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1	General Comment	Living Limpopo	Living Limpopo as a complainant in this matter would like to record that it is satisfied with the outcome of the investigation. We substantially accept the findings as set out in the Draft Investigation Report and welcome the recommendations made. We would like to express our gratitude to the SECU team which conducted the investigation for the seriousness with which our complaint has been treated and the thoroughness of the investigation. Barring the lengthy delay in the release of the draft findings, we consider SECU's overall handling of the complaint, its reckoning with the substance of the issues raised and its recommended remedial action, to embody responsiveness and accountability, and we thank SECU accordingly. We would nonetheless like to submit the following comments and queries in respect of the findings contained in the Draft Investigation Report (dIR).	Noted.
2	Para 2	Living Limpopo	It is misleading, in our opinion, to provide as the only description of the project that is the subject of this investigation, a quote from the project developer's website, even with qualification as such, when that description is vague, inaccurate and somewhat misrepresents the nature of the project. The project description given- 1. does not make it clear that the main industry to be developed in the zone is crude steel manufacturing in a production sequence from coking coal produced from raw coal that will be mined locally, to pig iron to steel and steel alloys; 2. gives no indication of the scale of the operation; 3. misrepresents the power supply plans for the smelter and	SECU notes the complainant's concern. SECU's intention is to provide a neutral, concise, plain language description of the MMSEZ. Paragraph 2 of the report amended to clarify the heavy industrial character of the South Site, provide a plain language description for metallurgical activities, and to reference that coal is a central resource for much of the planned activities in the South Site.

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			4. fails to declare that the primary rationale for the development is the proximity to coal resources and their exploitation. The interests of the investigation would be better served, in our opinion, if the uncontested facts about the nature and scale of the development were stated upfront in plain language. It is certainly material to us as complainants that the project is accurately described considering it forms the basis of our complaint. *Metallurgical zone vs. other clusters and explanation of activities* Firstly, we note in this regard that although the MMSEZ purports to encompass multiple sites where various clusters of industrial activities ranging from noxious industry to light industry (general manufacturing and agro-chemical manufacturing; agro-processing and logistics) will be located, in fact only the metallurgical zone site has been designated by the Department of Trade, Industry and Competition (DTIC)1 – as the *“South African Energy and Metallurgical Zone of the Musina-Makhado Special Economic Zone”* – and planning has been heavily skewed towards this development. For the sake of accuracy, the MMSEZ should therefore be described as a large-scale industrial development focused on metallurgy, although other industrial activities at other sites in the 60Km2 area are planned, including agro-chemicals and general manufacturing, agro-processing and logistics clusters. Since many people do not understand what is meant by the term ‘metallurgy’, it should be defined	

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			– as the process of extracting metals from ore by smelting at high temperatures. Finally, it should be explained that the MMSEZ metallurgical zone will primarily produce steel, in a production sequence from coking coal produced from raw coal mined locally, to pig iron to crude steel and ferro alloys. This is basically the description given in all of the following sources connected to the project: • the Final Scoping Report of the Musina-Makhado Special Economic Zone Development; DeltaBEC; August 2019 • Notice of Application for Environmental Authorisation and Change of Land-Use for the Proposed Musina-Makhado Special Economic Zone: Background Information Document; DeltaBEC, • Notification of Intent to Develop; Digby Wells, July 2019 • the Environmental Impact Assessment Report (EIAr), the draft of which is still publicly available on SAHRIS) including the many specialist impact assessment reports appended to the EIAr, as well as • numerous planning and other documents provided by the Department of Trade Industry and Competition (DTIC) to the Centre for Environmental Rights (CER) in response to its PAIA request, including the Technical Feasibility Study (see page 4-6), a statutory requirement for designation of a SEZ. • the website of the MMSEZ's licensed operator, South African Energy Metallurgy Base Pty Ltd, a subsidiary of Shenzhen Hoi Mor Resources – www.emsez.com, an excerpt of which is copied below as an example: *The South African Energy Metallurgical Special Economic Zone (hereinafter referred to as EMSEZ or SEZ) is a national-level energy metallurgical special economic zone which was established in accordance with South Africa's Special Economic Zone Act and approved by the South African government.*	

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			The SEZ is located in Musina - Makhado, Limpopo province, South Africa, with an area of 60 square kilometres. *Around the SEZ there are open pit coking - coal mines, with a deposit of more than 10 billion tons.* *The following plants shall be constructed under the SEZ Project: Coal Washery of 20 Mtpa; Coal - Fired Power Plant of 3,300 MW; Coking Plant of 3 Mtpa with Heat Recovery Power Generation Plant of 390 MW; High - CarbonFerrochrome Plant of 3 Mtpa; Ferromanganese Plant of 1Mtpa; Silicomanganese Plant of 500 Ktpa; Stainless Steel Plant of 3 Mtpa; High - Vanadium Steel Plant of 1 Mtpa and High - Manganese Steel Plant of 1 Mtpa; Metallurgical Lime Plant of 5 Mtpa, Titanium Dioxide Plant of 1.2 Mtpa and Vanadium Pentoxide (V_2O_5) Plant of 150 Ktpa.* *The **coking coal mine→coal washery→coking plant→power plant→ferroalloy plant→iron making plant→steel making plant** form a connected sequence of energy and metallurgy production of project* The 8,000 Ha size of the energy-metallurgical zone site and the planned capacity of the industrial plants should also be included in the description to indicate the scale of the project, which is as relevant to our opposition to the MMSEZ as the nature of the planned industrial activities (noxious industry). The table below is copied from the EIAr: **Plant** — **Planned Capacity** **Manufacturing plants** — t/a Coal Washery — 20 000 000 Coke Plant — 3 000 000 Pig iron plant — 6 000 000	

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			Ferrochrome plant 3 000 000 Ferromanganese plant 500 000 Silicon-manganese plant 500 000 Vanadium-titanium magnetite plant 10 000 000 High manganese steel plant 1 000 000 High vanadium steel plant 1 000 000 Stainless Steel Plant 3 000 000 Lime Plant 1 000 000 Cement Plant 2 000 000 Refractories factory 500 000 *Misrepresented energy supply plans* Finally, we draw your attention in particular to the following misleading aspects of the project description used in the Draft Investigation Report in connection with the power supply plans for the metallurgical zone. *"the MMSEZ, when fully operational, will consist of a renewable energy cluster that includes hydro, wind and solar energy facilities"* As all planning documents listed above and the EIAr make clear, the energy cluster component of the energy-metallurgical zone is part of the dedicated supporting infrastructure that will be developed to supply the metallurgical (steel manufacturing) cluster, which is obfuscated by listing the energy cluster first, as if it is independent of the smelter, falsely implying that the MMSEZ includes a power generation project and that the power generated will be available for other consumers. Moreover, the energy cluster is not accurately described as "renewable" as it is only partially renewables-based. Although a large-scale solar PV project is planned to supply the carbon	

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			intensive noxious industrial zone on a site presently covered by intact Mopane Bushveld vegetation and classified as a Critical Biodiversity Area, we are not aware of any other renewable energy plans. Moreover, the “hydro” referred to is not in fact hydroelectric power generation as falsely implied, but coal-to-hydrogen fuel generation. Lower down on the landing page of the MMSEZ website and elsewhere, it is disclosed that the power generation cluster will include “*Hydro Fuel Cells*” (per para 31. Of the dIR), which it is reasonable to assume, refers *inter alia* to the plans *"to develop a large-scale coal-to-hydrogen project to produce green hydrogen fuel* for e*lectricity generation*” according to the press statement issued on 1 July 20222, (which cannot plausibly be considered green hydrogen or renewable energy despite the claim to the contrary). Finally, it warrants noting that although the MMSEZ SOC has publicly announced that solar PV generation will replace the thermal electricity plant, Environmental Authorisation was issued in February 2022 without any conditions attached, and makes express reference to the EIA Report, Scoping Report and revised site layout, which include the coal-fired power station. Moreover, the specialist report on the power supply plans, which forms part of the EIAr, states plainly that solar PV power generation was assessed, is not viable and has been rejected as an option.For these reasons, we would argue that the description given of the MMSEZ and what it will comprise when “fully operational” is very misleading. *The conspicuous omission of coal and coal mining* The description of the MMSEZ used in the dIR excludes any mention of coal, when coal is the very core of the project.	

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			Living Limpopo can provide a detailed list of references to coal and coal resource extraction in numerous planning documents and marketing materials produced by the SOC, related organs of state and project backers, which shed light on the rationale for the metallurgical zone and the proximity of raw materials, and the relationship of mutual dependency between the industrial zone and the coal mines that will supply it. For the sake of brevity, we note here in this regard that even the first section on landing page of the MMSEZ website (from where the dIR description is taken) states the following: *Musina Makhado Special Economic Zone (MMSEZ) in the Vhembe District in Limpopo was designated by the South African Government as the preferred site for the location the SEZ. The South African Government through the Department of Trade and Industry (DTI) has designated the Musina-Makhado Special Economic Zone (MMSEZ) located in the Limpopo Province, Vhembe District and straddling between the two local municipalities of Musina and Makhado. In line with the Special Economic Zone Act, 2014 the Minister for the Department of Trade and Industry has issued an Operator Permit to facilitate investment. The MMSEZ is located closer to Beitbridge Border Gate, which is the second biggest port of entry in South Africa and a gateway to other SADC countries. The Musina-Makhado Special Economic Zone comprises two sites, one focusing primarily on Energy and Metallurgy and the other on three sectors, i.e. general manufacturing, agro-processing and logistics.* ***The Vhembe district in the Limpopo Province is endowed with mineral resources such a diamond. Coking coal with potential for beneficiation.*** *This Special*	

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			Economic Zone (SEZ) is intended to accelerate economic growth, development and job creation in Limpopo through: *•Promoting Industrialisation* *• Facilitating increased trade and investment* *• Supporting the development if sustainable enterprises* *• Ensuring Infrastructure Development*	
3	Para 5, 7 (read in conjunction with para 26), para 10, and para 11	Living Limpopo	We understand and accept the terms of reference and parameters of the investigation per para 5. and agree that it was not incumbent on SECU to conduct the due diligence that was required but was not done by the UNDP CO prior to the establishment of the partnership and entering into the MOU with the MMSEZ SOC per the findings of the investigation and para 14.2 of the dIR. Please consider our comments below in this light. With reference to para 7 and 10 and SECU's finding that the SOC must be treated as a private sector entity under UNDP's policies: Does this imply that had the UNDP CO not entered into an MOU with the MMSEZ SOC, but had instead entered into a partnership with the MMSEZ SOC's ultimate owner, the Limpopo Economic Development Environment and Tourism (LEDET), a government department then- • no due diligence would have been required because the counterparty to the MOU that established the partnership would not have been deemed "private sector" under the UNDP Policy on Private Sector Partnerships and the Policy on Due Diligence and Partnerships with the Private Sector, and	As indicated in the draft report, the programming principles in the UNDP's Social and Environmental Standards (SES) apply to all programming activity, which would include any scenario in which the CO were to enter into an MOU with a government agency. The SES programming principles are discussed in more detail in response to further comments below. Furthermore, the nature of cooperation that could be agreed to by the CO depends not only on the identity of the party with whom the MOU is signed. It also depends on the nature of the activities undertaken by the party and the type of activities contemplated in the MOU. These considerations would need to factor into any decision by the CO to sign an MOU with LEDET, which is a government agency but is not the legal operating entity for the MMSEZ.

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			• the main grounds on which SECU has based its recommendation that the UNDP withdraw from the partnership would be negated? With reference to our comment above at para 10., given that the MMSEZ is a project “involving coal and other minerals”, what “associated Risk Assessment Tool”, if any, would apply to partnerships with the owners of state-owned companies i.e. states? Our question at para 10 and 11. has a direct bearing on this case in light of the recommendation at para 15.1 – see comment below.	
4	Para 15.1	Living Limpopo	In its findings and recommendations, SECU has not recommended that the UNDP withdraw its support of the MMSEZ. Rather, at para 15.1, SECU recommends that “The CO should withdraw from its current MOU with the SOC, explaining that it used the wrong template. If the SOC wishes to continue its relationship with the UNDP, the parties will need to prepare a new MOU using the correct template.”. It can be inferred by extension that had the counterparty not been the state-owned company but the organ of the state that owns the state-owned company, the “template” used would be correct. Under these findings, the UNDP CO could alternatively remedy the compliance failure by entering into the same MOU with LEDET to support the same project apparently without any requirement to conduct a due diligence or use the Risk Assessment Tool. As complainants, we are thus anxious to understand precisely the mechanics of the obligation of the UNDP to comply with its Social and Environmental Standards (SES) in instances where it partners	See response under row 3 above.

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			with organs of state on projects involving coal. See in this regard our comment at para 15.4.	
5	Para 15.2, para 51 (read in conjunction with para 49), part 3: issues investigated – issue 5, and para 79 (read in conjunction with para 56).	Living Limpopo	• Please clarify whether the risks posed by entering into non-binding MOUs with counterparties that are engaged in activities the UNDP considers high risk to which staff should be sensitised, are only to the UNDP and its reputation. • If there are other risks deriving from such partnerships related to social and environmental compliance, should the recommendation to the CO not include sensitising staff to these risks as well? We would argue that the potential risks were not limited to the UNDP's reputation and that the consequences of the CO's decisions and actions include exposing the UNDP to the potential risk of involvement in activities "that may be in contravention of or have a negative or adverse impact on UNDP's status, neutrality, ideals and objectives or its image and reputation" as contemplated in Article VI in the template for the private sector dealing with required representations per para 49. We would like it noted that this is the primary issue for us as complainants, not Issue #5, and for the avoidance of doubt, the risk of reputational damage to the UNDP is of no concern to us whatsoever. The overweening concern for the UNDP's reputation as opposed to genuine concern about causing possible environmental or social harm conveyed in the findings and recommendations contained in the dIR sits somewhat uncomfortably with us as complainants who do not share this concern at all.	Noted. While SECU fully appreciates the complainant's position that reputational damage to the UNDP is of no concern to them, and that their concern is instead with the risk that UNDP would be causing harm to people and the environment, SECU finds that these two concerns are interconnected. The UNDP's reputation is a reflection of its values which are expressed in the SES. Acts that fail to comply with the SES, therefore, both risk causing damage to UNDP's reputation and undermining UNDP's efforts to protect people and the environment. SECU agrees that the link between the SES, social and environmental impacts, and reputational risks to the UNDP in the due diligence processes could be clearer in the relevant policies. Clarifications to paragraphs 15.2, 69, 79.2, and 82 have been made to address this link more clearly in this report.

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			We would add that the consequences of the compliance failures of the CO did not only create reputational risk for the UNDP per 79.2, but also caused the risk that the UNDP would be party to causing serious harm to people and the environment because, in addition to failing to conduct the required due diligence and obtain required representations, the decision to use the incorrect template also meant that the required Risk Assessment Tool was not used, which *inter alia* “direct(s) UNDP officials to carefully consider the impacts of the activities of a potential partner on people and the environment before entering into a partnership”, in circumstances where “there is substantial information suggesting that the MMSEZ could have adverse impacts on people and the environment” per para 56.	
6	Para 80	Living Limpopo	While the material implications of this recommendation are not lost on us in terms of the requirement to have conducted a proper due diligence and risk assessment that would very likely prevent the conclusion of any MOU or any other form of partnership or support for the project considering this coal-based industrial development’s risk profile, we dislike the misrepresentation of the UNDP’s misstep as a mere technicality. A “template” is generally understood as a model or form for others to copy. As a consequence, without a deeper understanding of UNDP procedures, it appears that SECU’s conclusion is that the wrong form has been used and that the partnership could proceed if the correct form is substituted. In fact, as the dIR makes clear, there is a great deal more substance connected to risk mediated by the “template” i.e. the procedure to be followed before	Noted. Paragraph 80 emphasizes both the requirement to use the correct template and the requirement to undertake the necessary due diligence. For avoidance of doubt, the opening sentences to paragraph 80 have been adjusted to clarify that the CO should withdraw from the current MOU because it used the wrong template and did not do the required due diligence.

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			establishing partnerships, and that risk is not limited to reputational risk for the UNDP, but rather its compliance with its own Social and Environmental Standards and by extension, the avoidance of causing social and environmental harm. We would certainly prefer the recommendation to address the substance of the issue at hand and recommend that the CO withdraw from the MOU with the SOC for the reason that the required due diligence and risk assessment was not done before a partnership was entered into with a state-owned company that is engaged in activities deemed high-risk.	
7	Para 82	Living Limpopo	With reference to our comment at para 15.2, we would add this is not only "important because state owned enterprises are operating companies and capable of undertaking activities that cause comparable reputational risk to UNDP", but because state owned enterprises are operating companies and capable of undertaking activities that may cause considerable social and environmental harms – the source of the risk to the UNDP's reputation.	Noted. As addressed in line 5 above, reputational risk and risk to people and the environment are connected. For avoidance of doubt, SECU has made changes to paragraphs 15.2 and 82.
8	Para 13	Living Limpopo	• What is meant by "The MMSEZ potentially implicates these principles"? How are the principles potentially "implicated" by the MMSEZ? • Is what is meant rather that the MMSEZ potentially compromises these principles that apply to all UNDP programming activities?	The implication on the principles is explained in paragraph 70 of the draft report. For the avoidance of doubt, clarifications have been made to paragraphs 13 and 70.
9	Para 14.4 and 79.4, para 15.3 and 81,	Living Limpopo	In the apparent absence of any due diligence requirement or risk assessment before the establishment of partnerships with organs of state other than state-owned companies (deemed	As indicated in paragraph 70, SECU does not consider the CO's position that it assessed the proposal against the programming principles to be convincing in the absence of any evidence of the CO's approach. However, as noted in

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	para 15.4 and 83, and para 29		the equivalent of a private sector partnership under applicable policy), it is only the requirement to apply the five programming principles to all UNDP programming activities that ensures compliance with the UNDP's Social and Environmental Standards in such instances. Consequently, the lack of formal procedures for the application of the principles is a glaring oversight. We note in this regard that while the CO was in fact bound by the formal due diligence requirements applicable to private sector partnerships, it is significant that the CO claimed that it had considered the programming principles and had – incredulously – considered the MMSEZ to be consistent with these principles, having overlooked or ignored the patent risks identified by SECU in its assessment at para 70. Had its counterparty been a state agency, such as the parent of the SOC instead of the SOC, it appears *prima facie* that the CO's casual assessment would stand, which is surely incongruent. Moreover, to the extent that the principles are all that ensure that the UNDP's Social and Environmental Standards are upheld, the inapplicability of the eight Project Level Standards to non-"ongoing" projects appears to be another glaring oversight: Since the eight Project Level Standards (that the five programming principles aim to uphold) did not apply to the MMSEZ because an MOU does not qualify as an "ongoing project" per para 29., it is unclear what, if any, are the required social and environmental standards. The lack of any applicable defined standards for this or any project supported by the UNDP and any related partnerships established is surely a lapse in policy that should be remedied. Accordingly, while we agree with and fully support the recommendations to the CO at para 15.3	paragraphs 14.4, 15.4, 79.4 and 83, there is a lack of formal procedures for applying the principles outside of the context of a project. In the project context, on the other hand, the principles are integrated into the Social and Environmental Screening Procedure (SESP) and are further implemented through the application of the project level standards. SECU has recommended that this gap in relation to activities that occur outside the context of a project be addressed through formal guidance and the utilization of SES technical experts. SECU also wishes to clarify that although the project level standards in the SES are not triggered by the signing of a non-binding MOU, the CO would need to develop a project, which would require adherence to the project level standards of the SES, if it wished to implement project activities in support of the MMSEZ.

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			and 81 especially the recommendations to the UNDP and 15.4 and 83., we feel the implications of the current policy 'grey area' that exists in relation to the application of both programming principles and standards is not made clear: The "lack of clear guidance" is proposed to exonerate the CO for its decision to back the MMSEZ, yet the urgency for the UNDP to remedy this lack of guidance that led to its emblem being emblazoned on an unvetted coal-fueled industrial megaproject being developed in a UNESCO-inscribed Biosphere Reserve, is not adequately stressed."	
10.	General comment	Living Limpopo	We would welcome a further recommendation to the CO that it re-engage with Living Limpopo and the cohort of civil society organisations that were signatories to the 22 July Open Letter to the CO. Our last engagement with the CO was on 14 December 2022, copied below (concerning our frustrated efforts to meet with the CO in the context of our complaint to SECU and this investigation). We would still very much like to be afforded an opportunity to meet with the CO to present the case for a nature-based alternative economic development plan for the Vhembe District region to address the triple challenge of poverty, unemployment and inequality, for which Living Limpopo advocates. In our estimation, the Great Vhembe Conservation Area - Biodiversity and Carbon Credit Project, which Living Limpopo has developed in partnership with the UNESCO MAB Vhembe Biosphere Reserve as the underpinning of a natural resources-based economy in the region, is well-aligned with the UNDP's mandate, its principles and social and environmental standards, and would complement other important programmes of the UNDP including UNDPBIOFIN.	SECU's investigations are based on the issues raised in the complaints that it receives. It makes recommendations on the basis of its findings of non-compliance with the UNDP policies applicable to the issues raised in these complaints. In this case, SECU's investigation focused on the compliance issues associated with the signing of the MOU between the CO and the SOC. The applicable policies, in particular the SES (Part C), require the CO to ensure meaningful, effective and informed participation of stakeholders in the formulation and implementation of UNDP programmes and projects. The scale and frequency of that engagement is determined by the nature of the activity, magnitude of potential risks and adverse impacts, and concerns raised by affected communities. Given the focus of the investigation and SECU's specific findings in this report, SECU is not well placed to make specific recommendations on this issue. However, in general, SECU encourages the CO in South Africa to proactively build and maintain constructive relationships with civil society stakeholders.

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			(We note also in this regard the very welcome recent announcement of the *"Integrated Transboundary River Basin Management for the Sustainable Development of the Limpopo River Basin,* spearheaded by the United Nations Development Programme (**UNDP**) in South Africa, in partnership with the Global Water Partnership-Southern Africa (GWPSA). It may have been misconstrued by us, but the tone of the last exchange with the CO regrettably almost echoes that of the MMSEZ SOC and its parent, LEDA towards us in this matter. See for example, the inaccurate and charged comment concerning our complaint to SECU made in LEDA's 2023 Annual Report published in November 2023, copied below. Regardless, we are eager to move past this episode with the UNDP CO and enter into a more constructive dialogue about the exciting prospects for partnerships that could yield great benefits in terms of sustainable growth, biodiversity conservation and climate change mitigation and adaptation in the Vhembe region.	