

Summary

Acceptable Risk?



How the security threat in Cabo Delgado was ignored for the benefit of 'The Netherlands Ltd.'



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FoI assessment Mozambique for Both ENDS and Milieudefensie

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Lay-out en illustraties:  de wetsenette

Summary

Urgency, relevance and objective of the report

In Mozambique's northern province Cabo Delgado an underreported conflict has displaced thousands of people who are now struggling for survival. Since the beginning of this conflict, which has been classified as a non-international armed conflict (NIAC) since the end of 2017,¹ inhabitants have suffered relentless violent attacks by armed groups, and witnessed killings, beheadings, and rapes, while their homes were razed to the ground. The violence reached a peak on March 24, 2021, when jihadist fighters attacked the city of Palma, located nearby the gas extraction project site (the "Project") of French company TotalEnergies ("Total"). At least 1,298 people died or are missing and 209 were kidnapped, including 55 Total (sub)contractors.² In October 2023, survivors and relatives of victims of the attack filed a civil complaint against Total for alleged negligence and indirect manslaughter.³ Some 70,000 people fled Palma after the attack, and in April 2021 Total declared a situation of force majeure on the Project and halted the Project's activities. By June 2021, the estimated number of displaced people in the Cabo Delgado province had risen to nearly 800,000.⁴

The Area 1 Mozambique Liquefied Natural Gas-project in Afungi entails the development of the offshore Golfinho-Atum gas field and the construction and operation of an onshore Liquefied Natural Gas ("LNG") plant (the "Project"), following the 2011 discovery of a natural gas field off the north coast of Mozambique. The Project site is in the province of Cabo Delgado, close to the town of Palma. Once operational, the onshore plant of the Project will liquefy the collected natural gas and supply most of the gas for exportation to Europe and Asia, as well as retain some for domestic consumption. The Project is currently led by French company Total, which took over control of the Project from American hydrocarbon exploration company Anadarko back in September 2019.⁵

Numerous Western companies play a role in the Project, among which the Dutch company Van Oord, which has been contracted to construct the Project's gas pipe system off the shore of Mozambique. Despite the structural violence in the area and numerous warnings from civil society

1 As classified by RULAC, an initiative of the Geneva Academy of International Humanitarian Law and Human Rights. See: <<https://www.rulac.org/browse/countries/mozambique#collapse1accord>> consulted on June 6, 2024.

2 According to independent journalist Alexander Perry, who spent five months investigating in Palma (between November 2022 and March 2023), the death toll is 1,507 civilians killed or missing, including 55 subcontractors. See <<https://acleddata.com/knowledge-base/9-april-2024-update-new-fatality-estimate-for-the-2021-attack-on-palma-mozambique/>> consulted on June 10, 2024.

3 The French Public Prosecutor's Office has announced that it has opened a preliminary investigation into Total's reaction to the attack in Palma. This decision follows the civil complaint filed against Total in October 2023 by survivors and relatives of victims of the 'jihadist' attack. Total is being investigated for negligence and manslaughter. See: <https://www.lemonde.fr/afrique/article/2024/05/04/attaque-djihadiste-au-mozambique-en-2021-enquete-ouverte-pour-homicide-involontaire-contre-totalenergies_6231545_3212.html> consulted on June 6, 2024.

4 See <<https://www.unhcr.org/news/briefing-notes/insecurity-northern-mozambique-continues-forcibly-displace-thousands>> consulted on June 6, 2024.

5 See <[https://totalenergies.com/media/news/press-releases/total-closes-acquisition-anadarkos-shareholding-mozambique-lng#:~:text=The%20Final%20Investment%20Decision%20\(FID,come%20into%20production%20by%202024](https://totalenergies.com/media/news/press-releases/total-closes-acquisition-anadarkos-shareholding-mozambique-lng#:~:text=The%20Final%20Investment%20Decision%20(FID,come%20into%20production%20by%202024)> consulted on June 6, 2024.

and the Dutch Embassy, in June 2020 the Dutch State decided to grant insurances to Van Oord and its financier Standard Chartered Bank (“SCB”) through the State’s Export Credit Agency (“ECA”) Atradius Dutch State Business (“ADSB”). These insurances, also known as Export Credit Insurances (“ECI’s”), which cover potential damages of up to USD 1,064,517,958, were approved in June 2020, but officially issued a day after the Palma attack in March 2021. Information obtained through Freedom of Information (“Fol”) requests submitted by Both ENDS, Friends of the Earth Europe, Milieudefensie and SOMO, show that the Dutch Ministries of Finance (“MinFin”), Foreign Affairs (“MoFA”) and Foreign Trade and Development Cooperation (“FTDC”) received clear warnings about the dire security situation in northern Mozambique ahead of the approval. Taking these warnings too lightly and deeming the Project’s security risks acceptable despite the conflict, the Dutch State greenlighted Van Oord’s insurance. In 2023, Dutch Parliamentarians filed a motion to, should the situation of force majeure be lifted in the future, defer a decision on continuing ECI support for the Project; at least until the outcome of a possible re-evaluation of the risks has been discussed by the House of Representatives. However, it appears that the responsible ministries refuse to implement this request. In addition, Total recently announced that it hopes to restart the development of the project in 2024. In the meantime, even though the force majeure is not yet lifted, ADSB is working on a re-evaluation.⁶

Considering the dire situation in Cabo Delgado, the current force majeure, Total’s wish to restart the project, the re-evaluation by ADSB and the worries expressed by Dutch Parliament Members, Both ENDS and Milieudefensie commissioned Dimes and Global Justice Association to investigate the Project. The aim of the research was to - based on the acquired Fol documents - assess the process that the Dutch ministries followed before approving and granting the ECI’s in support of the Project. In order to do this, between January and April 2024 we analyzed over 9,500 pages of communication and reports obtained through the Fol requests; news articles; documents related to the Fol request processes; Parliamentary questions and the answers thereto; and reports drafted by external parties, such as Uprights⁷, Rufin⁸, Milieudefensie, Both ENDS, JA!⁹ And Proximities.¹⁰

ADSB and the Dutch State currently have the chance to reconsider their support to the Project and provide full transparency about their (re-)assessment of the risks. If the force majeure is lifted, and the Dutch State again decides to go ahead with its support, it runs the risk of becoming complicit in a disaster project that is destroying the lives of many Mozambicans. The publication of this re-

6 This was announced by Dutch journalist Bram Vermeulen in the episode 5 of the podcast “Achter de Frontlinie”. The podcast is available via <<https://www.nporadio1.nl/podcasts/frontlinie/106829/5-de-rol-van-nederland-in-de-oorlog-in-mozambique>> consulted on June 6, 2024.

7 See <<https://milieudefensie.nl/actueel/report-uprights-on-total-and-Ing-mozambique.pdf>> consulted on June 6, 2024.

8 See <<https://totalenergies.com/media/news/press-releases/totalenergies-publishes-jcrufins-report-human-rights-cabo-delgado>> consulted on June 6, 2024.

9 See <<https://milieudefensie.nl/actueel/report-fuelling-the-crisis-in-mozambique.pdf>> consulted on June 6, 2024.

10 See <<https://open.overheid.nl/documenten/d362dffa-4459-4ffb-942e-9197ec03017d/file>> consulted on June 6, 2024.

port therefore comes at a critical time. At the same time, this report demonstrates that policies and safeguards ADSB and the ministries follow do not work to ensure no harm is done. In March 2024 the report “Dredging Destruction: Human rights violations and environmental destruction in international dredging projects insured by the Dutch state” demonstrated that there is a fundamental flaw in the system in which ECA’s operate. These underlying flaws are causing project governance dominated by vested interests. The learnings and recommendations in this report about the Mozambique LNG project are equally important for ADSB’s policies and standards in other projects.

“Surely contractors/operators don’t want to get into this kind of situation either. Are there any conditions for this anywhere? Is there room for delay until there is also more clarity on the developing security situation? When does it become a no-go even for contractors?” (MoFA to ADSB on May 22, 2020)

Key Findings

The ECI granting process was implemented in such a way that approval was the only possible outcome

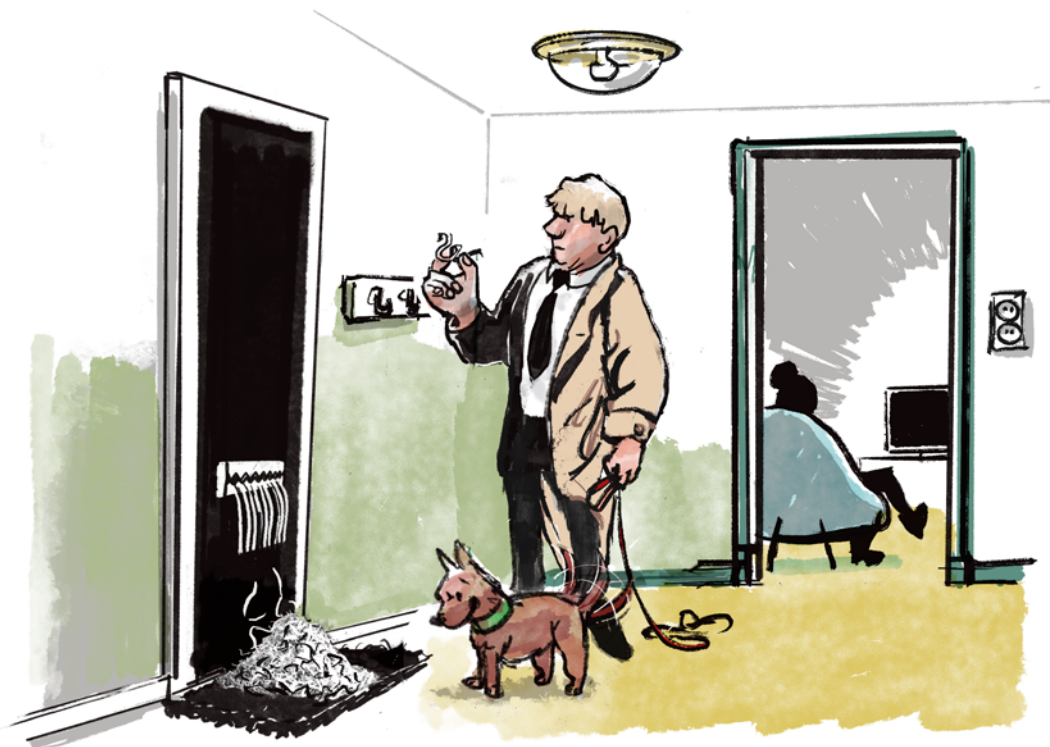
Internal communications between ADSB, MinFin and MoFA from early 2020 to mid-June 2020, show that the assessment of the ECI requests took approval as a starting point. There are several findings that support this conclusion: Firstly, a rejection could have had negative (business and geopolitical) consequences for ADSB and the Dutch State. Total was counting on the Dutch support and put pressure on ADSB to obtain approval for the ECI’s.

A rejection would have meant that Van Oord would have had to look for other insurance options, which could also have affected the decision of other ECA’s involved with the Project. Secondly, the option to delay or reject the granting of the ECI for the project was never openly considered by ADSB or MinFin, while MoFA only discussed this option superficially. Finally, ADSB’s due diligence process does not include rejection as a potential outcome. This limitation resulted in an assessment procedure in which ADSB and the ministries forced the pieces of the puzzle together, ignoring key pieces of information.

“Major pressure from main sponsor Total on ADSB to sign as soon as possible.” (MoFA notes June 4, 2020)

States are making it difficult to access information about the Project

Between 2020 and 2023 Both ENDS, Milieudefensie, SOMO, and Friends of the Earth Europe filed several Fol requests with ADSB, MinFin and MoFA. But throughout the follow-up of their requests, they have faced (and are still facing) all possible barriers in their attempts to obtain relevant information about the Dutch State's involvement with the Project. The organizations have had to deal with extreme delays, attempts from MinFin and MoFA to omit relevant information, unjustified censorship, legal proceedings, and non-compliance with court orders. To date, MinFin has paid approximately EUR 52,000 in penalties due to follow-up delays. The resistance of governments to release information about the Project is also visible in Italy and to some extent in the UK. In May 2023, the Italian Supreme Administrative Court rejected the Italian ECA's (SACE) appeal against the Administrative Court's ruling of May 2022, which had recognised the Italian NGO ReCommon's right to get access to internal documents related to the evaluation and financing of the Project. Despite the Court order, the requested documents have still not been released.



“Honey, did you do another Fol request?”

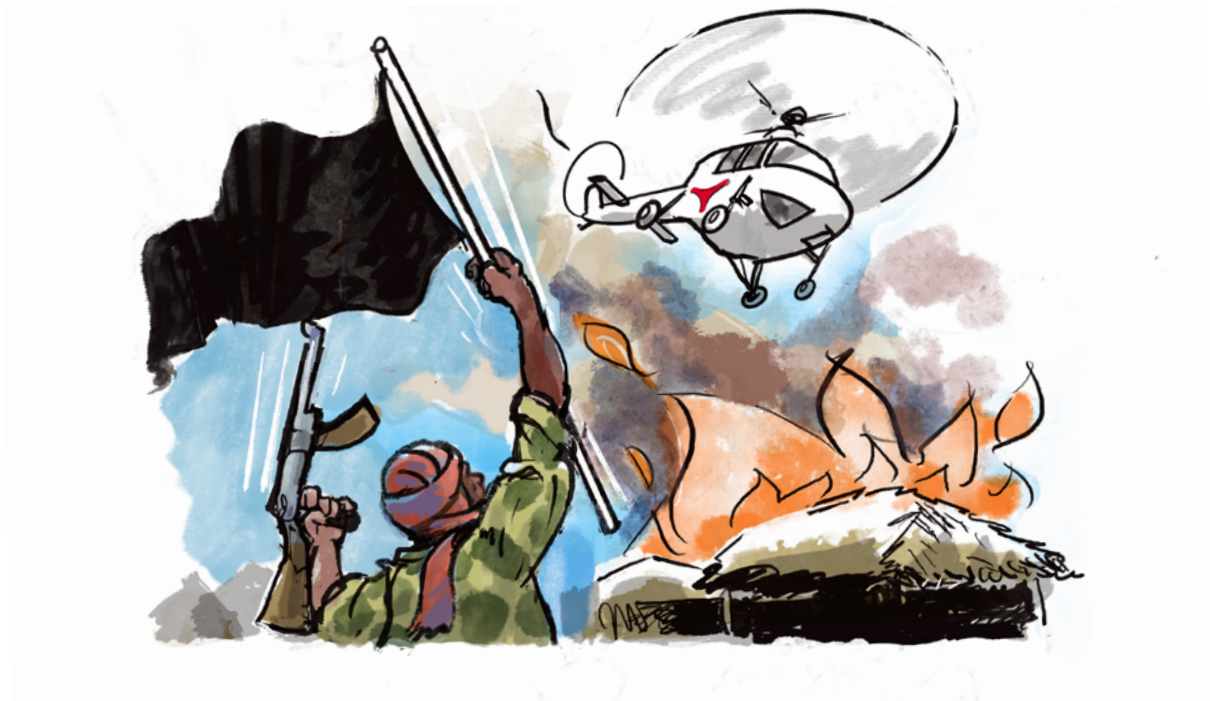
Dutch ministries and ADSB downplayed security risks

In its acceptance proposal to MinFin and MoFA, ADSB painted a picture of the Project's security situation which did not reflect the reality on the ground. The conflict between the insurgents and

the Mozambican military forces in Cabo Delgado has been classified by the Geneva Academy as a non-international armed conflict. But even though they had more than enough information about the increasing violence, attacks, limited capacity of Mozambican military forces and growing capacity of the insurgents, neither ADSB, MinFin nor MoFA in their conclusions referred to the situation as such. This is remarkable, considering that FoI documents reveal that employees of ADSB had expressed concerns about the situation on the ground internally. When ADSB representatives wanted to visit the Project site in early December 2018, they had to fly over the site by helicopter for safety reasons. Moreover, they were equipped with bullet-proof vests, ADSB told Both ENDS staff.¹¹

ADSB left out and downplayed important information about the security situation and social challenges, including crackdowns on journalists, lack of access to information, and the issue of unfair wealth distribution and youth unemployment being a contributing factor to the recruitment of youth by the insurgents. ADSB also made it seem as if several resettlement issues – such as farmers’ lack of access to replacement land and limited access to the sea for fishermen – had been resolved. In doing so it ignored that some loss of livelihood compensation solutions were not yet implemented, due to the security threats. ADSB also insufficiently covered the human rights issues around the military presence in the communities.

“Looks acceptable to me.”



¹¹ See <<https://www.nrc.nl/nieuws/2021/11/01/nederland-negeerde-waarschuwingen-van-eigen-ambassade-over-geweld-in-noord-mozambique-a4063888#:~:text=Nederland%20negeerde%20bij%20gasproject%20waarschuwingen%20over%20ontvoeringen%20en%20onthoofdingen%20in%20Mozambique>> consulted on June 6, 2024.

“In December 2018, we visited Pemba and took a helicopter flight over the project area due to the unsettled situation in the area.” (ADSB, December 2018)

The link between gas extraction activities and the conflict was neglected by ADSB and the ministries

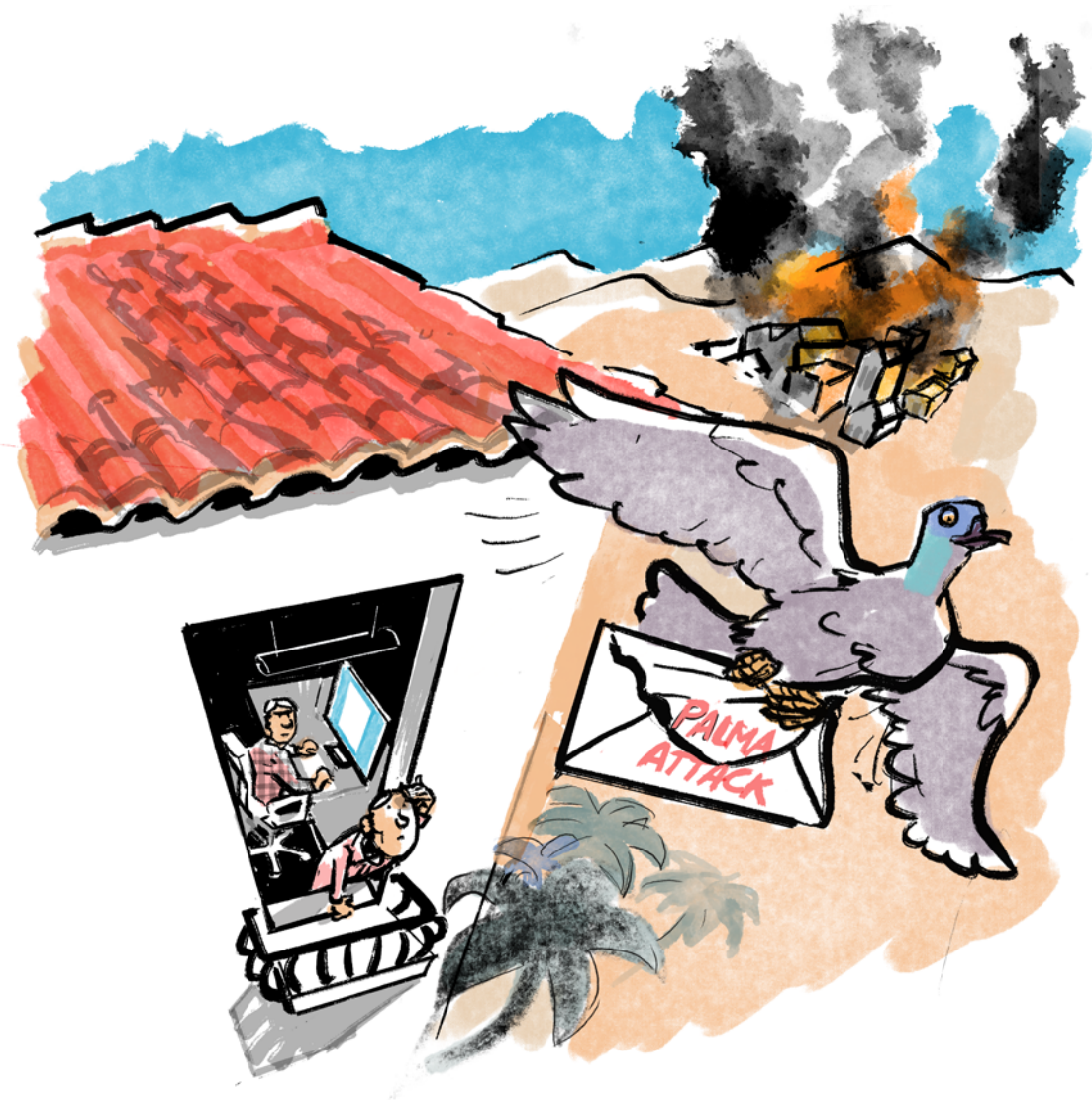
The violence in Cabo Delgado surged in 2017, about seven years after one of the world’s largest offshore gas reserves was found. Investments in the Mozambican gas industry rose steeply after the discovery, but the population has so far not benefited from any of these investments. Numerous studies and news reports describe that the jihadist insurgency began out of local people’s displeasure at the neglect of Cabo Delgado, a province mostly inhabited by Muslims. Since 2021, the violence increasingly turned against civilians and – in total- more than 2,500 Mozambicans were killed in mass beheadings and clashes between jihadists and the Mozambican army. As of January 2024, the number of displaced individuals in northern Mozambique still exceeded 582,000.

Journalists, the Dutch embassy in Mozambique, Both ENDS and Milieudefensie have all flagged possible links between the gas projects and the armed conflict in the years before the ECI was granted. But Fol documents show that ADSB rejected the view that the civilian unrest and the violence is linked to gas extraction activities. By rejecting this possibility pertinently, ADSB did not sufficiently analyse the possible link between the Project and the violence.

“It is of course terrible for those people living towards Pemba that the terrorists are moving on into the country. It does however give more the picture that it is not directly related to the project as Both ENDS would like us to admit” (ADSB staff member to colleague on April 30, 2020)

MinFin and MoFA incorrectly pretended that their decision-making involved few concerns

MinFin and MoFA claimed towards the Parliament and the public that the granting of the ECI’s involved few concerns about the security situation. From the obtained Fol documents however, it is evident that a debate took place between both ministries concerning the level of risk and security threats since March 2020. The focus of the debate was how real of a risk the deteriorating security situation truly posed to the project. MoFA and MinFin both had serious concerns at some point during the approval process, but these concerns were not communicated with the public or Members of Parliament.



“Why send an e-mail?”

The ministries knew about the Palma attacks sooner than they let on, and had the opportunity to withdraw from the Project

The ECIs were granted on March 25 and 26, 2021, shortly after the insurgent attack on Palma. In their answers to Parliamentary questions from September 2021, FTDC and MinFin stated that the consequences of the attack were not clear to them until the weekend of March 27 and 28, 2021. And that the ministries therefore could not prevent the official issuance of the ECIs. Contrary to this, during a parliamentary debate in 2023 the current MinFin State Secretary Van Rij stated that ADSB received its first information about the attacks already on March 25, 2021. This is relevant because ADSB and the Dutch State could have theoretically still pulled out or delayed the policy issuance between the moment of the Palma attack and the formal ECI issuance.

It is highly unlikely that nobody within the ministries, the Dutch embassy or ADSB had heard of the severity of the attack before March 27 or 28, or even before March 25, considering that Al Jazeera¹² and The Africa Report¹³ had already published about the attacks on March 24. Al Jazeera¹⁴, the Guardian¹⁵ and the Mozambican Defence Ministry published further details of the attack on March 25, and The Guardian¹⁶ published about it again on March 26. Given the security information to which ADSB and the ministries already had access, and the debates that had taken place during the approval phase in May/June 2020, it is difficult to understand that the news of the attack was not sufficient for the ministries to pause the ECI granting on March 24 or 25.

ADSB “cherry-picked” mitigating factors and ignored warnings from reliable sources such as the Dutch embassy in Maputo and MoFA’s Sub-Saharan Africa directorate

In terms of security risks, ADSB built its proposal to the ministries predominantly on the information provided by Total and consultants who had an obvious interest in getting the Dutch ECI support. Meanwhile it ignored red flags raised by the Dutch Embassy, MoFAs Sub-Saharan Africa directorate (“DAF”), NGOs and news media, and left out information gathered during its own site visits. The FoI documents also show that the Dutch embassy’s insights and opinion were overruled when the decision to approve the ECIs was made in June 2020. Both the Proximities report and the FoI documents make clear that the Dutch embassy was very dissatisfied with the process and the way its input was handled during the ECI approval.

Finally, in its analysis, ADSB used a narrow security focus (also confirmed by Proximities) because its financial department uses the question whether “security risks jeopardise loan repayment” as a starting point,¹⁷ instead of assessing the applicable risks from a Corporate Social Responsibility (“CSR”) perspective:

“The fact that the project has not been attacked so far is not a good guarantee for the future.” “Indeed, the security situation is deteriorating by the day, a risk that remains underexposed in ADSB’s acceptance proposal. The security conclusion is summarily thin” [and] “a description of negative trend is missing.” [...] (Memo Dutch Embassy to MoFA of May 19, 2020)

12 See <<https://www.aljazeera.com/news/2021/3/24/mozambique-armed-groups-attack-town-near-gas-projects>> consulted on June 6, 2024.

13 See <<https://www.theafricareport.com/75169/mozambique-fresh-attacks-on-palma-as-total-prepares-to-return-to-Ing-project/>> consulted on June 6, 2024.

14 See <<https://www.aljazeera.com/news/2021/3/25/fighting-in-town-near-mozambique-gas-hub-continues-for-second-day>> consulted on June 6, 2024.

15 See <<https://www.theguardian.com/world/2021/mar/25/fighting-rages-in-mozambique-close-to-totals-gas-project>> consulted on June 6, 2024.

16 See <<https://www.theguardian.com/world/2021/mar/26/mozambique-180-workers-trapped-in-hotel-amid-insurgent-attack>> consulted on June 6, 2024.

17 Idem.

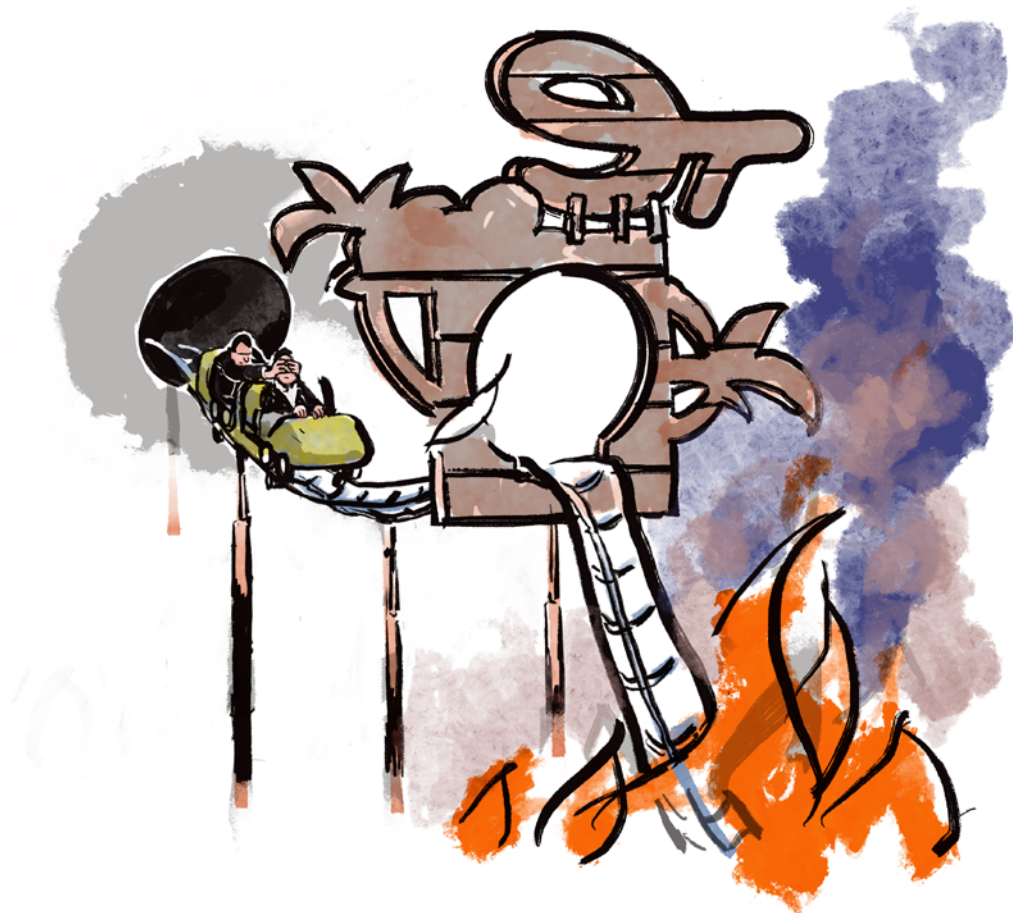
A meeting with Total and the French embassy influenced the ministries' decisions to approve the ECI's

The decision from MinFin and FTDC to approve the ECI's was made shortly after a conference call between ADSB, MinFin, MoFA, Total, Total's security advisor ADIT, Total's financier Société Générale, the French Embassy, and the Dutch Embassy on May 28, 2020. Before this call, MoFA and MinFin had serious doubts about the security situation and the effect the ongoing violence might have on the Project and the local population. On the day of the May 28 call, MinFin changed its mind, mostly based on promises and pressure from Total, and reassurances from the French Embassy. Despite the call with Total and MinFin's change of position, MoFA still had doubts. But under pressure of MinFin, which tried to convince MoFA and even influence the content of MoFA's advice to FTDC Minister Kaag, MoFA decided to approve the ECI request as well.

“I can't quite get to this business case. [...] A mystery to me why ADSB is so positive” (MoFA employee on May 28, 2020)

ADSB's monitoring plan was inadequate

ADSB's plan to monitor the Project's security risks appears to have been inadequate for its purpose. First, ADSB has limited visibility over the Project site, being based in the Netherlands. This point was also underlined by the Proximities report. Second, ADSB's due diligence consultants received most of their information from Total, which was not an objective source. Third, the context in Cabo Delgado in terms of press freedom and access for NGOs make it hard to access independent information. It remains unclear how ADSB or its consultants had planned (or are planning) to go on monitoring visits in a setting of oppression.



“Just trust us.”

It is unclear whether and how the Dutch State can withdraw its support to the Project

To date, it remains unclear if the Dutch State can cut ties with the Project and step away from the ECIs granted to Van Oord and SCB. The ministries claim to have assessed the legal possibilities and have concluded that there is insufficient contractual liberty for the Dutch State to withdraw the

ECl's. The ministries have not shared the contractual terms with the public, making it impossible to assess the exact terms and conditions of the ECl's. Due to a lack of clear communication from MinFin and MoFA, it also remains unclear if, and if so how, the Dutch State could use its political leverage to influence the decision to resume, further delay or stop the Project.



“Je maintiendrai.”

Conclusion

ADSB and the ministries assessed the security and human rights risks of the Project inadequately. Many of the anticipated risks materialised, leading to at least 2.500 deaths and 800.000 refugees in the province of Cabo Delgado. The inadequacy of the assessment is confirmed not only by this research, but also by the Proximities and Uprights reports.

Due to the current force majeure situation ADSB, MinFin and FTDC now have the opportunity to re-assess the situation on the basis of an even more complete picture of the reality on the ground. The Dutch State should seize this opportunity and assess all options, including contractual ways

out and use of political influence to ensure that the well-being and reparation of the damage caused to the affected people of Cabo Delgado is prioritized over corporate interests. Solely re-assessing the Project against the same standards as before will not result in a reasonable decision if crucial information is ignored or downplayed again. To prevent a focus on the trivial, in the form of a paper exercise existing of more reports, more social action plans, and more cherry-picking of information intended to lead to the re-approval of the Project, an approval process requires meaningful consultation with affected communities, and reliance on objective information from independent sources.

Considering the ongoing safety and human rights concerns in Cabo Delgado and Total's alleged incapacity to adequately respond to attacks, a re-assessment of the security situation is likely to show that the safety of the people on and around the Project site still cannot be guaranteed. If this is indeed the case, we believe this should lead to the conclusion that the security risk is unacceptable.

The French Public Prosecutor has announced that it has opened a preliminary investigation into Total's dealing with the Palma attack. Total is being accused of negligence and indirect manslaughter. The Dutch State and ADSB should take a step back and consider whether they can continue to rely on security information provided by a company that is under investigation for alleged negligence. This time, instead of rearranging the deckchairs on a sinking ship, it is essential that ADSB and the Dutch State first focus on the threat of the iceberg ahead.

Selection of Recommendations

The findings in this report serve to show the responsible ministries and ADSB where improvements of their assessment and decision-making process are needed and to inform Dutch Parliamentarians and civil society on how to monitor and approach ADSB's and the ministries' upcoming re-evaluation process.

To Dutch Parliamentarians:

1. Demand from ADSB and the involved ministries full transparency about the (re-) assessment, including but not limited to the safety and security aspects of the Project.
2. Continue asking critical questions to the Minister of FTDC and MinFin State Secretary, who are responsible for the Dutch ECI support to the Project. It is key that those monitoring the re-assessment processes (i) realize that the armed conflict continues to date and key drivers of the conflict remain unaddressed, (ii) consider that The French Public Prosecutor has opened a preliminary investigation into Total's actions during the Palma attack, (iii) identify the sources that are used by ADSB to obtain security information and advice and verify their independence, (iv) express to the ministries that information coming from the ground should not be overlooked, (v) realize that re-assessing the Project against international standards again by simply updat-

ing the information that was already available before, will not lead to new results or a reasonable conclusion.

3. Monitor and ensure compliance with the motion filed by Thijssen, Van Lee, Van der Raan and Teunissen on October 16, 2023, requesting the government to delay a decision on providing ECI's for the Project until the outcome of the reassessment process has been discussed in the Dutch House of Representatives.
4. Monitor and ensure that Total is not influencing the reassessment process of the ECI. Require that ADSB is transparent about any contact with Total during the process.
5. Ensure that a clause outlining the legal possibilities to terminate an ECI is included in any future contracts and monitor transparency to the public about potential improvements on this point.
6. Ensure that the reassessment process is not concluded before the civil investigation against Total by the French prosecutor is closed and the findings are made public.

To ADSB and the Dutch State (MinFin, MoFA and FTDC):

1. Provide full disclosure on what was known about the Palma attack when the ECI's to Van Oord and SBC were issued in March 2021, shortly after the attack. Explain to the public why the ECI's were issued exactly on those days, and why no action was undertaken to immediately stop or delay the issuance.
2. Explore the possibilities of a responsible withdrawal from the Project and ensure that withdrawal from the Project is considered as a possible outcome of the re-assessment. We underline that the French Public Prosecutor has opened a preliminary investigation into Total's reaction to the Palma attack. Avoid ignoring or downplaying red flags that are relevant for a reasonable decision and do not work towards re-approval at all costs. There are international standards available on what constitutes a responsible exit.
3. Do not finalize the reassessment process before the civil investigation against Total by the French prosecutor is concluded and the findings are made public.
4. Investigate indications that the social unrest and armed conflict are linked to the Project.
5. Ensure compliance with the motion filed by Thijssen, Van Lee, Van der Raan and Teunissen on October 16, 2023.
6. In line with the recommendation of Uprights to Total, ensure that the Human Rights Due Diligence process is conducted with a conflict-sensitive lens.
7. Ensure that a clause outlining the legal possibilities to terminate an ECI is included in any future contracts and be transparent to the public about potential improvements on this point.

To Civil Society:

1. Closely monitor ADSB's and the Dutch State's re-assessment of the Project, and make sure that information from the ground is shared with the public.
2. Monitor and ensure that Total is not influencing the reassessment process of the ECI. Require that ADSB is transparent about any contact with Total during the process.

3. Insist on the disclosure of more details about ADSB's and the Dutch State's legal withdrawal options.
4. Insist on a full disclosure of what ADSB and the Dutch State knew about the Palma attack when the ECI's to Van Oord and SBC were issued in March 2021, shortly after the attack. This can be done through direct dialogue with ADSB and the involved ministries, or via additional Fol requests.
5. Advocate for improvement of the Fol process in general, to ensure that Dutch ministries comply with their obligations under the Dutch Fol Act.
6. Coordinate with counterparts in the United Kingdom and Italy (and possibly other countries which have granted ECI support to the Project too) about Fol requests and potential court cases initiated in their countries.
7. Continue to document links between the Project and human rights violations, if needed with the assistance of academia and journalists. Documenting possible causal links between the project and the conflict and/or serious human rights violations is key in repairing the systemic failure of Dutch policies to protect people and the environment.