OECD **GUIDELINES** FOR MULTINATIONAL ENTERPRISES

NATIONAL CONTACT POINT FOR RESPONSIBLE BUSINESS CONDUCT NORWAY

Oslo, 10th February, 2020

Final statement:

Industri Energi and the Coordination Council of DNO Yemen Labor Union – DNO ASA II

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1 SUMMARY

Industri Energi and the Coordination Council of DNO Yemen Labor Union (the Unions) filed a complaint with the Norwegian National Contact Point (NCP) on 12 September 2018, claiming that DNO Yemen, a subsidiary of DNO ASA (DNO) failed to comply with domestic laws in Yemen, contrary to Chapter I, paragraph 2 of the Guidelines, and that the company had observed standards of employment less favourable than those observed by comparable employers, contrary to the provision in Chapter V, paragraph 4, letter a. The Unions expressed a wish to make use of the NCP's good offices to facilitate dialogue between the parties.

DNO submitted its response on 12 October 2018, disputing the claims and asserting that the complaint contained requests identical to a previous complaint lodged with the NCP. On account of this and several other reasons, DNO declined to participate in a new process of good offices and mediation before the NCP.

The NCP published its Initial Assessment on 17 January 2019, stating that it would assess the complaint on its merits. The NCP considered that it had not decided on the present issues in the previous complaint, and it expressed its view that dialogue and mediation should be considered seriously as a constructive way forward for both parties.

The context of the conflict in Yemen is one of grave circumstances for both the business community and the civilian population. Neutral information is scarce, and although the NCP gained valuable insights through a variety of sources, it was unable to establish evidence of decisive character for the issue at hand in this specific instance. Finding that it had exhausted its means of investigation, the NCP prepared its final statement on the matter.

With regard to the claims of the present complaint, the information before the NCP did not provide grounds for concluding that DNO had failed to comply with the Guidelines. However, considering that DNO lacked grounds for criticising the NCP in the former proceedings, and maintaining that it was within its mandate to offer its good offices to the parties in the context of the present complaint, the NCP found reason to recommend that DNO in the future demonstrates that it fully respects the complaint mechanism as a crucial part of the NCP system established under the OECD Guidelines through transparent participation in processes before the NCP. The NCP moreover recommends that DNO in the future strive to map standards of employment by comparable employers in the host country of its operations and apply these standards in line with the Guidelines. Lastly, the NCP recommends that DNO continue to seek resolutions with any former Yemeni worker who reaches out in good faith to receive their entitlements in accordance with Yemeni law.

2 THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines for Multinational Enterprises are recommendations on responsible business conduct addressed to multinational enterprises. The Guidelines set out good practice for all types of enterprises in all sectors and are based on internationally recognised standards. The Guidelines contain recommendations on transparency, human rights, employment and labour rights, the environment, bribery and extortion, consumer interests, science and technology, competition and taxation. They contain voluntary, non-judicial recommendations, at the same time as there is a clear expectation on the part of the governments that enterprises implement the Guidelines.

Adhering governments are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that may arise from the alleged non-observance of the guidelines in specific instances. Norway's NCP consists of four independent experts and a secretariat. The NCP considers specific instances and contributes to raising awareness about the Guidelines.

The NCP has established dedicated procedural guidelines, which are available on the NCPs website here[1].

3 THE PARTIES

3.1 COMPLAINANT – INDUSTRI ENERGI ON BEHALF OF DNO YEMEN LABOR UNION

Industri Energi is a Norwegian trade union for employees in oil, gas and land-based industry. It has about 57,000 members and is the fourth biggest union under the Confederation of Norwegian Trade Unions (LO). The Coordination Council of DNO Yemen Labor Union represents former DNO Yemen employees. The complaint was filed on 12 September 2018. The Unions presented some additional information on 7 December 2018 and responded to the NCP's questions on 6 June 2019.

3.2 THE COMPANY – DNO ASA

DNO is a Norwegian oil company that operates in the Middle East and North Africa. Its parent company, DNO ASA, is listed on the Oslo Stock Exchange (Oslo Børs). According to its 2018

[1] https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2013/12/FINAL_KPprosedyreregler_eng_godkj1.pdf

Annual Report, DNO's turnover in 2018 amounted to USD 829 million and its subsidiaries hold a total of 28 licenses in Yemen, Iraq, Oman, the UK and Norway.

DNO's operations in Yemen were established in 1998 under its subsidiary DNO Yemen AS ("DNO Yemen") and has until recently had licence agreements in several oil fields in the country. Until April 2015, DNO had 242 employees in Yemen, 97.5 per cent of whom were Yemeni nationals. The employees worked in the office in Sana'a and on the oil fields the company operated, called Blocks 32 and 43, situated approximately 600 kilometres from Sana'a. According to DNO, production from these blocks was suspended in early 2015 due to the country's deteriorating security conditions and the licenses were relinquished in late 2016.

DNO submitted its response on 12 October 2018. The company provided comments to the draft version of the NCP's Initial Assessment on 17 December 2018 and comments to the final version of the Initial Assessment on 16 January 2019. Although DNO refused to accept the NCP's offer to participate in good offices and take part in a mediation process, they responded to enquiries and communicated with the NCP on 7 June 2019, 18 June 2019 and 9 July 2019. DNO requested that most of its replies be kept confidential, also for the complainants.

4 MAIN POINTS OF THE COMPLAINT FROM INDUSTRI ENERGI AND THE COORDINATION COUNCIL OF DNO YEMEN LABOR UNION

On 12 September 2018, the NCP received a complaint from Industri Energi and the Coordination Council of DNO Yemen Labor Union ('the Unions') against the Norwegian company DNO ASA. The complaint made reference to a former complaint by Industri Energi on behalf of the union in Yemen, which initiated a process before the NCP in which the parties accepted the offer of good offices and mediation. The mediation failed, and resulted in the NCP's final statement on 22 March 2018 (English version published 9 April 2018). The NCP concluded that DNO had not met the expectations expressed in the OECD Guidelines regarding notification and consultation with the employees of DNO Yemen prior to dismissals in 2015, and provided recommendations for DNO. The NCP recommended that DNO in the future should carry out risk-based due diligence, establish proper emergency-planning procedures for how to give notification, establish meaningful cooperation between representatives of the trade union and the management in a crisis situation, and enhance the transparency of its policy and procedures for responsible business conduct.

In the present complaint, the Unions claim that DNO has not obeyed domestic laws in Yemen, contrary to Chapter I, paragraph 2 of the Guidelines, and that the company has observed

standards of employment less favourable than those observed by comparable employers, contrary to the provision in Chapter V, paragraph 4, letter a.

With regard to the first account, the Unions particularly refer to a judgment by the First Arbitration Committee for Labour Issues and Disputes in Sana'a, issued on 3 August 2016 (Appendix 14 to the complaint). According to the Unions, it transpires from the judgment that DNO Yemen is to pay 175 of its former employees 75 per cent of their salaries from June 2015 up to the date of reemployment, a Ramadan bonus for 2015 and reimbursement of their legal expenses. DNO Yemen's appeals did not succeed before the Sana'a Court of Appeal (Appendix 15 to the complaint) nor the Supreme Court, which dismissed the company's appeal on 13 December 2017 (Appendix 16 to the complaint). The Unions claimed that DNO had not and would not comply with the judgment, citing correspondence between DNO Yemen and the DNO Yemen Union.

The Unions moreover argued that the dismissals, as well as the handover of the blocks, was contrary to the express wishes and demands of the authorities, citing correspondence in 2015 between the General Manager of DNO Yemen AS and representatives of the Ministry of Labour and Social Affairs, the Ministry of Oil and Minerals and the Deputy Governor of the Office for the Affairs of the Valley and Desert concerning the decision to terminate employment contracts.

With regard to the claim that DNO's standards of employment and industrial relations have been less favourable than those observed by comparable employers in the host country, the Unions referred to the French company Total and the Austrian company OMV, which they considered relevant as they had been dominating the upstream industry in Yemen.. According to the Unions, Total paid salaries to all employees until the company handed over Block 10 to the new operator PetroMasila in December 2015. The new operator employed all the former Total employees, who in addition to reemployment received end of service benefits and compensations.

The Unions submitted that OMV paid their workers a minimum of 75 per cent of their salaries from the time the company suspended production in 2015 until 1 April 2016. The salaries of employees who were not assigned duties was reduced to 50 per cent. The company did not dismiss workers in order to save money, and it guaranteed minimum wages. On 19 December 2016, OMV sent a letter to all Yemeni employees offering voluntary leaver schemes. The company had to reduce its work force in the beginning of 2017, however, and this was done in cooperation with the labour union.

The Unions lastly made reference to attempts made in June 2015 to engage with DNO Yemen to discuss possible solutions instead of dismissals and at an unspecified later date to discuss the situation. The parties did not reach agreement.

The Unions requested that the NCP facilitate mediation between DNO Yemen Union, assisted by Industri Energi, and the international management of DNO in a country in which the leadership of the DNO Yemen Union would be able to acquire visas.

5 DNO'S RESPONSE TO THE COMPLAINT

DNO submitted its response on 12 October 2018. The company observed that in early 2015, DNO Yemen's operations were disrupted, and ultimately rendered impossible, by political instability and insecurity. The company was eventually forced to cease its activities in the country and reduce its workforce in Blocks 32, 43 and 47. The company stated that it relinquished Blocks 32 and 43 in November 2016 and handed back its licenses and assets to the Yemeni Government.

DNO considered the new complaint to contain virtually identical requests to Industri Energi's first complaint, resulting in the NCP's final statement on 22 March 2018. DNO declined to accept the NCP's offer of good offices and mediation in what they referred to as "another exercise covering the same subject matter". According to DNO, the issues in dispute in the new complaint brought no new arguments to warrant the initiation of another mediation round. The company noted that the only new addition was what DNO refers to as "the illegitimate Houthi Supreme Court decision" rendered in December 2017.

According to DNO, the legal decisions invoked in the complaint were made in total disregard of Yemeni due process requirements and awarded remedies which are not provided for under Yemeni law, which sets maximum compensation for workers who are subject to termination and makes no provision for mandatory specific performance. DNO made reference to the fact that the Yemen Union case was initiated within Houthi-controlled territory, where illegitimate interferences with the judiciary 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.

In its response to the complaint, DNO also noted in a footnote that "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". DNO Yemen therefore 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". DNO moreover submitted that the "Houthi court decisions" were determined to be "void ab initio" with the issuance of UN sanctions.

The company considered that the offers that DNO Yemen has made and will continue to make are fully in accordance with Yemeni law and the rights to which the former Yemeni workers are entitled. However, the company would not be able to fulfil a condition of continued employment, even if it were willing, as DNO had relinquished its licenses.

DNO strongly denied the allegations that the company had shown little interest in negotiation, citing several attempts to connect with former workers. DNO stated that further NCP interventions would not make a positive contribution to the process. DNO moreover expressed its lack of faith in the NCP process, based on what the company viewed as lack of adherence to the principles of the Implementation Procedures and Procedural Guidelines in the previous process. DNO moreover viewed the new complaint as evidence that Industri Energi and the Yemen Union were clearly not interested in cooperating in good faith or acting in the best interests of DNO Yemen's former workers whom they claim to represent.

However, DNO also stated that it would nonetheless continue to reach out and seek resolution with any former Yemeni worker who reached out in good faith to receive their entitlements in accordance with Yemeni law.

6 THE NCP'S CONSIDERATION OF THE MATTER

The NCP's secretariat had initial communication with the parties via email and, in accordance with the NCPs procedures[2], offered them meetings in order to explain the Guidelines, the NCP's

[2] https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2014/01/FINAL_KPprosedyreregler_eng_godkj.pdf

role and its procedures. The parties declined the offer, having knowledge of the process through the NCP proceedings in 2017/2018.

Based on an initial assessment of the complaint and the response, and taking into account DNO's comments of 17 December 2018 to the draft initial assessment, the NCP concluded that the issues raised merited further examination. In its initial assessment published on 17 January 2019, the NCP stated that the complaint refers to compliance with key principles of the Guidelines, that has been brought against a Norwegian company to which the Guidelines apply, and that the issues fall within the scope of its mandate. The NCP moreover considered that it had not decided on the present issues in the previous complaint.

The NCP noted the parties' diverging attitudes towards further engagement by the NCP. It nonetheless reiterated that its mandate dictates the offering of the NCP's good offices to the parties of a dispute under the Guidelines. The NCP stated that it remained at the parties' disposal, and that the NCP was of the view that dialogue and mediation should be seriously considered as a constructive way forward for both parties.

Taking into account that DNO declined to accept the NCP's invitation to facilitate dialogue between the parties, the NCP proceeded with its examination of the issues raised. On 9 May 2019, the NCP invited the parties to respond to a number of specific questions relating to the case at hand. On 6 June 2019, the Unions provided full answers to all the questions addressed to them. DNO also responded to the NCP's enquiries, although maintaining that the company did not wish to participate in the NCP process of good offices and mediation. DNO also requested that most of its replies be kept confidential.

The NCP also dedicated much time and resources to research relevant information from a variety of experts both in Norway and internationally. Although the NCP's investigations provided valuable insights into the context of the conflict in Yemen, they did not provide information of decisive character. Finding that it had exhausted its means of investigation, the NCP prepared its final statement on the matter.

7 THE NCP'S ASSESSMENT OF DNO'S COMPLIANCE WITH THE OECD GUIDELINES

7.1 INTRODUCTORY REMARKS

7.1.1 THE SCOPE OF THE NCP'S ASSESSMENT

The NCP maintains that the issue of notification and consultation prior to the dismissals was concluded with the NCP's final statement on 9 April (the Norwegian version was published 22 March) 2018 with regard to the previous complaint by Industri Energi. The final statement is available on NCPs website[3]. The NCP therein concluded that DNO had not complied with Chapter V, paragraphs 6 and 8 of the Guidelines with respect to notification and consultation. The NCP further recommended that DNO in the future, especially in connection with activities in high-risk areas, should carry out risk-based due diligence and enhance the transparency of its guidelines and procedures for responsible business conduct, in line with the expectations of the OECD guidelines.

With regard to the claims regarding the lawfulness of dismissals, the NCP recalls its observations in its final statement of 9 April 2018:

> *"The third point in the complaint concerns the lawfulness of dismissals as part of the downsizing of DNO's operations in Yemen in 2015. This is a question that falls outside the scope of what the NCP can consider under the Guidelines. The NCP refers to how the Guidelines Chapter I paragraph 2 states that 'obeying domestic laws is the first obligation of enterprises' and assumes that DNO respects this."*

The NCP maintains that it falls outside the NCP's mandate to consider the lawfulness of the 2015 dismissals under applicable Yemeni law. The determination of the content of domestic law is for national courts. In this new case at hand, the Unions claim that they have received a final judgment from a domestic court. It is not disputed between the parties that a judgment exists, and that DNO refuses to comply with it. DNO, however, disputes that the judgment has been delivered by a "domestic court", considering the courts to be controlled by Houthi rebels delivering judgments without legitimacy and basis in law. The first question before the NCP is whether DNO's refusal to adhere to the final judgment constitutes a breach of Chapter 1, paragraph 2 of the Guidelines (see section 7.3).

The second question before the NCP concerns the claim that DNO Yemen's dismissals in 2015 and the accompanying conditions constituted standards of employment less favourable than comparable employers in the host country, in contravention of the Guidelines Chapter V, paragraph 4, letter a (see section 7.4). The NCP also considers this matter to be separate from the previous complaint by Industri Energi.

7.1.2 FACTUAL BACKGROUND

[3] https://www.responsiblebusiness.no/dialogue-and-mediation/specific-instances/dno-industri-energi/

The complexity of the situation in Yemen and lack of neutral information has made it virtually impossible for the NCP to assess the complaint on its merits. As the NCP's observations on the matter must be seen in light of the highly sensitive and severe backdrop for the complaint at hand, the NCP here presents an overview of the broader factual background pertaining to the conflict in Yemen.

Following the Arab Spring of 2011, the former president Ali Abdullah Saleh stepped down and Abd-Rabbu Mansour Hadi became interim president and overseer of a "national dialogue" to draft a new constitution. In 2013 and 2014, violent conflict escalated in the country, involving both al-Qaeda in the Arabian Peninsula in the east of the country and the Houthis (Ansar Allah), who advanced from the south. The Houthis seized the capital, Sana`a, on 21 September 2014 and demanded a share in power. In early 2015, Hadi escaped the country and an intervention led by Saudi Arabia ensued in March 2015. The Houthis were driven from Aden in the south of Yemen, but remained in control of Sana`a. Yemen became the subject of a partial blockade in order to prevent weapons being smuggled into the country.

As hunger grew among the civilian population and basic health services were lacking, the United Nations humanitarian branch described the situation as a humanitarian crisis in 2015 and a humanitarian catastrophe in 2016. Reaffirming its commitment to the unity, sovereignty, independence and territorial integrity of Yemen, the UN Security Council adopted Resolution 2140 (2014) on 26 February 2014. Acting under Chapter VII of the Charter of the United Nations, the Security Council adopted a sanctions regime including travel restrictions and asset freezes to and for the benefit of designated persons and entities. On 14 April 2015, the UN Security Council expressed grave alarm at the significant and rapid deterioration of the humanitarian situation in Yemen in Resolution 2216 (2015) and therein imposed an arms embargo in relation to persons who engaged in acts that threaten the peace, security or stability of Yemen. The sanctions regime was implemented by the Norwegian authorities on 19 June 2015 by way of regulation (Reg. No. 663 of 19 June 2015).

The present complaint concerns DNO's activities in connection with Blocks 32 and 43, which according to DNO were handed over to the Yemeni Ministry of Oil and Minerals (MOM) in late 2016. There appears to be one or more arbitration cases related to these relinquishments. With respect to Block 43, it has been reported in the Global Arbitration Review[4] that DNO

[4] https://globalarbitrationreview.com/article/1195832/yemen-wins-damages-over-abandoned-oil-block

"filed an ICC claim in 2017 against the Yemen Ministry of Oil seeking a declaration that it properly exercised its right to relinquish its interest in the block and damages". The Yemeni ministry is said to have filed a counterclaim of USD 100 million. It is further reported that there is or was another ICC arbitration "based on DNO's exit from a third oil block" in Yemen. It transpires from DNO's 2018 Annual Report that the Ministry in 2018 filed an arbitration claim against DNO and the other partners of Block 53, which is not related to the present complaint, for allegedly wrongful withdrawal from the Production Sharing Agreement (PSA). DNO Yemen disputed the claim, which was decided by way of arbitration in 2019. According to the same article in the Global Arbitration Review, an ICC tribunal has ordered a group of international energy companies, including DNO, to pay Yemen almost USD 30 million in relation to this claim. The NCP observes that DNO's counterpart in the aforementioned arbitration cases appears to be the internationally recognised government of Yemen.

DNO's Annual Report 2018 states that DNO still holds a licence to operate Block 47 in Yemen, although operations there are suspended.

7.1.3 COMMENTS WITH REGARD TO THE PARTIES' PARTICIPATION IN THE PROCESS

As stated above, the parties have voiced different opinions as to the ongoing negotiations and the role the NCP might play in facilitating dialogue. Whereas the Unions have expressed that they wish to make use of the NCP's good offices in this regard, DNO has repeatedly expressed its lack of faith in the NCP proceedings, voiced its concern that the NCP's engagement in the matter would prejudice ongoing dialogue between the parties and held that the NCP lacks a valid remit under the OECD Guidelines with regard to the current complaint.

As stated in the initial assessment, the NCP found DNO's reasoning with regard to allegations of flaws in the previous proceedings to be baseless. The mediator in the previous process was chosen by the parties and the NCP allowed both parties to be heard and to comment upon one another's submissions before the final statement was written. With regard to the media, the chair of the NCP only fulfilled his statutory duty to provide guidance to the interested public without disclosing anything from the mediation process.

With regard to whether the NCP's offering of its good offices to the parties would cause prejudice in the ongoing negotiations between the parties, the NCP observes that the Unions in their complaint expressly asked the NCP to facilitate mediation (p. 14 of the complaint). It is

not the role of the NCP to question nor disregard one party's wish for dialogue with the other party. Rather, the NCP's mandate is to offer its good offices to the parties without prejudice towards either party. As DNO has expressed a willingness to engage directly with its former workers, the NCP considers DNO's negative attitude to the NCP's offering of its good offices to be unfortunate.

As explained above, although DNO chose not to fully participate in the process, it nonetheless shared information with the NCP as it considered appropriate. The NCP reiterates that it appreciates that DNO responded to its enquiries. However, the company's sharing of particular information, while insisting that the content of its correspondence be kept confidential, made an assessment of its compliance difficult in the context of the highly complex situation in Yemen. As the NCP's access to reliable sources of information has been very limited, contradiction between the parties would have been valuable in providing grounds for a thorough assessment of DNO's compliance with the Guidelines.

On these grounds, the NCP recommends that DNO in the future demonstrate that it fully respects the complaint mechanism as a crucial part of the NCP system established under the OECD Guidelines through transparent participation in processes before the NCP.

7.2 HAS DNO COMPLIED WITH THE OECD GUIDELINES CHAPTER 1, PARAGRAPH 2?

It is a fundamental expectation that enterprises obey domestic laws, see Chapter I of the Guidelines, Concepts and Principles, where the first sentence of paragraph 2 reads as follows: "Obeying domestic laws is the first obligation of enterprises".

Turning to the complaint at hand, the NCP first observes that an enterprise's workers find themselves in a precarious situation when being laid off in the midst of an escalating armed conflict. As members of the civilian population, they continue to be subject to the governing laws of the state and region where they live. As far as the NCP understands, filing a lawsuit with the First Arbitration Committee for Labour Issues and Disputes in Sana'a was a legal remedy available to DNO Yemen's former workers.

The NCP observes that the impugned judgment of the First Arbitration Committee for Labour Issues and Disputes in Sana'a, upheld by the Supreme Court after DNO's appeals, contains a verdict which conclusion reads (in the translation provided by the Unions):

> *"Firstly: To obligate the defendant (DNO) to pay to the claimants, who number (175 employees), the first of whom is Mr. [omitted] and the last is Mr. [omitted], as per the attached list, the following dues:*

1- To pay to the claimants [sic] salaries starting from the month of June 2015 at the rate of 75% of their salaries in accordance with what was stated in the facts and merits.

2- To pay to the claimants Ramadan bonus for the year 1436 H.C., corresponding to the year 2015 A.D.

3- To reimburse the claimants for the attorney charges and fees of an amount of YER50,000 (Fifty thousand Yemeni riyals) to each employee.

Secondly: It was proved that the claimants who number 18 employees the first of whom is Mr. [omitted] and the last is Mr. [omitted] as per the attached list have received their legal dues in accordance to was explained by us in the facts.

Thirdly: The judgment shall include accelerated enforcement associated with sufficient and certain guarantee.

Fourthly: The facts and merits shall be deemed an integral part hereof."

As far as the NCP gathers from the translation provided, it transpires from the First Arbitration Committee's reasoning that it did not consider the dismissals to be valid. Consequently, the 175 employees who had not accepted the severance terms presented by DNO, were assumed to be entitled to their salaries from the start of their suspension in June 2015 "up to the date of their return to work" or until the time when the conditions for dismissals were met in the manner considered appropriate by the First Arbitration Committee (Appendix 14 to the complaint, pp. 4–5). The Court of Appeal and the Supreme Court upheld the verdict.

DNO has strongly argued that all aspects of the domestic legal proceedings in question were decisively flawed and effectively in breach of domestic substantive and procedural law (see Section 5 above). The NCP is in no position to assess whether these assertions are correct. With regard to the argument that the judgment(s) were *void ab initio* as a consequence of the UN Security Council Sanctions (see Section 5), the NCP notes that it lies outside the scope of the NCP's role in deciding this specific complaint to determine the precise practical implications of the actions taken by the Security Council under Chapter VII of the Charter of the United Nations, notably in Resolution 2140 (26 February 2014) and Resolution 2204 (24 February 2015). The NCP notes, however, that it fails to see that it follows from the said resolutions that all actions within the judiciary in the Houthi-controlled areas are by default *void ab initio* at the national and international level. The NCP moreover fails to see that complying with a judgment would necessarily *ipso facto* be a violation of UN sanctions.

While taking into account DNO's arguments as to why it felt compelled to participate in the domestic proceedings (see Section 5 above), the NCP observes that DNO, notwithstanding the Security Council resolutions, twice appealed the impugned judgments, submitting many of the

same arguments before domestic courts in this Houthi-controlled area of Yemen, thus at least appearing at the time to lend legitimacy to the judiciary to which its former employees had turned subsequent to their dismissals. On the related note of the legitimacy of the local and national government during the period in question, the NCP also notes that DNO Yemen's notice of dismissal of 25 April 2015, as presented by the complainants (Appendix 1 to the complaint) appears to have been sent with a copy to the Ministry of Labour and Social Affairs, at a time when president Hadi had fled the country and before he re-established Aden as his seat of government.

Notwithstanding the abovementioned circumstances, and taking into account the complex nature of the conflict in Yemen, the evolving and changing nature of the control exerted by the different warring factions over civilian functions such as the judiciary, and having regard to the substantive content of Yemeni labour law as far as the NCP has been able to establish it, the NCP concludes that the evidence before it is insufficient to establish a non-observance of the Guidelines on account of DNO's lack of adherence to the judgment presented by the Unions.

On a general note, the NCP observes that where a conflict between a company and its former workers develops within the context of a broader crisis, where the workers lack access to a judiciary whose rulings the company acknowledges and is willing to adhere to, it is particularly important that the company strives to sustain a spirit of co-operation and dialogue with workers individually as well as with workers' unions, as enshrined in the expectations set forth in Chapter V of the Guidelines. The NCP has been informed by the parties that DNO Yemen has settled directly with more than half of the individuals concerned.

7.3 HAS DNO OBSERVED STANDARDS OF EMPLOYMENT LESS FAVOURABLE THAN THOSE OBSERVED BY COMPARABLE EMPLOYERS IN YEMEN, CONTRARY TO THE PROVISION IN CHAPTER V, PARAGRAPH 4, LETTER A?

The Unions claim that DNO has acted in breach of the expectation expressed in Chapter V, paragraph 4, letter a of the Guidelines:

> *Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:*
>
> ...

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

The Unions argue that the French company Total and the Austrian company OMV should be considered as "comparable employers", because they were the dominating companies in the up-stream industry in Yemen. In their letter of 6 June 2019, the Unions have specified five elements they consider to have been less favourable in relation to DNO Yemen's dismissals: Lack of reasonable notice of changes and co-operation with worker representatives, the dismissals in themselves, the stipulated payment, the failure to secure continued employment upon handover of the blocks, and the end of service benefits.

Based on DNO's response to the complaint, the NCP assumes that DNO does not agree with the Unions' assertion in this regard. DNO has declined to share the specifics of its settlement proposals. Through documents enclosed by the Unions, the NCP has nonetheless gathered an understanding of the conditions as they were at the time of the dismissals.

With regard to notice of changes and co-operation with worker representatives prior to the dismissals, the NCP refers to its final statement of 9 April 2018, wherein it concluded that DNO had acted contrary to the Guidelines' expectations with regard to notification and consultation, cf. Chapter V, paragraphs 6 and 8 of the Guidelines. In its assessment of the present complaint, the NCP will only assess the other points on which the Unions consider that DNO has acted contrary to the Guidelines by observing less favourable standards than OMV and Total.

The NCP considers that conditions pertaining to dismissals fall within the ambit of the provision in Chapter V, paragraph 4, letter a of the Guidelines. In the view of the NCP, "standards of employment" is an expression that includes the conditions offered to employees from the moment they are appointed and until they are finally dismissed, including the conditions for dismissal. It is stated in the commentary to this provision in the Guidelines that "employment and industrial relations standards are understood to include compensation and working-time arrangements", which in the NCP's view confirms that compensation schemes relating to dismissals is covered by the provision.

As the NCP understands the complaint, the main issue raised by the Unions is the dismissals in themselves, which they consider to be "unlawful". As the NCP does not take a stand as to the lawfulness of the dismissals, see section 7.2 above, it will concentrate on the conditions offered to the workers in connection with the dismissals.

According to the Unions, DNO's dismissals effective as of 31 May 2015 were accompanied by the following conditions (see p. 4 of the complaint):

- Salary until the Termination Date (1 month)
- Compensation for any proportional annual leave entitlement to this date not taken
- End of service gratuity of one month's salary per year of service and pro rata for part years

According to the Unions, however, OMV and Total presented their employees with more favourable conditions. Total, the Unions assert, paid its employees 75 per cent of their salaries after production stopped, then secured continued employment through its handing over of production to a new operator, and then paid entitlements to the workers when they were assigned to the new operator. The payment amounted to "[s]alary up to the end of notice period for the termination of employment contracts, one month salary in lieu of notice, end of benefits in line with personnel policy and all payments were done in USD, using official rate […]" (the Unions' letter to the NCP of 6 June 2019, p. 2).

OMV, according to the information presented by the Unions, paid 75 per cent of the workers' salaries until the end of 2015, and then 50 per cent to nonworking staff after negotiations with the union. OMV kept its workers, but offered voluntary leaver schemes in January 2016, which offered "end of service benefits based on years of service (at least one month pay for each year), one month salary for lieu of the notice period, one month in lieu of vacation and six months' salary for tendering of resignation" (the Unions' letter to the NCP of 6 June 2019, p. 2).

The NCP has not been able to corroborate the information presented by the Unions with regard to the conditions offered by OMV and Total in order to ascertain whether these conditions were offered on the basis of a standard the companies considered themselves compelled to meet, or whether they consciously over-performed because of the extraordinary situation facing the companies, their operations and their employees. The information presented by the Unions is not conclusive in this regard.

Concerning the Unions' reference to Total's successful handover of its employees to a new operator, the NCP has no grounds for ascertaining that, given the circumstances, this is an "employment standard" in the context of Chapter V, paragraph 4, letter a of the Guidelines. The same may be said with regard to OMV's success in re-establishing its operations with the

same employees. It follows that, even if it is correct that these two companies have acted differently from DNO towards their employees, their actions do not constitute a benchmark towards which DNO Yemen's conduct must be measured.

The NCP has taken note of the overview presented by the Unions with regard to their demands and DNO's offer in later meetings between the parties. While the NCP will always be supportive of dialogue in conflicts involving enterprises to which the Guidelines apply, the NCP is not in a position to assess the specifics of the settlement demands and offers against a relevant benchmark. The NCP also observes that settlement offers may take into account a wide variety of considerations, as the Unions' demands for work experience certificates for each employee demonstrates.

On the basis of the foregoing, the NCP has not found grounds for concluding that DNO has not complied with the OECD Guidelines on this point, but that there is a scope for DNO to demonstrating willingness to map and identify comparable standards of employment by comparable employers in the host country and apply these standards.

8 THE NCP'S RECOMMENDATIONS FOR DNO

In line with the NCP's procedures for specific instances, the NCP will issue recommendations to the parties on how they can ensure greater compliance with the Guidelines. The NCP makes the following recommendations to DNO:

1. The NCP recommends that DNO in the future demonstrate its full respect for the complaint mechanism as a crucial part of the NCP system established under the OECD Guidelines. This entails a willingness to enter into good offices and to engage in good faith in these proceedings, and demonstrate transparency in the process.

2. The NCP recommends that DNO strive to identify and map standards of employment by comparable employers in the host country and apply these standards, in line with the recommendations set out in Chapter V, paragraph 4, letter a of the Guidelines

3. The NCP recommends that DNO continue to actively seek resolutions with any former Yemeni worker who reaches out in good faith to receive their entitlements in accordance with Yemeni law.