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TO: UNITED NATIONS DEVELOPMENT PROGRAMME, SOUTH AFRICA

Dr Ayodele Odusola

Resident Representative for UNDP South Africa

United Nations Development Programme

UN House Level 08, Metropark Building, 351 Francis Baard Street

Pretoria, South Africa

Email: ayodele.odusola@undp.org

OPEN LETTER TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

CIVIL SOCIETY ORGANISATIONS CONDEMN THE SIGNING OF THE MEMORANDUM OF UNDERSTANDING WITH THE MUSINA-MAKHADO SPECIAL ECONOMIC ZONE AND THE UNDP's INADEQUATE GRIEVANCE MECHANISMS

1. We represent a diversity of civil society organisations. Through this open letter, we wish to place on record and register our deep concern at the UNDP's public endorsement of the unsustainable coal-dependent Greater Musina-Makhado Special Economic Zone (MMSEZ), which contravenes fundamental principles of sustainable development in the context of the climate crisis. We further wish to place on record our concern regarding the inadequate and inherently reactive nature of UNDP's available remedial mechanisms, namely the Stakeholder Response Mechanism (SRM) and the Social and Environmental Compliance Unit (SECU).
3. This letter is divided into three sections. First, we will list the key reasons why the MMSEZ is a dangerous development and show how it contradicts UNDP programming principles. Second, we will explain how the memorandum of understanding between UNDP and MMSEZ (MoU) contributes to the momentum of a dangerous project by enabling project proponents and contractors to sell the project as having the backing of a body of the UNDP's prestige, regardless of the nuances of an MoU being non-binding. Third, we will show that the MMSEZ MoU highlights a severe flaw in UNDP's present grievance mechanisms – being reactive

in design and unable to prevent severe harm resulting from public endorsements of projects that are fundamentally flawed in their conception.

In the context of the climate crisis, the MMSEZ contravenes environmental and human rights standards and UNDP principles

4. The most authoritative body on climate science, the Intergovernmental Panel on Climate Change (IPCC), projects that limiting the global temperature increase to the critical 1.5°C threshold requires a reduction in CO₂ emissions by around 45% of 2010 levels by 2030 and net-zero by 2050.¹ We would therefore not expect the UNDP to endorse or support in any manner projects that would frustrate this critical goal and risk contravening the Paris Agreement, which commits parties to the objective of limiting the global average temperature increase to well below 2°C with the aim of limiting it to 1.5°C.² All proposed development projects should be assessed in this context. UNDP's own programming principle of 'sustainability and resilience' entails '...that supported programmes and projects enhance climate resiliency and avoid unwarranted increases in greenhouse gas (GHG) emissions, instead enhancing efficiency and reducing GHG intensity.'³ The MMSEZ directly contravenes this goal of climate resiliency through high GHG emissions, which will disallow South Africa from meeting its GHG mitigation obligations under the Paris Agreement, and by exacerbating water insecurity in a region that is already water insecure and expected to experience worsening water insecurity due to climate change.
5. Our first objection is, therefore, that the MMSEZ would commit to reinforcing South Africa's carbon-intensive growth path, thereby frustrating efforts to fight climate change. The MMSEZ project is expected to generate approximately 1 billion tonnes of carbon dioxide equivalent in direct and energy indirect emissions over the lifetime of the project.⁴ The project could contribute between 10-14% of South Africa's

¹ PCC [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)] Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above preindustrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty.

² Article 2(a) of the Paris Agreement

³ https://info.undp.org/sites/bpps/SES_Toolkit/SitePages/Sustainability%20and%20Resilience.aspx

⁴ 56-58 of the Specialist Climate Change Assessment Report for the proposed Musina-Makhado Special Economic Zone South Site (September 2021).

carbon budget under the 2°C global reduction target and as much as between 16-24% under a 1.5°C target.⁵ Moreover, the MMSEZ's (crudely) estimated GHG emissions as per its Environmental Impact Assessment Report (EIAR) of 30-50 Megatons per annum (depending on whether the coal-fired power plant proceeds) is equivalent to about 10% of South Africa's *total* emissions from all sectors combined at present and will thus seriously jeopardise the country's ability to meet its future carbon budget as per its Nationally Determined Contribution commitment under the Paris Agreement. The impact of the MMSEZ on the 'emissions inventory' of the country is thus rated as 'very high' as per the EIA Specialist Climate Impact Assessment Report.⁶ In summary, in light of the significantly high negative climate impacts, which cannot be mitigated and are permanent and irreversible, no decision-maker can and should have authorised the MMSEZ. Doing so would put South Africa at risk of not meeting its climate change commitments, and would place the people of Limpopo at significant risk. The MMSEZ entails significant unwarranted and avoidable increases in GHG emissions and thus directly contravenes the UNDP programming principle of 'sustainability and resilience.' It would also contravene the human right to a clean, healthy and sustainable environment as recognised by the United Nations Human Rights Council Resolution 48/13 (2021).

6. Second, the MMSEZ would jeopardise one of the most fundamental rights and a precondition for life – water.⁷ The MMSEZ covers a region in South Africa in which both ground and surface water is in short supply. Inappropriate and incompatible land uses in water source areas, poorly maintained infrastructure, and inadequate monitoring are aggravating the imbalance between the supply and demand for water in this strategically important area.⁸ The Limpopo Water Management Area North Reconciliation Strategy explicitly states that the catchments in the area, which rely on the Limpopo River, are already in deficit.⁹ The project would involve very high levels of unplanned additional water use because of its coal dependence, and project proponents have never adequately explained where such water is to be

⁵ Ibid at 58-59.

⁶ At 59.

⁷ See V Munnik *Water for the EMSEZ Megaproject at all costs: a report into the absence of water governance in the Limpopo River Catchment*, 2021 (Commissioned by Friedrich Ebert Stiftung) at 5, 30.

⁸ Vhembe Integrated Development Plan at 122.

⁹ Limpopo Water Management Area North Reconciliation Strategy, 2016 at 1-2.

found. The current plans to source the estimated 125Mm³ needed annually for the zone's operation have not been assessed for feasibility, legal compliance, or environmental impact. Thus far these plans include the following:

1) siphoning from groundwater sources, including at the site of the zone which is surrounded by vulnerable rural communities, and the Limpopo River's alluvial aquifer, until

2) a planned 'off-channel' mega-dam (the 'Musina Dam') is built close to the MMSEZ North Site to capture up to 60% of the Limpopo River's annual flow, supplemented by a scheme to pump 30Mm³ annually from Zimbabwe's Tokwe-Mukosi and Zhove dams.

This water sourcing plan poses a threat to the human right of access to water in Limpopo, as well as Southern Zimbabwe—both of which are already water-scarce areas. Further, the plan undermines existing water management and conservation governance efforts in a critical transboundary water management area.

7. Third, given that the MMSEZ is a mega project with far-reaching regional impacts, it is very troubling that no prior study of cumulative impacts has been undertaken. In South Africa, the process that should have been followed was the Strategic Environmental Assessment as provided for in the National Environmental Management Act.¹⁰ This is one of the reasons cited by civil society in calling for the project to be scrapped.
8. Fourth, the project is in conflict with a number of spatial plans for the area and which include the Vhembe Bioregional Plan of the Limpopo Department of Economic Development, Environment and Tourism (LEDET). In addition to conflicts with the Limpopo Conservation Plan and the Limpopo Protected Areas Expansion Strategy, the Vhembe Bioregional Plan also identifies clear conflicts between the MMSEZ and its associated coal mining projects and the proposed core zones identified for the Vhembe Biosphere Reserve (VBR), which is part of the UNESCO Man and Biosphere Programme's World Network of Biosphere Reserves.¹¹ In November

¹⁰ Section 24 (5) (bA) (ii) of Act 107 of 1998.

¹¹ *Limpopo Provincial Government Vhembe District Municipality Bioregional Plan (Process and Consultation Report)* at 13 and 15.

2021, the VBR brought a motion together with other parties before the High Court to have the application for environmental authorisation invalidated¹² and has subsequently appealed the environmental authorisation granted to establish the MMSEZ South Site.¹³ Further, it is unclear how the electricity generation plans for the MMSEZ comply with the dictates of South Africa's 2018 Integrated Resource Plan.

9. Fifth, there have been multiple and fundamental procedural flaws in the application for environmental authorisation. First, the public participation process was extremely flawed with inadequate public notice of meetings and opportunities for input; misleading information; and even reports of intimidation and threats, for example, reports of community members and interested parties being refused access to a landowner meeting by armed guards in early 2021. Such a process goes against international human rights and UNDP's own principles, such as 'leave no one behind', which entails that the UNDP '... prioritise its programmatic interventions to address the situation of those most marginalised, discriminated and excluded, and to empower them as active agents of the development process.'¹⁴
10. Sixth, the environmental impact assessment process followed has departed significantly from the legislation and principles of sound environmental assessment. A particularly egregious example involves the requirement in South African law that the entirety of the project activities must be applied in order for the competent authority to have a full understanding of the cumulative impact of all the listed activities. The currently approved environmental authorisation only covers specific vegetation clearance and the transformation of land in order to secure the site for future development. This enables a 'salami approach' of small approvals that approve a megaproject through the backdoor and incentivises the creation of facts on the ground that make the project increasingly irreversible.
11. The sum total of these objections reveals a project that runs counter to international and domestic law on the environment and human rights. It, further, is in complete

¹² Case No: 8643/2021.

¹³ Appeal in terms of Section 43 of the National Environmental Management Act, 1998 and National Appeal Regulations, 2014. Ref: 12/1/9/2-V79.

¹⁴ https://info.undp.org/sites/bpps/SES_Toolkit/SitePages/Leave%20No%20One%20Behind.aspx.

contradiction to most UNDP principles, including ‘leave no one behind’, ‘human rights’¹⁵ and ‘sustainability and resilience.’

The signing of the MoU has created momentum and confidence in a fundamentally flawed project

12. The MoU between UNDP and MMSEZ lends undeserved and problematic credibility to the MMSEZ project. The mere fact that the signing of an MoU does not create binding commitments on the part of the UNDP does not discount that, given its prestige as a UN body, the MoUs it signs can of themselves lend a project significant legitimacy, prestige and momentum. This MoU has been the subject of sponsored content in major media outlets. The photograph of Dr Ayodele Odusola of United Nations Development Programme and Musina SEZ CEO Lehlogonolo Masoga signing the MoU, in particular, has conveyed a picture of formal endorsement.¹⁶ For this reason, it is imperative that the UNDP acknowledge its mistake, retract the MoU and not merely hide behind the MoU’s non-binding nature.

The MoU has revealed the remit of UNDP mechanisms to be reactive and fundamentally flawed

13. In the course of engagements with the UNDP Country Office in South Africa and the remedial mechanisms (SRM and SECU), our attention has been drawn to the fact that the jurisdiction of these mechanisms only covers UNDP projects that have at least a UNDP project plan and/or already been funded by the UNDP. These mechanisms do not extend to public signals of support and MoUs, and thus fail to provide a proactive remedy in situations in which UNDP is providing momentum and credibility to projects that defy its own programmatic principles.
14. This disregards the reality that some projects are, from the point of view of human rights and the UNDP’s own principles, nefarious in their conception and not merely their execution. Secondly, it fails to recognise that the power and influence of the UNDP means that statements and MoUs can effectively be used to make projects appear inevitable and legitimate regardless of their fundamental flaws. This, in effect

¹⁵ https://info.undp.org/sites/bpps/SES_Toolkit/SitePages/Human%20Rights.aspx.

¹⁶ For example, see *Mail & Guardian* ‘M&G focus on special economic zones’ (29 April 2022). Accessed at <https://mg.co.za/special-reports/2022-04-29-mg-focus-on-special-economic-zones/#:~:text=%E2%80%9CSpecial%20Economic%20Zones%20seek%20to,industrial%20capabilities%20and%20industrial%20capabilities>.

and on a practical level, delegitimises the community's long standing work in opposing the project, and causes further conflict in the area. Third, as a result of the above, the existing mechanisms represent a solely reactive approach to responding to harm that has already occurred, as opposed to a preventive approach that can, at a critical moment, correct any perceptions created by the UNDP and lessen the likelihood of dangerous development projects proceeding. For the reasons outlined above, it is our view that the MMSEZ is a clear example of a dangerous and fundamentally flawed project with which the UNDP should not associate itself in any manner.

The UNDP should publicly retract its signing of the MoU

15. We, therefore, again call on the UNDP to demonstrate its commitment to human rights and environmental legal standards (as well as its own programming principles) and acknowledge its responsibilities by retracting the MoU and officially communicating its retraction.

Yours sincerely,

Living Limpopo

Centre for Applied Legal Studies

Centre for Environmental Rights

Natural Justice

The Vhembe Biosphere Reserve, a UNESCO Biosphere Reserve

All Rise Attorneys for Climate and Environmental Justice

EarthLife Africa

groundWork

Fossil Free South Africa

BirdLife South Africa

The Wildlife and Environment Society of South Africa - WESSA NAR & NACSSA

The Mining and Environmental Justice Community Network of South Africa (MEJCON)

350Africa.org

Dr. Victor Munnik

Prof. Lisa Thompson

Prof. Patrick Bond