a substantial business after the transaction.

2.4. Initial assessment

15. The NCP accepted parts of the complaints for further examination in its Initial Assessment of 27 February 2023 and offered the parties its good offices, stating the following:

"The NCP has considered the above criteria for the initial assessment process and has determined that the issues raised in the complaints relating to the companies' human rights due diligence merit further consideration. The NCP will offer the parties a dialogue on the companies' due diligence in connection with the transaction. Aker BP ASA and Aker ASA have different roles in relation to the transaction as the acquiring company and shareholder company respectively. The main issue in the specific instance is the due diligence expectations with respect to Aker BP ASA. The extent to which Aker ASA is included in the dialogue should be discussed with the parties and determined at the outset of the dialogue. If the dialogue has not succeeded within six months after it commences, the NCP will carry

out a new assessment of whether further dialogue and consideration is still appropriate.”³

2.5. Proceedings following the Initial Assessment

2.5.1 Good offices

16. The principal goal of the Specific Instance procedure is to resolve the issues raised through dialogue and mediation. Both parties accepted the offer of good offices from the NCP. Norwegian Supreme Court Justice Ingvald Falch and the former chair of the Dutch NCP, Dr. Maartje van Putten, were approved by the parties and appointed as mediators by the NCP. The mediation process commenced on 14 June 2023, with separate meetings held in Oslo with each party. This was followed by joint meetings at Soria Moria hotel in Oslo on 23 to 25 August 2023. The parties did not reach an agreement. Following the mediation, the mediators referred the case back to the NCP, stating as follows:

“We hereby inform you that it on the latter of these dates was concluded jointly by the parties and us that the mediation process had to end without any agreement or understanding between the parties.”

2.5.2 Documentation and statements from the parties

17. In the absence of further dialogue and mediation between the parties, the NCP has proceeded to examine the Specific Instance. What ensued included a voluminous exchange of documentation and expert opinions. The submissions have covered various aspects of the Specific Instance and the OECD Guidelines, including: the nature of the expectation that companies carry out due diligence in connection with mergers and acquisitions under the Guidelines; the contents of the right to remedy under international human rights law and how this applies under the Guidelines; and whether any right to remedy, actual or potential, can be said to have been adversely impacted in the Specific Instance.
18. The NCP will – to the extent necessary for the Final Statement – address these issues in its examination of the Specific Instance. The NCP recalls and reiterates that the main question as stated in the Initial Assessment is whether the Aker companies carried out human rights due diligence in line with the Guidelines in connection with the transaction.
19. The examination by the NCP is delimited to an assessment of the Aker companies’ human rights due diligence at the time of the transaction and takes as a premise that the Aker companies did not have any responsibility for the alleged contribution by Lundin Energy to the serious human rights violations in Sudan. Accordingly, this Final Statement addresses specifically Aker BP’s role as a party to the negotiations and agreement with Lundin Energy, which resulted in the merger between Aker BP and Lundin Energy’s Norwegian oil and gas business.
20. The timeline of the submissions and expert opinions submitted by both parties to the NCP are presented in the table below. Most of the documentation concerns Aker BP. Indeed, in its Initial Assessment, the NCP noted that Aker BP and Aker ASA have different roles in

³ The initial assessment is published here: [PAX and others vs. Aker BP ASA and Aker ASA – Ansvarlig Næringsliv](#).

relation to the transaction as the acquiring company and shareholder company respectively. The main issue in the Specific Instance is the due diligence expectations with respect to Aker BP, since this company was the actual party to the transaction, and this is therefore also the focus of the Final Statement.

Submissions from the parties

Date	Party	Submission
31 May 2022	Complainants	Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises (concerning Aker BP)
31 May 2022	Complainants	Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises (concerning Aker ASA)
24 June 2022	Respondents	Response to the NCP on behalf of Aker ASA and Aker BP ASA
15 August 2022	Complainants	Response to the follow-up questions from the Norwegian National Contact Point of 1 August 2022, followed by reflections on the joint response by Aker BP ASA and Aker ASA to the NCP that may be relevant for the initial assessment
1 November 2022	Complainants	NGO Response to NCP
24 November 2023	Complainants	Submission for examination by the Norwegian NCP of alleged non-compliance with the OECD Guidelines by Aker BP ASA and Aker ASA
24 November 2023	Complainants	Expert Opinion on the Impact of Failing to Remediate a Harm by dr Tara van Ho
24 November 2023	Complainants	Expert Opinion on the Issue of Human Rights Due Diligence and Access to Remedy in the Context of Mergers and Acquisitions, Professor Anita Ramasastry
30 November 2022	Respondents	Additional comments to the NCP by Aker BP AS and Aker ASA
22 January 2024	Respondents	Response and submissions of Aker BP ASA and Aker ASA
22 January 2024	Respondents	Attachments to response and submissions of Aker BP ASA and Aker ASA
22 January 2024	Respondents	Expert opinion on the issue of the right to an effective remedy as provided for by international human rights law relating to the present complaint, professor Marius Emberland
22 March 2024	Complainants	In the OECD Complaints against Aker BP ASA and Aker ASA: Notes on final written submissions

22 March 2024	Complainants	Expert response by dr Tara Van Ho
22 March 2024	Complainants	Response to Response and Submissions of Aker BP ASA and Aker ASA on the Issues of Human Rights Due Diligence and Access to Remedy in the Context of Mergers and Acquisition, Professor Anita Ramasastry
8 April 2024	Respondents	Letter from Aker BP ASA and Aker ASA to NCP
9 September 2024	Respondents	Reply from Aker BP ASA and Aker ASA
9 September 2024	Respondents	Pareto Securities: Pure Renewables Growth Play
9 September 2024	Respondents	Reply to dr Tara Van Ho's Expert Response from Marius Emberland
18 November 2024	Complainants	J. Södergren Advokatbyrå AB- Legal Opinion
23 December 2024	Respondents	Note from Aker BP ASA and Aker ASA
23 December 2024	Respondents	Stockholms Tingsrett Beslut under rättegång 24.11.2023
23 December 2024	Respondents	Expert note in response to legal opinion by Mr Jan Södergren dated 18 November 2024

3. Background and context

3.1. Accusations against Lundin Energy of aiding and abetting war crimes and victims' claims for compensation

21. In this Specific Instance, it is not alleged that the Aker companies are responsible for, or linked to, the widespread abuses and harm inflicted on the people of Sudan (today's South Sudan) during Lundin Energy's operations in Block 5A in the period 1997 – 2003. Moreover, it is not for the NCP in this case to make any determinations regarding the responsibility of Lundin Energy or its directors. However, the serious accusations against Lundin Energy and its directors for aiding and abetting war crimes in Sudan are an important part of the factual context within which the conduct of Aker BP and Aker ASA must be assessed. The purpose of this section is not to express any view on the criminal liability of Lundin Energy or any of its representatives, but only to describe the context within which the Aker companies' human rights due diligence had to be undertaken.

22. The allegations of gross human rights abuses against civilians in what is now South Sudan between the late 1990s and 2005 is supported by documentation found in extensive reports by the UN, including UN Special Rapporteurs, human rights NGOs and others.⁴ In the report

⁴ Reference is made to the compilation of documentation found on <https://unpaiddebt.org/>

Unpaid Debt (2010), the European Coalition on Oil in Sudan (ECOS)⁵ provides a broad description of the conflict and its consequences.

23. ECOS estimates the extent of the damages caused by the 1997 – 2003 oil war in Block 5A to amount to 12,000 people killed or deceased from hunger, exhaustion and conflict-related diseases; 160,000 people forcibly displaced, often multiple times; and 20,000 people permanently uprooted. In addition, comes the destruction of huts and livestock shelters, cattle and other livestock lost and looted, the loss of income and incalculable moral damage.
24. ECOS believed that Lundin Oil AB – which in 1997 formed a Consortium with Petronas Carigali Overseas Sdn Bhd (“Petronas”) from Malaysia, OMV (Sudan) Exploration GmbH (“OMV”) from Austria, and the Sudanese state-owned oil company Sudapet Ltd. – could have been complicit in the commission of war crimes and crimes against humanity.⁶
25. In 2010, ECOS called for an investigation of the role of the Consortium and outlined the victims’ case for compensation. ECOS also argued that the home governments of Lundin (Sweden), Petronas (Malaysia) and OMV (Austria) had failed in their international duty-bound obligations to investigate human rights violations and international crimes.
26. Lundin has disputed the information provided in the NGO reports, and particularly the report *Unpaid Debt*,⁷ arguing that there are extensive flaws in the methodology, accuracy, credibility and reliability of these reports.
27. In June 2010, the Swedish Prosecution Authority announced a preliminary investigation into the allegations against Lundin of complicity in crimes under international law during its operations in Sudan.
28. Lundin has consistently denied the accusations stating that no evidence has been provided linking Lundin to the alleged primary crimes and that they operated in line with the laws and policies of Sweden, the EU and the UN. They have pointed out that, at the time of entry, a peace agreement had also been signed in Sudan. Further, throughout Lundin’s time in Sudan, there were no sanctions in place against European companies operating in the country. On the contrary, Sweden, the EU and the UN had policies of constructive engagement with Sudan. Also, in meetings, and through written correspondence, with the Government of Sudan and other parties to the conflict, Lundin raised concerns about alleged assaults on civilians.⁸
29. After a lengthy preliminary investigation, the Swedish prosecutor brought criminal charges on 11 November 2021 against former chairman of Lundin Energy AB, Ian Lundin, and former CEO of the Company, Alex Schneider, as representatives of Lundin Energy, of complicity in war crimes that were allegedly committed in Sudan between 1999 and 2003.
30. The Prosecuting Authority held that the crime was grave “in part because it was committed through a large number of separate acts, in part because many people were killed and

⁵ <https://paxforpeace.nl/wp-content/uploads/sites/2/import/import/unpaid-debt.pdf>

⁶ Ibid, page 7.

⁷ <https://www.lundinsudanlegalcase.com/ngo-reports/>

⁸ <https://www.lundinsudanlegalcase.com/> and <https://www.reportlundinsudan.com/>

injured, in part because it caused extensive loss of property and in part because the crime was aimed at civilians who were particularly vulnerable since health organisations only had limited access to the area in which the serious violations occurred.” As regards aiding and abetting, the Prosecution Authority held that the two representatives of Lundin:

“[...] supported, either separately or together and in agreement within the framework of their respective roles within the Lundin companies [...], the Sudanese government in creating the necessary conditions for Sudan Ltd’s operations by using a warfare that entailed the Sudanese military and regime allied militia systematically attacking civilians or at least carrying out systematic attacks that violated the principle of distinction and proportion [...]”⁹

31. The charges included claims against Lundin Energy/Orrön Energy for a corporate fine (“Företagsbot”) of SEK 3 000 000 and forfeiture of economic benefits (“Förverkande av ekonomiska fördelar”) of SEK 1 391 791 000, which according to the Swedish Prosecution Authority represented the value of the gain of SEK 720 098 000 that Lundin Energy made on the sale of the business in 2003.
32. Lundin Energy refuted that there were any grounds for allegations of wrongdoing by any of its representatives and it did not foresee any impact on the operational and financial guidance that the Company has set out previously.
33. The Prosecutor’s forfeiture claim was increased on 29 August 2023 and now amounts to SEK 2,381,300,000. Lundin Energy, which disputes both the methodology used by the Prosecutor and the amount of the claimed forfeiture, does not see any circumstances in which the claim for forfeiture could become payable, as, according to Lundin Energy, there is no legal basis for this claim and no grounds for allegations of wrongdoing by any former Lundin Energy representative.
34. The trial commenced on 5 September 2023 in Stockholms tingsrätt, and it is scheduled to last until February 2026.¹⁰ At the outset, civil claims for damages from a limited number of South Sudanese plaintiffs were included in the case. However, the Court decided on 22 November 2023 that it would not consider these claims in the trial, and that these claims must be dealt with in separate proceedings.

4. Examination by the NCP

4.1. Expectations in the OECD Guidelines regarding human rights due diligence

35. Chapter II of the OECD Guidelines sets forth the expectation that enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. Enterprises should seek to prevent or mitigate adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a

⁹ Ibid.

¹⁰ <https://www.domstol.se/nyheter/2023/08/huvudforhandling-i-mal-om-medhjalp-till-grovt-folkkrattsbrott-i-sudan-inleds/>

business relationship. This is not intended to shift responsibility from the entity causing the adverse impact to the enterprise with which it has a business relationship.¹¹

36. Chapter II also expresses the general expectation in the Guidelines that enterprises carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

37. The OECD Due Diligence Guidance for Responsible Business Conduct (2018) elaborates on the due diligence framework in the Guidelines and entails the following steps: 1) Embed responsible business conduct into policies and management systems; 2) Identify and assess adverse impacts in operations, supply chains and business relationships; 3) Cease, prevent or mitigate adverse impacts; 4) Track implementation and results; 5) Communicate how impacts are addressed and 6) Provide for or cooperate in remediation, when appropriate.

38. In Chapter IV, the Guidelines – following up the general expectations above – sets forth the expectation that enterprises respect *human rights*. Enterprises have a duty to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved.¹² In order to fulfil its duties, enterprises should:

“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”¹³

39. According to the Guidelines, this process entails assessing actual and potential human rights impacts, integrating, and acting upon the findings, tracking responses as well as communicating how impacts are addressed. The process goes beyond identifying and managing material risks to the enterprise itself and must include the risks to rightsholders.

40. The expectations on human rights in the Guidelines are in line with the UN Guiding Principles for Business and Human Rights (UNGPs). The UNGPs clarify what may be expected of companies also in the context of mergers and acquisitions:

“Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.”¹⁴

41. The Guidelines call on enterprises to respect human rights. In all cases, and as a minimum, reference should be made to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural

¹¹ OECD Guidelines (2011), Chapter II, General Policies, para. 10 to 12.

¹² OECD Guidelines (2011), Chapter IV. Human Rights, para. 1.

¹³ OECD Guidelines (2011), Chapter IV. Human Rights, para 5.

¹⁴ UNGP Principle 17, Commentary.

Rights, and to the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.

42. The right to an effective remedy is a human right in itself and it is protected by, among other treaties and conventions, the Universal Declaration on Human Rights (Article 8), the UN Convention on Political and Civil Rights (Article 2, third paragraph) and the European Convention on Human Rights (Article 13). The right to an effective remedy has both procedural and substantive aspects. "Access to remedy" refers both to victims' ability to access the procedures through which a remedy may be delivered and to the victims' ability to obtain an effective remedy through those procedures.
43. Further, according to international human rights law, remedy may include a broad range of actions by the responsible State, including apologies, financial or non-financial compensation and reparation, or guarantees of non-repetition. Depending on the context and type of harm, a substantive remedy that meets international standards may require a mix of approaches. The appropriate path to remedy will depend on the circumstances. In the case of a breach of the right to life and the prohibition of torture, which are at issue in the Lundin case, the right to an effective remedy would require an award of compensation where appropriate. Compensation for non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress.
44. The responsibility of an enterprise under the Guidelines is to respect the right to an effective remedy for victims of human rights abuse by a company. The parties to this Specific Instance have diverging views on what the right to an effective remedy entails according to international standards. And, more importantly, they disagree on how the right to an effective remedy, as protected by international human rights treaties, translates into the Guidelines' expectation that enterprises shall respect this human right.¹⁵ Clearly, the obligations to provide remedy for human rights violations under international human rights law, lies with States and not private parties or enterprises. As with other human rights, functional adjustments may be necessary to address the differences between States' violations of human rights and enterprises' adverse impacts on the same human rights.
45. The UN Working Group on Business and Human Rights' report to the General Assembly dated 18 July 2017 unpacks the concept of access to effective remedies under the UNGPs:

"Business enterprises have an independent but complementary role to play in realizing effective remedies. They have four remedy-related responsibilities flowing from pillars II and III of the Guiding Principles. First, a combined reading of Guiding Principles 11 and 12 makes it clear that all business enterprises have a responsibility to respect all "internationally recognized human rights". This includes the right to an effective remedy recognized in the Universal Declaration of Human Rights (art. 8) and the International Covenant on Civil and Political Rights (art. 2 (3)). In other words, businesses should not cause, contribute to or be directly linked to an adverse impact on the right to an effective remedy, that is, taking any action that "removes or reduces the ability of an individual to enjoy" this right." (emphasis added)

¹⁵ Reference is made to the expert opinions of Professor Marius Emberland, Professor Tara van Ho and Professor Anita Ramasastry, published on the NCP website, www.responsiblebusiness.no.

46. The means available for States and enterprises to reduce the ability for victims to enjoy the right to an effective remedy may differ. When a company has caused or contributed to adverse human rights impacts, including war crimes, the right to life and the prohibition of torture and inhuman treatment, the victims' enjoyment of an effective remedy may – contrary to the situation for States – depend on the company's financial ability to offer compensation or other forms of remediation that require such resources. Thus, if the company's assets and value are reduced after the events causing the negative impacts, this may also reduce the ability of victims to obtain an adequate remedy. In such cases, a significant reduction of the assets of the company that has caused or contributed to adverse impacts on human rights may, depending on the circumstances, amount to an adverse impact on the victims' right to an effective remedy.

47. In the further analysis of a claim under the Guidelines that victims' right to an effective remedy has been negatively impacted, it must be appreciated that States are not the only potential source of effective remedies for business-related harms and that court proceedings are not the only avenue for victims to obtain remedy. The essence of the right to an effective remedy is nevertheless the same. The UNGPs recognize the important complementary role that non-State-based grievance mechanisms can play, in part because they might provide a potential additional avenue for victims to pursue a remedy that can best meet their needs.¹⁶ The interpretive guide *Access to Remedy in Cases of Business-related Human Rights Abuse* explains this further:

“As recognized in the Guiding Principles and elsewhere, business enterprises have a responsibility to respect human rights, which exists independently of States' abilities or willingness to fulfil their own human rights obligations. As part of this responsibility, business enterprises are expected to provide for or cooperate in the provision of remedy when they identify that they have caused or contributed to an adverse human rights impact. Further, business enterprises are expected to establish or participate in effective operational-level grievance mechanisms to enable remedies to be provided quickly and directly to affected stakeholders (see questions 42 and 57–69).”¹⁷

48. The interpretive guide describes a “remedy ecosystem approach”, where different mechanisms come into play to enable access to remedy. Under a remedy ecosystem approach, the focus is not on what individual remediation mechanisms can or cannot do in terms of remedy, but on what their contribution can be to broader remedial efforts. This includes State-based and non-State-based mechanisms as well as laws, policies, regulatory systems and structures that enable them to exist and operate in a way that is mutually reinforcing and enables access to effective remedy for human rights harms.¹⁸

49. In some situations, which are of relevance to this Specific Instance, deference to court processes is nevertheless appropriate:

¹⁶ Op. cit at page 61.

¹⁷ <https://www.ohchr.org/sites/default/files/2024-11/access-to-remedy-bhr-interpretive-guide-en.pdf> - page 74.

¹⁸ Op. cit. at page 65.

“In some circumstances, it may be most appropriate for remediation to be provided by an entity other than the enterprise. For instance, if a court process or some other State-based proceeding is under way, it may be necessary or appropriate for the enterprise to defer to that process rather than pursuing direct remediation. As the commentary to Guiding Principle 22 makes clear, such deferral is likely to be necessary if crimes are alleged. Wherever possible, those affected should have the opportunity to make an informed decision about how they wish to proceed, based on an understanding of the alternatives.

If the enterprise has contributed to the impact but another entity (for instance, a contractor, supplier or the armed forces) is the primary cause and is either providing remediation or being held to account through a legitimate State-based mechanism, it will typically be appropriate to defer to that process whenever a parallel remediation process would undermine it.”¹⁹

50. In the following sections, the NCP assesses the due diligence of the Aker companies in relation to the Guidelines and related questions regarding the right to an effective remedy for adverse human rights impacts.

4.2. Assessment of the due diligence undertaken by Aker BP

4.2.1 Introduction

51. The NCP will first assess the conduct of Aker BP in relation to the human rights due diligence expectations in the Guidelines. As stated above, this is the focus of the examination of the Specific Instance.
52. The expectation in the Guidelines of carrying out due diligence in connection with an acquisition that maybe linked to potential adverse impacts on the right to remedy for victims of alleged widespread human rights violations, has not been clarified to any great extent by the OECD, through NCP practices nor other authoritative sources. The assessment of the Aker companies’ due diligence is done with this in mind.
53. The complainants are of the view that no specific human rights due diligence was conducted in connection with the merger. They state that the Aker companies materially bypassed red flags in their due diligence. They find that Aker gave weight to Lundin’s defense, but failed to properly assess the full circumstances, which included that the criminal indictment was filed after a long investigation, suggesting a high risk that Lundin had indeed contributed to adverse impacts. They claim that Aker BP did not properly assess the financial capacity of Orrön, did not properly assess the costs of remediation and did not conduct stakeholder engagement that may have corrected these flaws. They are of the view that Aker BP failed to carry out human rights due diligence in line with the Guidelines.²⁰

¹⁹ OHCHR, “The corporate responsibility to respect human rights: an interpretive guide” (New York and Geneva, 2012), page 69 (Q 64. When should an enterprise provide directly for remediation?), referenced also in the expert opinion from Anita Ramasastry.

²⁰ Submission from complainants 22 March 2024. In the OECD Complaints against Aker BP ASA and Aker ASA: Notes on final written submissions, para 31.

54. Aker BP states that the company adheres to the Guidelines and the UNGPs. Aker BP's commitment to respect human rights is set out in their human rights policy, which incorporates human rights due diligence.²¹ It states that:

- We will continuously assess human rights impacts from our operations by performing human rights due diligence and propose necessary preventive risk mitigating actions if needed.
- We offer a system for raising concerns in situations when our operations have or can potentially affect human rights of individuals, workers and local communities
- We will provide or cooperate in providing appropriate remediation to individuals, workers and local communities, where we have caused or contributed to adverse human rights. To such effect, we will also, where relevant, provide or cooperate in effective grievance mechanisms.
- We will conduct risk assessment and audits of our suppliers and business partners to assess where the risk of human rights infringements is highest in order to continuously improve our efforts to mitigate human rights violations.

55. Aker BP explains that human rights due diligence in this case was an integrated part of the company's overall due diligence in connection with the transaction. This is reasonable, provided it goes beyond simply identifying and managing material risks to the enterprise itself and includes the risks of adverse impacts related to matters covered by the Guidelines.

56. In the submissions to the NCP after the Initial Assessment, Aker BP has provided the NCP with an account of the human rights due diligence carried out and the company's findings on relevant issues. The NCP bases its assessment on the information given in the company's submissions during the NCP process.

57. The NCP considers that the two main issues that had to be assessed in the human rights due diligence related to the transaction were (1) the plausibility of Lundin Energy's (now Orrön Energy's) alleged responsibility for grave human rights abuses during its operations in Sudan, and (2) Lundin Energy's (now Orrön Energy's) financial ability – after the transaction had been completed – to provide for or cooperate in the remediation of any adverse human rights impacts caused by them.

58. Before assessing these questions in the context of the due diligence of Aker BP, an overview of the transaction in question is due.

4.2.2 The transaction between Aker BP and Lundin Energy

59. In submissions to the NCP, Aker BP and Aker ASA address the nature of the transaction between Aker BP and Lundin Energy. They underscore that the primary target of the transaction was Lundin Energy Norway AS. The acquisition also included certain holding companies and services companies related to Lundin Energy Norway AS' operations that provided management functions, oil trading services and financing functions. Attachment 1 to this Final Statement shows the legal entities transferred to Aker BP indicated in blue and the ones retained by Lundin Energy (Orrön Energy) marked in beige.

²¹ <https://akerbp.com/wp-content/uploads/2022/04/human-rights-policy-principles.pdf>, para 65.

60. The Aker companies state that for practical purposes, the companies that were the target of the transaction were transferred to a new holding company prior to completion of the transaction. The Aker companies explain that the transaction was implemented through the following steps:
- First, Lundin incorporated a new subsidiary called Lundin Energy MergerCo, and the “blue” companies (see attachment 1) were transferred to this new legal entity.
 - Second, the shares in Lundin Energy MergerCo were distributed to the shareholders in Lundin as a distribution in kind.
 - Third, Lundin Energy MergerCo completed the merger with Aker BP with Aker BP as the surviving entity, resulting in Lundin Energy MergerCo being liquidated and Aker BP becoming the owner of the “blue” companies.
61. The acquired entities include Lundin Energy Norway AS, which owns and operates the Norwegian E&P (Exploration and Production) business, and the holding company Lundin Energy Holding BV (which was an internal holding company in the Lundin group). The other entities are service companies providing management functions, oil trading services and financing functions.
62. Lundin’s resolution to distribute the merger consideration as dividend significantly reduced the value of Lundin Energy/Orrön after the transaction. Aker BP explains this to the NCP as follows: Since Lundin Energy’s plan was to sell the E&P business and create a pure-play renewables business, it was a premise for the structured sales process that Lundin Energy would not continue as a shareholder in the combined company (Aker BP) and that the Aker BP shares would therefore be distributed as dividend prior to completing the merger.
63. Following the divestment of the E&P business, Orrön Energy transformed into a “pure play renewables company” and remained listed on Nasdaq Stockholm.
64. The Transaction Agreement between Lundin Energy and Aker BP formalized the acquisition. Aker BP would receive Lundin Energy’s oil and gas assets, and that Lundin Energy would, as part of the agreement between the parties:
- “indemnify [Aker BP] against losses, liabilities, costs or expenses, arising or incurred as a result of the underlying facts and circumstances relating to the [Swedish prosecutor’s] Indictment, including both criminal claims and civil claims, and including the costs of handling such claims, incurred by or being made against any member of the Target group [Lundin Energy] (including any successor entity) prior to or after the completion of the Merger.”²²
65. The Aker companies furthermore note in their submission to the NCP of 22 January 2024 that Aker BP had monitored Lundin Energy’s E&P assets since 2014 to consider a possible business combination and had also followed the Sudan case from public sources.

²² Aker, ‘Aker ASA and Lundin Energy combine their oil and gas businesses’, press release, 21 December 2021.

4.2.3 Aker BP's assessment of the plausibility of Lundin Energy being liable for gross human rights abuses

66. According to the OECDs general due diligence guidance, a business should – when significant risks are identified – carry out iterative and increasingly in-depth assessments of prioritised operations, suppliers and other business relationships in order to identify and assess specific and potential adverse responsible business conduct (RBC) impacts. The RBC *risks* should be considered prior to a proposed business activity (e.g. an acquisition) projecting how the proposed activity and associated business relationships could have adverse impacts on specific RBC issues. The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved, and the purpose is to understand the specific impacts on specific people, given a specific context of operations. In this process of gauging human rights risks, the company should draw on internal and/or independent external human rights expertise and stakeholder dialogue, where possible.²³
67. As regards the process of identifying and assessing actual and potential adverse impacts associated with the transaction, Aker BP has explained that the focus of the company's human rights due diligence was on the target of the transaction, i.e. primarily Lundin Energy Norway AS. This is a natural starting point for human rights due diligence of the transaction. Aker BP noted that this company was incorporated after Lundin's operations in Sudan and was also acquired by Lundin from DNO after the operations in Sudan had ended. No connection between the alleged adverse human rights impacts and the incorporation, acquisition or operations of Lundin Energy Norway AS, or any other of the target companies, were found during the due diligence process. The NCP has no basis for questioning this finding.
68. Aker has in its submissions to the NCP explained that the allegations against Lundin Energy and the indictment were well known and indeed a "red flag". In its last submission to the NCP,²⁴ Aker refers to its earlier submissions and explains that "Aker BP's account confirmed not only had the criminal charges informed the analysis but that the indictment in and of itself formed the point of departure for the risk assessment regarding Lundin Energy's responsibility". Aker further explains that "[t]he fact that the Prosecution Authority had brought these charges after a lengthy period of investigation was taken as the point of departure, hence the indictment did not trigger a need for a deeper analysis into Lundin Energy's alleged contribution to adverse human rights impacts".²⁵
69. Aker BP has explained to the NCP that relevant documents and several key persons were interviewed as part of their due diligence:

"We gathered information from persons with detailed knowledge of the allegations made against Lundin Energy regarding human rights impact of its operations in Sudan. The issues that were examined as well as our findings and conclusions were set out in internal memos, that formed part of our internal due diligence documentation. Due to our ongoing confidentiality obligations, we are not able to share the content of the

²³ OECD Due Diligence Guidance for Responsible Business Conduct (2018), see especially pages 25 to 28.

²⁴ The Aker companies' comments to the draft Final Statement, 29 May 2025,

²⁵ Ibid.

documents reviewed, information gathered from the interviews, or our own reports on the human rights due diligence.”²⁶

70. Based on these explanations, the NCP must build on the fact that Aker BP’s premise for the human rights due diligence – at the time of the transaction – was that there was a risk that Lundin Energy had contributed to adverse human rights impacts as described in the indictment by the Swedish Prosecuting Authority.
71. Based on Aker BP’s starting point, as explained above, an iterative assessment should – especially in the light of the indictment and the very serious nature of the allegations – have triggered a deeper analysis of the risk of Lundin Energy (now Orrön Energy) being held responsible to remediate harms caused by the alleged complicity in war crimes, and the consequences thereof. Moreover, such an analysis should have been informed by external independent resources and/or expertise. This deeper analysis of the risks related to Lundin’s capacity to provide effective remedy is not documented nor explained in any detail by Aker BP, and the NCP thus concludes that this was not included in Aker BP’s due diligence.
72. In addition to this, human rights due diligence calls for engagement with rightsholders and other stakeholders. Such engagement and communication with stakeholders must be carried out with due regard to commercial confidentiality and legal restrictions applicable to e.g. a transaction process. The NCP accepts that there were limited possibilities to have a stakeholder dialogue during the process leading to the transaction, since there were legal obstacles and confidential requirements that had to be observed. On the other hand, it is well documented that Lundin Energy’s own engagement with stakeholders regarding the claims for remedy, historically had been limited. This fact should itself have been a “red flag” in the due diligence carried out by Aker BP, especially since – as discussed above – the company largely relied on the assessments conducted by Lundin Energy, e.g. regarding the question whether there was a risk that Lundin Energy had caused any adverse impacts during its operations in today’s South Sudan. The limited possibilities to gather information from stakeholders must be compensated when carrying out human rights due diligence, e.g. by drawing on internal or external experts and/or reports. Further, prioritizing stakeholder dialogue as soon as possible, is key. The NCP has not been presented with any documentation that indicates that Aker BP did or considered doing any of this, although such information was readily available in public sources.
73. As regards stakeholder engagement after the announcement of the transaction, both parties refer to meetings with the Aker companies initiated by the complainants. A first meeting between Aker BP, NPA and PAX was held on 27 January 2022. NPA and PAX shared the concern that the merger was in breach of the Guidelines because they believed no human rights due diligence had been carried out and external stakeholders had not been consulted. They argued that the merger would deny South Sudanese victims of human rights violations access to remedy and reparation, perpetuating ongoing (unremediated) impacts.
74. A second discussion was held on 22 March 2022 between NPA and representatives of both Aker BP and Aker ASA. According to the complainants, the Aker companies claimed in the meeting that their due diligence responsibilities had been fulfilled by Aker BP’s

²⁶ Response and submissions of Aker BP ASA and Aker ASA, 22 January 2024, page 36.

commissioning of a Swedish law firm to carry out due diligence on the merger.²⁷ According to the complainants, the Aker companies acknowledged that no specific human rights due diligence had been carried out on the merger and that Lundin Energy's human rights legacy had not been examined. Nevertheless, they asserted that the merger would have no adverse human rights consequences because Lundin Energy would continue to carry all liabilities and costs related to its Sudanese legacy. According to the complainants, Aker BP did not seek to engage further with the complainants on this issue. The NCP notes that Aker BP denies that such statements were made,²⁸ and the NCP is not in a position to resolve this dispute over the facts at this point.

75. Following the latter meeting, senior executives in Aker BP and Aker ASA received a letter from a broad coalition of NGOs on 24 March 2022. Here, the NGOs raised concerns about potential liabilities arising from the announced merger between Aker BP and Lundin Energy. They state that the terms of the acquisition do not comply with the Guidelines and other standards for failure to conduct adequate human rights due diligence, failure to meaningfully engage with stakeholders, failure to disclose information and for facilitating ongoing unremediated impacts.

76. It does not appear that the dialogue with stakeholders led to any further actions by Aker BP.

4.2.4 Aker BP's assessment re. Lundin Energy's/Orrön Energy's financial capacity after the transaction

77. In its submissions to the NCP after the Initial Assessment and mediation, Aker BP explained that their due diligence also addressed the financial solidity of Lundin Energy (now Orrön Energy), and that relevant issues overlapped with the risk assessment otherwise addressed in the due diligence process. Aker BP states that, for several reasons, they sought to identify and address any potential obstacles for the completion of the transaction. An element of this was that Orrön Energy should have a solid basis to meet its future financial obligations, based on the estimates of Lundin Energy.²⁹

78. Aker BP also explained that – as a part of the assessment of the risk of the transaction having negative impact on the financial ability of Lundin Energy (Orrön Energy) to meet its financial liabilities – they also relied on the assumption that the corporate bodies of Lundin Energy had not acted negligently in relation to Swedish law when deciding on the distribution of the consideration from the transaction as dividend to shareholders. As regards the latter point, the NCP underscores that there is no need to challenge the legality of decision made by corporate bodies of Lundin Energy. However, the expectations of the Guidelines often go further than – and supplement – strict legal requirements.

79. According to Aker BP's submissions, the main uncertainty in the due diligence process concerned Orrön Energy's potential future obligations stemming from its operations in Sudan. The NCP agrees that this is a central issue. Here, it must be recalled that Lundin

²⁷ Complaint to the Norwegian National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises, page 12. Available [here](#).

²⁸ Response and submissions of Aker BP and Aker ASA of 22 January 2024, page 25.

²⁹ See Pareto Securities, Pareto Securities AB Equity Research, Pure Renewables Growth Play. Attachment 1: Orrön Energy, Initiating Coverage 18 July 2022.

Energy decided that the merger consideration should be distributed as dividend to shareholders, and thus that the transaction would significantly reduce the value of Lundin Energy. The complainants state that the transaction removed 98 percent of the company's assets. This is not disputed by the Aker companies. They highlight, however, that what is material is not the target company's value at the time of the merger, but rather the remaining assets and continuing business.³⁰

80. According to the companies' submissions to the NCP, Aker BP's assessment was based on the premise that any obligation to compensate victims of the Sudan operations would likely not arise for at least 7-8 years, and only once the expected litigation had been through all court instances. Aker BP explains in a submission to the NCP that:

"Lundin's position is that they have not contributed to human rights violations in Sudan. It was clear to us that Lundin Energy would await a clarification of their potential liability and economic obligations through the criminal proceedings before considering addressing claims for compensation in any form."³¹

81. Aker BP explains that the focus of their assessment was that Orrön would remain a robust company in the years to come, and it was, and still is, Aker BP's view that Orrön Energy is likely to have the means necessary to provide a "remedy at a cost that would realistically be required if the company at a future point in time should be compelled to provide remedy in line with the expectations in the Guidelines".³²

82. In its assessment of when Orrön Energy should be capable of providing remedy to the victims, it cannot be unreasonable for Aker BP to expect that Orrön Energy would await the outcome of the criminal proceedings. It would not, however, be appropriate – provided that criminal responsibility was established – to build on a scenario where the victims should necessarily be required to establish their civil claims through fresh court proceedings. Thus, due diligence in connection with the merger should, with respect to human rights specifically, have been based on the risk that criminal liability could be established, and, if so, that Orrön Energy would thereafter face substantial claims for remediation from victims.

83. In this regard, the NCP is of the opinion that, in the case of the estimated 160 000 potential South Sudanese victims it would be an unsurmountable task – economically and practically – for them to successfully pursue their individual compensation claims in Swedish courts. For all practical purposes, adequate and full remedy must be obtained through other mechanisms, including negotiations and agreements with those who are responsible.³³ This may be done within the context of a remedy ecosystem approach, described above.

84. As regards the issue of the financial capacity of Lundin Energy (now Orrön Energy) to provide remedy to the victims of the alleged and grave human rights impacts, Aker BP takes issue with the complainants' calculations. Further, Aker BP explains that it assessed Lundin

³⁰ Response and submissions of Aker BP and Aker ASA of 22 January 2024, page 22.

³¹ Response and submissions of Aker BP ASA and Aker ASA of 22 January 2024, page 29.

³² Response and submissions of Aker BP and Aker ASA of 22 January 2024, page 30.

³³ For an example of remedy provided following mediation and agreement in an NCP Specific Instance, see Final Statement of the Dutch NCP of 18 August 2017: [Former employees of Bralima vs. Bralima and Heineken](#).

Energy's/Orrön Energy's financial solidity and that they were confident that it would be able to meet any future liabilities and obligations.³⁴

85. The NCP acknowledges that the calculation of financial loss for approximately 160 000 victims of war crimes over a period of several years is extremely complicated. The NCP also agrees that remedy for this diverse group of people, and for different losses and forms of impacts, may not be limited to an economic compensation meted out to each individual claimant. Other forms of remedy – from apologies to supporting the rebuilding of society – may be relevant. The initial estimation presented by the complainants – USD 1 787 million – must thus be regarded as uncertain, but it nevertheless provides an indication of the victims' view of what a realistic claim could look like. The number and the calculation that it is based on, is found on the website unpaiddebt.org.³⁵ In this document, the estimated value of Lundin Energy's share of the consortium's responsibility, USD 714 million, is also found, equivalent to the number that was presented to Lundin Energy and Aker BP prior to the filing of the complaint to the NCP. Legally speaking from a Scandinavian point of view, all participants in the consortium could, under certain conditions, be held responsible *in solidum*, i.e. the whole loss could be claimed from any and each of the companies.
86. In any event, the NCP is not in a position to assess the reliability of either the complainants' calculations of Aker BP's views on the costs involved in remediating the loss suffered by victims of the alleged war crimes in Sudan. Aker BP has submitted that they do not see a tort-based claim for collective damages caused by the war in 1999 – 2003 as the relevant vantage point for assessing the financial commitment that would be required for Orrön Energy to meet the Guidelines' expectation regarding remediation.³⁶ In the present case, however, there is no reason to doubt that adequate and full remedy for the alleged victims – provided responsibility for human rights abuse is established – will have to comprise a substantial financial element. Any assessment of possible remediation must appreciate that significant economic resources are needed, in addition to the possible penalties and forfeiture claims that the company may be ordered to pay. Again, Aker BP's assessment does not go further than making a broad claim that the estimates are unsubstantiated and highly inflated. A sufficiently in-depth analysis should, however, have taken the damage and losses described in the report *Unpaid debt* more seriously. Due to the uncertainty, the assessment should, according to the Guidelines, have drawn on external, independent resources and/ or expertise. Such a deeper analysis of the risk is absent from Aker BP's due diligence.
87. There was information suggesting that it could be uncertain whether Lundin Energy (now Orrön Energy) would have the financial ability – after the transaction had been completed – to remediate the substantial adverse impacts suffered by the victims. After the transaction, Lundin Energy's portfolio of onshore renewable assets in the Nordics was left behind in the company, debt free, with a cash balance of USD 130 000 000³⁷ – approximately corresponding to the forfeiture claim at the time. According to Lundin Energy at the time of the announcement of the transaction, the cash should cover all capital expenditures and other working capital requirements until late 2023. The expectation was that "after the completion of all currently planned projects, this business is expected to be free cash flow

³⁴ Response and submissions of Aker BP ASA and Aker ASA of 22 January 2024, page 27.

³⁵ <https://unpaiddebt.org/calculating-the-debt/>

³⁶ Reply from Aker BP ASA and Aker ASA of 9 September 2024, page 16.

³⁷ Lundin Energy Press release 21 December 2021.

positive and will form the basis of a viable, independent renewables company".³⁸ The NCP has not been presented with any information that can confirm that providing remedy for the victims of alleged war crimes in today's South Sudan was part of this plan for the company.

88. Accordingly, a more thorough-going assessment of the risk as to whether Lundin Energy (now Orrön Energy) would be able to carry the financial capacity to offer potential victims an effective remedy in a not-too-distant future, was called for. The due diligence carried out by Aker BP was too narrowly focused on compelling the victims to seek compensation through lengthy court proceedings, and, furthermore, did not take the estimated total size of a claim from the victims seriously. In any event, the human rights due diligence described by Aker BP in its submissions to the NCP, leaves too many questions and risks unanswered. The human rights due diligence should have included a more in-depth assessment of the potential negative impacts on the victims right to an effective remedy. Based on the information provided, it is the NCP's view that Aker BP's human rights due diligence in connection with the transaction did not meet this expectation.

4.2.5 Aker BP's involvement with the potential adverse impact on the victims' right to an effective remedy

89. A central part of a company's human rights due diligence is to assess its involvement with the actual or potential adverse impacts identified in order to determine the appropriate response.³⁹ According to the information available to the NCP, however, Aker BP did not undertake any assessment with regards to its involvement in the potential adverse impact on the victims' rights to effective remedy.
90. The NCP reiterates that the assessment of the company's involvement with a potential or actual negative impact must be done based on the facts of each case. In this case, the complainants argue that Aker BP contributed to the negative impacts on the victims' right to an effective remedy by being a party to the transaction. According to the Guidelines, a company's contribution must be substantial, meaning that it does not include minor or trivial contributions.⁴⁰
91. As the case now stands, the NCP does not have a sufficient basis to determine whether Aker BP should have concluded that it contributed to the risk of adverse impacts on the victims' right to an effective remedy. This requires deeper insight into the transaction and the parties' interests in the different elements of it, as well as the deliberations leading up to the agreement on how it should be structured. Thus, the NCP cannot make a determination regarding this issue in the present Final Statement.
92. The NCP's recommendation is that Aker BP's forthcoming human rights due diligence undertakes a thoroughgoing assessment of whether it contributed to the actual or potential negative impact.
93. For the purposes of assessing Aker BP's involvement in the potential adverse impact on the victims' right to an effective remedy, based on the information available, the NCP concludes that the company, in any event, was directly linked to the potential adverse impact. Thus, the

³⁸ Lundin Energy Press release 21 December 2021.

³⁹ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, item 2.3.

⁴⁰ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Annex, Q29.

company's obligation under the Guidelines was, as a minimum, to seek to prevent or mitigate adverse impacts.⁴¹

94. Aker BP focused on the need of Lundin Energy to indemnify the "Target" (i.e. Aker BP) through the indemnity clause against losses, liabilities, costs, or expenses, arising or incurred as a result of the underlying facts and circumstances relating to the indictment, including both criminal claims and civil claims. Accordingly, Aker BP was aware of the risk of liabilities stemming from potential civil claims, while at the same time participating in a transaction that would reduce Lundin Energy of 98 percent of its value. Through the indemnity clause, Aker BP secured that all liability remained in Lundin Energy (now Orrön Energy) but did nothing to ensure that this company was financially capable of offering adequate remedy to the victims of the alleged human rights abuses.
95. Considering the risk that Lundin Energy (Orrön Energy) would be held liable for contributing to the severe human rights violations in Sudan, Aker BP should have used its leverage during the negotiations to seek assurances from Lundin Energy and its shareholders that the right to remedy would be respected. Aker BP should have sought, to the extent possible, guarantees that adequate financial resources would be available for the purpose of providing remedy to victims of war crimes during Lund Energy's operations in Sudan. Based on the information the NCP has received and reviewed through this process, it does not appear any such actions were taken.
96. In light of this, Aker BP's human rights due diligence failed to seek to prevent and/or mitigate the potential adverse impacts on the victims' right to an effective remedy. In the view of the NCP, Aker BP did not meet the expectations in the Guidelines in this regard.

4.2.6 Aker ASAs due diligence

97. The NCP has not found reason to carry out any standalone, in-depth examination of the due diligence of Aker ASA.
98. The complainants are of the view that Aker ASA failed to carry out human rights' due diligence in connection with the transaction. They state that Aker ASA holds significant and decisive managerial control over Aker BP and was a key driver of and played a determining role in the conclusion of the merger. They state that there is no trace in the public domain of human rights due diligence conducted by Aker ASA. The complainants are of the view that Aker ASA should have exercised its leverage over Aker BP to influence the company to prevent or mitigate adverse impacts by taking action.
99. The Aker companies state that Aker ASA has a business relationship with Aker BP, but that the transaction did not create a business relationship between Aker ASA and Lundin Energy. According to the companies, the relevant focus for Aker ASA's human rights due diligence concerns its portfolio company Aker BP. In their submission to the NCP of 9 September 2024, the Aker companies note that in major transactions involving portfolio companies, Aker ASA works alongside and supports the companies' transaction teams. With respect to the acquisition of Lundin's oil and gas business, the companies state that Aker ASA assisted

⁴¹ OECD Guidelines (2023) Chapter II. General Policies, item 13. (Item 12 in the 2011 version of the Guidelines)

Aker BP in the transaction work, including the due diligence and that Aker ASA ensured that Aker BP carried out a due diligence on human right aspects of the transaction.

100. On this basis, Aker ASA's due diligence as an owner and investor, to a large degree must have suffered from the same failures as those found in Aker BP's due diligence. However, Aker ASA's first tier business relationship was with Aker BP and not Lundin Energy. Thus, it was first and foremost expected under the Guidelines that Aker ASA should have used its leverage over Aker BP to engage with that company to seek to prevent and mitigate the risk of negative impact on the victims' right to remedy. This was not done.

101. The NCP has not requested, nor have the companies provided further information about any human rights due diligence undertaken by Aker ASA. The NCP takes note of the fact that Aker BP, and Aker ASA, now have implemented a new integrity procedure for M&A transactions focusing on RBC issues, including human rights due diligence. The Aker companies state that this procedure incorporates the human rights due diligence process, with reference to the Guidelines and accompanying Guidance. The procedure specifies how RBC issues shall be addressed within the broader process for risk assessment related to M&A transactions.⁴² The 2023 Annual Report of Aker describes how the integrity procedure applies in M&A transactions:

"The internal integrity procedure for M&A transactions applies guiding principles related to responsible business conduct set out in the OECD Guidelines for Multinational Enterprises and includes a human rights due diligence as part of the M&A due diligence process."⁴³

5. Conclusions and recommendations from the NCP

Based on the review of documentation available, the NCP concludes as follows:

102. The NCP appreciates that the Aker companies have human rights policies based on international standards. Further, the NCP agrees that a first step in a human rights due diligence in connection with the merger should focus on the target company, and the NCP has no basis for questioning the finding that there was no connection between the alleged human rights impacts and the target company in this Specific Instance.

103. However, human rights due diligence in connection with mergers and acquisitions must – when the circumstances indicate that the transaction may have other negative impacts on the human rights of those affected – have a broader scope. In this Specific Instance, the scope of the human rights due diligence must cover the risk of negative impacts on the right to an effective remedy for the victims of Lundin Energy's alleged contribution to war crimes in Sudan.

104. Aker BP has, based on the documentation provided to the NCP, failed to carry out human rights due diligence in line with the Guidelines in the Specific Instance. While the Aker companies have carried out business-related, financial and legal due diligence in relation to the transaction, and this has also encompassed some aspects of human rights due diligence,

⁴² Submission from Aker companies to NCP, 22 January 2024, pages 34 – 35.

⁴³ Annual Report of Aker 2023, available [here](#).

the due diligence has not adequately and independently addressed the risks of adverse impacts of the transaction on the victims' right to an effective remedy. Even though Aker BP viewed the indictment by the Swedish Prosecuting Authority as a red flag, and had as premise for its due diligence that there was a risk that Lundin Energy had contributed to adverse human rights impacts as described in the indictment, the human rights due diligence that Aker BP has carried out does not meet the expectations of the Guidelines on the following issues:

- a. The deeper analysis of the risk of Lundin Energy (now Orrön Energy) being held responsible for contributing to grave human rights violations in Sudan (today's South Sudan) while operating there, and the consequences thereof, was not carried out.
- b. The risk that Lundin Energy/Orrön Energy would not be financially capable of offering adequate remedy to victims, should responsibility be established, was not properly assessed.
- c. Aker BP did not seek to mitigate the risks of the transaction's potential negative impacts on the victims' right to an effective remedy.

105. The complainants have, in the aftermath of their initial submissions, indicated that Aker BP has contributed and continues to contribute to adverse human rights impacts, notably the denial of the right to effective remedy. The NCP does not, as the case now stands, have the basis to make a determination on this issue, and is moreover of the view that for the purposes of this Final Statement it is not necessary to determine whether Aker BP has contributed to actual adverse impacts on the victims' right to an effective remedy.

The NCP has the following recommendations to the Aker companies:

106. In light of the findings in this Specific Instance, Aker BP should carry out human rights due diligence related to the transaction in line with the Guidelines, by reviewing the steps that were taken, and conducting an assessment utilizing internally and externally available information and engaging with stakeholders to identify possible impacts, putting in place possible mitigating or remedial actions where relevant and being transparent about the process and progress over time. The human rights due diligence should include an assessment of the company's role and involvement with the actual or potential adverse impacts identified in order to determine the appropriate response,
107. Based on this due diligence, Aker BP should, if or when it is timely and appropriate, seek to take a role in remediation. For example, Aker BP may use its leverage, to the extent practicable, to encourage the business relationship to participate in processes to provide for remedy. In practice, this could entail that Aker BP seeks to engage with Orrön Energy and its main owners to facilitate a process where possible remedial actions are explored.
108. The NCP takes note of the fact that, in the aftermath of the complaint, the Aker companies have taken positive steps in terms of updating policies with respect to human rights due diligence, also in the context of mergers and acquisitions.
109. In this regard, the Aker companies should ensure effective implementation of policies on human rights due diligence in relation to mergers and acquisitions, and, especially, ensure meaningful engagement with stakeholders as part of carrying out human rights due diligence. Further, the Aker companies should ensure that information about how they identify and address actual and potential adverse impacts is accessible to its intended

audiences (e.g. rightsholders, investors, consumers etc) and is sufficient to demonstrate the adequacy of the enterprise's response to impacts.

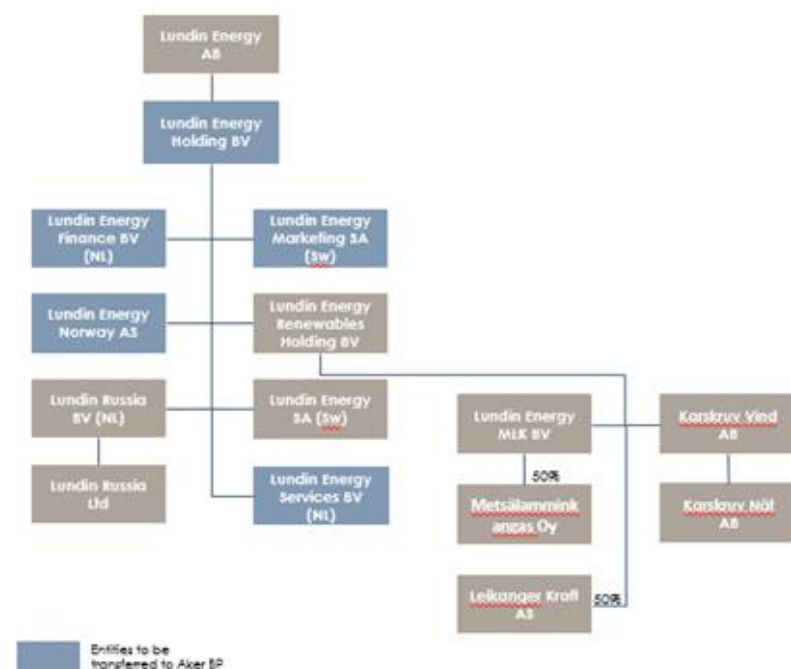
6. Follow-up by the NCP

110. The Final Statement will be published on the website of the NCP and submitted to the OECD for publication in the database of Specific Instances.

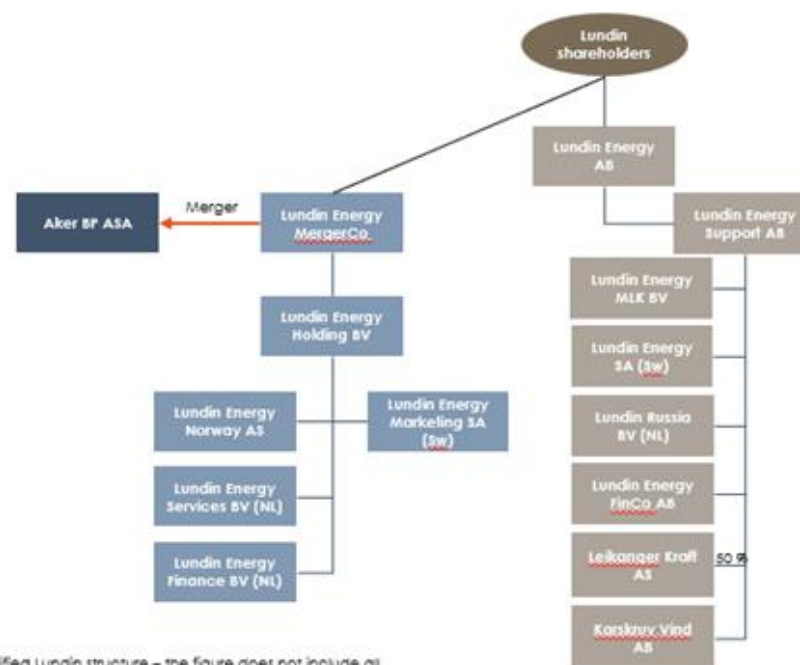
111. In accordance with the case-handling procedures of the NCP, the NCP will invite each of the parties to a follow-up meeting within a year after the Final Statement is published to provide the NCP with an update on implementation of the recommendations and any other activities relevant to the issues raised. The NCP will then publish a follow-up statement. If there are outstanding issues, further follow-up activities may be necessary.

Lundin legal structure

Lundin Structure as of signing (Dec 2021)



Lundin Structure at Closing (July 2022)



Simplified Lundin structure – the figure does not include all companies under Lundin Energy Support AS