

Assessment of TotalEnergies' Mozambique LNG Project Human Rights due diligence

Report prepared by



Commissioned by



Table of Contents

| | |
|---|----|
| Executive Summary | 3 |
| I. Background | 5 |
| II. Objective and Methodology | 9 |
| III. Presentation of the Project’s Human Rights Due Diligence | 11 |
| 1. The HRDD Assessment | 11 |
| 2. The HRDD Action Plan | 12 |
| 3. The Human Rights Policy | 14 |
| IV. Problematic Areas in HRDD process..... | 16 |
| 1. Belated Timing for the HRDD Assessment | 16 |
| 2. Lacunae with stakeholder engagement | 18 |
| A. Lack of effective representation in stakeholder engagement and transparency in its methodology in the context of the HRDD Assessment | 20 |
| B. Adoption of the HRDD Action Plan based on incomplete HRDD Assessment | 23 |
| C. Lack of participation in the development of the HRDD Action Plan and HR Policy | 24 |
| 3. The HRDD process disregards the armed conflict in Mozambique..... | 25 |
| A. Relevant facts regarding the conflict in Mozambique | 25 |
| B. Heightened HRDD in conflict-affected areas | 30 |
| C. The HRDD Assessment and the HRDD Action Plan neglected heightened HRDD. | 32 |
| 4. Failure to assess the resettlement plan to the situation on the ground. | 40 |
| A. Endorsement of the existing resettlement plan without addressing its potential or actual adverse human rights impacts | 42 |
| B. Failure to address the impact of the conflict on the implementation of the resettlement process and to restore the livelihoods of affected right-holders. | 44 |
| V. Conclusion | 47 |

Executive Summary

While clear signs indicate that TotalEnergies is considering officially restarting the development of the LNG project it operates in the Northern Province of Cabo Delgado in Mozambique, Justiça Ambiental!, Friends of the Earth Europe, Friends of the Earth US and Milieudefensie contracted Uprights to conduct a review of the human rights due diligence (HRDD) of the LNG project. This evaluation demonstrates that the HRDD Assessment conducted by an external consulting firm in 2020, after TotalEnergies became the operator in September 2019, but before it declared *force majeure* in April 2021, **is incomplete and contains flaws** that have not been properly addressed by TotalEnergies in its subsequent HRDD Action Plan. While some of the limitations encountered in conducting the HRDD Assessment may be related to the COVID-19 pandemic, it does not obliterate the shortcomings identified in this report.

This report shows that there is a **significant disconnect** between the LNG project's public commitment to respect human rights in all aspects of its operations (contained in its Human Rights Policy) and the actual implementation of HRDD in its operations and the human right situation on the ground. Jean-Christophe Rufin's recent report commissioned by TotalEnergies brings out and confirms some of the shortcomings of the Project's HRDD process identified in this report.

The main area of concern relates to the disregard by the HRDD process of the armed conflict in Mozambique. The LKL HRDD Assessment conducted in 2020 and the following Action Plan of TotalEnergies **fail to properly prioritize and consider the armed conflict** and to conduct heightened HRDD with a conflict-sensitive approach. No justification can be found for such a disregard given that the LNG project has been operating in a conflict-affected area since 2017 and that TotalEnergies became the operator of the project in September 2019.

As a result of this important gap, the HRDD process almost entirely **disregards the potential and actual human rights impacts** of the Project in relation to the armed conflict. Notably, the HRDD process fails to accurately assess the potential human rights impact of the Project on the security situation of the communities vis-à-vis the insurgents and the Mozambique security forces. It also fails to consider international humanitarian and criminal law as relevant legal frameworks despite their undeniable applicability to the context of the Project's operation. Consequently, the HRDD process fails to assess the real risk of being considered complicit in international humanitarian law violations or war crimes committed by the Mozambican armed forces. It also did not comprehensively address the issue of gender and conflict as part of any heightened human rights due diligence.

If the HRDD process had been conducted with a conflict-sensitive lens, the Project would have developed a responsible and clear strategy in advance to address the potential human rights impacts that might result from the termination or suspension of its activities. Because it did not, TotalEnergies was not prepared when it declared *force majeure* and did not have any clear strategy as to how it would continue the implementation of the resettlement plan and the protection of the communities who were resettled to, or waiting for resettlement to, Quitunda Village, thus leaving affected communities in limbo. Two other examples indicate that TotalEnergies' HRDD policies and practices were not suited to address potential or actual human rights impacts in relation to the security of the community. Firstly, TotalEnergies did not take part in rescue efforts from the Amarula Hotel during the Palma attack. Although it had a unique position to conduct rescue

operations with its some 700 security personnel and equipment (personnel carrier-type choppers, airport, and aviation fuel), it did not use this ability and resources. Nor did it exercise its leverage with the Mozambican government to activate its help for those in need. Secondly, when insurgents clashed with Mozambican security forces and attacked civilians near the LNG plant in Afungi, at least 10,000 IDPs had gathered outside the LNG Project site secured by the government forces. Media reported that civilians had often been denied entry to the LNG Project site. This incident shows that TotalEnergies seemed to not feel responsible for thousands of civilians.

Besides the armed conflict, this report identifies other problematic areas in the HRDD process:

- There was the belated timing of the HRDD Assessment. TotalEnergies did not carry out any HRIA before it engaged in the project and again not before it became the operator in 2019.
- There were the lacunae with stakeholder engagement processes, raising serious doubts as to the sufficiency of the engagement and the quality of the information collected to conduct analysis in the HRDD Assessment. Key stakeholder groups (like communities that have yet to be resettled and civil society in Cabo Delgado) appear not to have been consulted and the methodology used to engage with affected stakeholders was not transparent.
- And there was the failure of the HRDD documents to assess the Resettlement Plan to the reality of the situation on the ground. Despite numerous issues raised over the years by affected communities with the resettlement process, the HRDD Assessment and the HRDD Action Plan appear to endorse the existing resettlement plan and process without assessing its human rights impact on the ground.

This review was conducted on the basis of the limited HRDD documents made publicly available by TotalEnergies namely the HRDD Assessment of the Project conducted by the consulting firm in 2020, the HRDD Action Plan and the Human Rights Policy, both adopted by the Project in the first quarter of 2021. The public scrutiny of the implementation of HRDD by the Project was limited by the unavailability of a number of important documents such as the Memorandum of understanding signed between the Project and the Government in relation to the deployment of a Joint Task Force composed of members of the Mozambican security forces to protect the Project and the community-based security plan. Another important limitation to public scrutiny has been the briefness of the HRDD Assessment which often contains inadequate explanations and does not often provide the details of its reasoning and conclusions limiting the possibility to assess the comprehensiveness of the HRDD Assessment.

I. Background

1. In 2010 large quantities of natural gas were discovered off the coast of Mozambique. It attracted large investments from international energy companies that are in the process of developing several liquefied natural gas (LNG) projects. One of these projects - the Mozambique LNG Project (the Project) – is located in Cabo Delgado Province and operated by Total E&P Mozambique Area 1 Lda (TEPMA1), a wholly owned subsidiary of TotalEnergies since 2019. The Project is designed to gather offshore natural gas which will be processed in an onshore LNG facility before being exported internationally.¹ The construction of the onshore facility required the Project to acquire the right to use 7.000 hectares of land on the Afungi Peninsula of Cabo Delgado Province from the government (DUAT)² and imply the physical and/or economical displacement of communities from the DUAT.
2. In 2015, the Project - then operated by Anadarko Petroleum Corporation (Anadarko) - conducted a Human Rights Impact Assessment (2015 HRIA) in order to identify the human rights risks areas of the Project and to propose mitigations for these risks.³ At the end of 2017, an armed conflict broke out between the Government of Mozambique and the armed group Al-Shabab in the northern part of Mozambique, notably in the Cabo Delgado region.⁴ Despite the volatile security situation, a 20 billion dollar final investment decision for the Project was taken in June 2019. TotalEnergies became the operator in September that year after it acquired its operated interest from Anadarko.⁵ Once operator, TotalEnergies commissioned a consultancy firm, LKL International Consulting Inc. (LKL),⁶ to update the 2015 HRIA in line with TotalEnergies' public commitment to respect human rights during the development and operation of the Project.⁷ LKL conducted the Human Rights Due Diligence Assessment (HRDD Assessment) between December 2019 and August 2020 and delivered its final report in December 2020.⁸ Sometime between January and March 2021, the Project adopted a Human Rights Due Diligence Action Plan (HRDD Action Plan).⁹ On 12 March 2021, TEPMA1 also approved a general Human Rights Policy.¹⁰ However, shortly after, on 27 March 2021, as a result of the violent attack of the town of Palma,¹¹ TotalEnergies announced the

¹ LKL International Consulting INC., [Mozambique LNG Project Human Rights Due Diligence Assessment](#), December 2020 (HRDD Assessment), p. 1.

² In Mozambique, lands are owned by the State and only its use can be granted by the attribution of a *Direito de uso e Aproveitamento de Terra* (DUAT).

³ Total, [Human Rights Due Diligence Action Plan](#), Mozambique LNG, 2021 (HRDD Action Plan), p. 4; Mozambique LNG Website, [Human rights commitments](#) (“The HRIA identified four key human rights risk areas, or salient issues, namely: grievance redress and access to remedy; respect of labour rights in the supply chain; respect of human rights in security; and, land access and resettlement. Mitigations for the identified risks were embedded in a number of project-related social management plans, including the Stakeholder Engagement Plan (which includes the Community Grievance Mechanism) the Industrial Relations Handbook, the Community-Based Security Plan, and the Resettlement Plan.”). The 2015 HRIA is not publicly available.

⁴ Geneva Academy, RULAC, [Mozambique](#).

⁵ [Total Closes the Acquisition of Anadarko's Shareholding in Mozambique LNG | TotalEnergies.com](#); Mozambique LNG Website, [Project Milestones](#); HRDD Assessment, p. 1, fn. 1.

⁶ The project was conducted by a “team of Human Rights, security and social performance experts from LKL International Consulting Inc. with the collaboration of Triple R Alliance”. See HRDD Assessment, p. 1 and Appendix I, Assessment Team.

⁷ Mozambique LNG Website, [Human rights commitments](#).

⁸ HRDD Assessment, front page, p. 1.

⁹ HRDD Action plan.

¹⁰ TEPMA1, [Human Rights Policy](#), 12 March 2021.

¹¹ See below Chronology and paras 73-75.

suspension of its operations on the ground,¹² and declared *force majeure* in relation to the Project on 26 April 2021.¹³

3. TotalEnergies has not officially resumed the development of the Project since it declared *force majeure* in April 2021. Since the end of 2022, there have been several signs indicating that TotalEnergies is considering formally restarting its operation in Mozambique in 2023.¹⁴ In December 2022, TotalEnergies entrusted the expert Jean-Christophe Rufin with an independent mission to assess the humanitarian situation in Cabo Delgado province.¹⁵ The report was delivered in March 2023 and published on the website of TotalEnergies on 23 May 2023, together with an action plan from the Project partners.¹⁶

| <u>Chronology</u> ¹⁷ | |
|--|--|
| • 2010 | Discovery of natural gas off the coast of northern Mozambique. |
| • 2 December 2014 | The Government of Mozambique passed a Decree Law for Area 1 and Area 4 of the LNG projects providing the legal framework for the development of the Project. ¹⁸ |
| • 2015 | The Project conducted a Human Rights Impact Assessment (2015 HRIA). ¹⁹ |
| • 5 October 2017 | First military attack conducted by members of Al-Shabab group against three police stations in Mocimboa da Praia, Cabo Delgado province. ²⁰ |
| • 21 February 2019 | Attack by members of Al-Shabab against Anadarko convoy, killing one Mozambican driver. ²¹ |

¹² International Crisis Group, [Stemming the Insurrection in Mozambique’s Cabo Delgado](#), Africa Report n°303, 11 June 2021, p. 15.

¹³ Mozambique LNG Website, press release, [Total declares Force Majeure on Mozambique LNG project | TotalEnergies-led Mozambique LNG Project](#), 26 April 2021.

¹⁴ Africa Intelligence, [TotalEnergie relance l’appel d’offres pour le gros oeuvres d’Afungi](#), 24 November 2022 (resumption of the tender process for the construction work on Afungi peninsula); Africa news, [Le Mozambique rouvre un port-clé dans la region gazière de Cabo Delgado](#), 30 November 2022 (reopening of the port of Mocimboa da Praia); Reuters, [Saipem to restart Mozambique LNG project for Total in July](#), 28 February 2023 (Saipem declared to the press that an agreement had been reached between TotalEnergies and them to restart the project in July 2023); TotalEnergies, press release, [Mozambique LNG: TotalEnergies Entrusts Jean-Christophe Rufin with an Independent mission to assess the humanitarian situation in Cabo Delgado Province](#), 2 February 2023 (visit of the Chairman and CEO of TotalEnergies to Cabo Delgado Province); Africa Intelligence, [TotalEnergies and Saipem on hiring spree as Mozambique LNG set to resume](#), 6 March 2023 (restart of recruitment process).

¹⁵ TotalEnergies, press release, [Mozambique LNG: TotalEnergies Entrusts Jean-Christophe Rufin with an Independent mission to assess the humanitarian situation in Cabo Delgado Province](#), 2 February 2023.

¹⁶ TotalEnergies, press release, [TotalEnergies publishes JC. Rufin’s report on human rights in Cabo Delgado, together with the action plan decided by the Mozambique LNG project partners](#), 23 May 2023.

¹⁷ For project milestones, see also [The Resource | TotalEnergies-led Mozambique LNG Project](#); for activities relating to the Mozambique LNG Project, see [Press releases | TotalEnergies-led Mozambique LNG Project](#).

¹⁸ Council of Ministers, [Mozambique Decree 2.2014 Rovuma Basin English](#), 2 December 2014; Shearman&Sterling LLP, [Mozambique’s Decree Law: Worth the Wait](#), 30 January 2015; Clifford Chance, [mozambiques-rovuma-basin-decreelaw-key-uncertainties-and-their-impact](#)., July 2015.

¹⁹ HRDD Action plan, p. 4; Mozambique LNG Website, [Human rights commitments](#).

²⁰ Geneva Academy, RULAC, [Mozambique](#).

²¹ OilPrice.com, [Gunmen Attack Anadarko LNG Project In Mozambique](#), 22 February 2019; Bloomberg, [Anadarko Mozambique Attacked for First Time Amid Insurgency, 21 February 2019](#).

| | |
|------------------------------|--|
| • March 2019 | The Project (and Area 4) signed a Security Memorandum of understanding with the Mozambican Ministry of National Defence and Ministry of the Interior. ²² |
| • 18 June 2019 | \$20 billion final investment decision on the Project. ²³ |
| • August 2019 | Start of the construction of the Project. ²⁴ |
| • July-Dec. 2019 | Implementation of Phase 1 Relocation of communities to Quitunda Village. ²⁵ |
| • Sept. 2019 | TotalEnergies acquired its operated interest in the Project from Anadarko becoming the operator of the Project. ²⁶ |
| • Sept.-Dec. 2019 | TotalEnergies commissioned LKL to update the 2015 HRIA. ²⁷ |
| • Dec. 2019-Aug. 2020 | LKL conducted the HRDD Assessment. ²⁸ |
| • 27 June 2020 | An attack by insurgents on a vehicle belonging to Fenix Construction, a sub-contractor of the Project, took place four kilometres north of Mocimboa da Praia in Cabo Delgado province, approximately 60 kilometres south of the Project construction site. Of the 14 passengers in the vehicle, eight people lost their lives, three managed to escape, and three others remained missing. ²⁹ |
| • 17 July 2020 | TotalEnergies announced the signing of a \$14.9 billion senior debt financing agreement for the Project. ³⁰ |
| • 24 August 2020 | An updated Memorandum of Understanding was signed between TEPMA1 and the government of Mozambique regarding the security of the Project. ³¹ |
| • December 2020 | The security situation led to the temporary demobilisation of the Project workforce. ³² |
| • December 2020 | LKL delivered its report on the HRDD Assessment. |
| • 4 January 2021 | The Project confirmed the suspension of its operations and withdrew non-security personnel. ³³ |
| • Jan. or March 2021 | Adoption by the Project of the HRDD Action Plan (unspecified date). |
| • 12 March 2021 | The Project adopted a Human Rights Policy. |

²² Mozambique LNG Website, [Security | TotalEnergies-led Mozambique LNG Project](#).

²³ TotalEnergies Website, News, [Total Closes the Acquisition of Anadarko's Shareholding in Mozambique LNG](#), 30 September 2019.

²⁴ Mozambique LNG Website, [The Resource | TotalEnergies-led Mozambique LNG Project](#).

²⁵ HRDD Assessment, p. 15.

²⁶ HRDD Assessment, p. 1, fn. 1.

²⁷ HRDD Action Plan, p. 4.

²⁸ HRDD Assessment, p. 1.

²⁹ Zitamar News, [At least eight dead in Mocimboa ambush on construction workers 6 July 2020; Upstream, Eight killed in Mozambique insurgents' ambush on LNG contractor vehicle, 8 July 2020](#); Global Construction Review, [Eight construction workers on Total's Mozambique LNG project gunned down in vehicle](#), 6 July 2020.

³⁰ TotalEnergies Website, News, [Total announces the signing of Mozambique LNG project financing](#), 17 July 2020.

³¹ TotalEnergies Website, News, [Total signs agreement with the Government of Mozambique regarding the security of Mozambique LNG project](#), 27 August 2020.

³² Mozambique LNG Website, Press Release, [Mozambique LNG project resumes construction activities, 24 March 2021](#).

³³ International Crisis Group, [Stemming the Insurrection in Mozambique's Cabo Delgado](#), Africa Report N°303, 11 June 2021, Appendix B: Timeline of Cabo Delgado Conflict, p. 40.

| | |
|--------------------|---|
| • 24 March 2021 | The Project announced that it would progressively resume construction activities at the Afungi site, following the implementation of additional site security measures. ³⁴ |
| • 24 March 2021 | Al-Shabab attacked the town of Palma in Cabo Delgado province. ³⁵ At least 1.193 people were killed or are missing and 209 were kidnapped including children among civilian residents of Palma, as a result of the insurgent attack ³⁶ Hundreds of women and girls were also abducted by Al-Shabab and submitted to sexual abuse and forced marriage. ³⁷ |
| • 27 March 2021 | TotalEnergies announced suspension of its operations. ³⁸ |
| • 26 April 2021 | TotalEnergies declared <i>force majeure</i> on the Project. ³⁹ |
| • 12 December 2022 | Signature of a Memorandum of Understanding between the Ministry of Justice, Constitutional and Religious Affairs (MJCRA) and TEPMA 1 aiming to establish the implementation of a Human Rights Intervention Plan for the Afungi region, in Cabo Delgado Province. ⁴⁰ |
| • December 2022 | TotalEnergies entrusted Jean-Christophe Rufin with an independent mission to assess the humanitarian situation in Cabo Delgado province. ⁴¹ |
| • 3 February 2023 | Chairman and CEO of TotalEnergies visited Cabo Delgado province to review the security and humanitarian situation. ⁴² |
| • 23 May 2023 | Publication by TotalEnergies of Jean-Christophe Rufin’s report on the socioeconomic, humanitarian, and human rights situation in the Palma-Afungi-Mocimba area (Cabo Delgado) and of a related action plan adopted by the Project partners. ⁴³ |

³⁴ See Mozambique LNG Website, Press Release, [Mozambique LNG project resumes construction activities, 24 March 2021](#).

³⁵ Insecurity Insight, [Mozambique Alert: Palma](#), 26 March 2021; Insecurity Insight, [Vigil InSight Situation Report of 15 March 2021](#).

³⁶ Alex Perry, [Palma Massacre](#), 19 June 2023.

³⁷ HRW, Mozambique: [Hundreds of Women, Girls Abducted](#), 7 December 2021.

³⁸ International Crisis Group, [Stemming the Insurrection in Mozambique’s Cabo Delgado](#), Africa Report N°303, 11 June 2021.

³⁹ Mozambique LNG Website, press release, [Total declares Force Majeure on Mozambique LNG project | TotalEnergies-led Mozambique LNG Project](#), 26 April 2021.

⁴⁰ Mozambique LNG Website, press release, [MJCRA and TotalEnergies Sign Agreement for Human Rights Intervention in Palma](#), 12 December 2022.

⁴¹ TotalEnergies, press release, [Mozambique LNG: TotalEnergies Entrusts Jean-Christophe Rufin with an Independent mission to assess the humanitarian situation in Cabo Delgado Province](#), 2 February 2023.

⁴² TotalEnergies, press release, [Mozambique LNG: TotalEnergies Entrusts Jean-Christophe Rufin with an Independent mission to assess the humanitarian situation in Cabo Delgado Province](#), 2 February 2023.

⁴³ TotalEnergies, press release, [TotalEnergies publishes JC. Rufin’s report on human rights in Cabo Delgado, together with the action plan decided by the Mozambique LNG project partners](#), 23 May 2023.

II. Objective and Methodology

4. Justiça Ambiental!, Friends of the Earth Europe, Friends of the Earth US and Milieudefensie contracted Uprights to conduct an independent review of TotalEnergies human rights due diligence (HRDD) process in relation to the Project. The review of the HRDD actions of the Project focused on three key documents: (1) the HRDD Assessment of the Project conducted by the consulting firm LKL in 2020; (2) The HRDD Action Plan and, (3) the Human Rights Policy, both adopted by the Project in the first quarter of 2021 following the HRDD Assessment. The result of this review is presented in this report.
5. HRDD is the process of identifying, preventing, mitigating and addressing human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks.⁴⁴ The purpose of HRDD is to ensure that businesses fulfil their responsibility to respect international human rights standards which entails avoiding infringements of human rights of others and addressing the adverse human rights impacts that businesses cause or contribute to.⁴⁵ Businesses responsibility to respect international human rights standards is codified in the United Nations Guiding Principles on Business and Human Rights (UNGP).⁴⁶ The UNGP are not a treaty but international guidelines for both States and companies to ensure that human rights are respected in relation to business operations. They were endorsed by the Human Rights Council in 2011 and are considered as “the authoritative global reference point for business and human rights”.⁴⁷ In relation to businesses, UNGP Principles 15 to 22 specifies that businesses should have in place a policy commitment to respect human rights, an HRDD process and processes to remedy adverse human rights impacts they cause or contribute to. An HRDD process involves: (1) an impact assessment, namely assessing actual and potential human rights impacts relying on consultations with relevant stakeholders; (2) integrating and acting upon the findings of the impact assessment across the business internal functions and processes and by taking appropriate actions; (3) tracking the effectiveness of the responses; and (4) communicating on how impacts are addressed. Because conducting HRDD is a complex process, numerous best practices and implementation guidelines emerged over the years to assist businesses and other relevant actors in carrying meaningful HRDD process that aligned with UNGP.⁴⁸
6. In recent years, the UN Working Group on human rights and transnational corporations and other business enterprises (Working Group on Business and Human Rights), building on UNGP and other existing resources, has specified the expectation for businesses operating in conflict-affected areas to conduct heightened HRDD and developed best practices to follow for its implementation.⁴⁹

⁴⁴ The UN Working Group on the issue of human rights and transnational corporations and other business enterprises, [The UN Guiding Principles on Business and Human Rights – An introduction](#), p. 3.

⁴⁵ OHCHR, [Guiding Principles on Business and Human Rights](#), 2011 (UNGP), Principle 11.

⁴⁶ UNGP identifies three component of this responsibility which can be summarized as follows: “First, companies must institute a policy commitment to meet the responsibility to respect human rights. Second, they must undertake ongoing human rights due diligence to identify, prevent, mitigate, and account for their human rights impacts. Finally, they must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.” See The UN Working Group on Business and Human Rights, [The UN Guiding Principles on Business and Human Rights – An introduction](#), p. 3.

⁴⁷ OHCHR, [A Guide for Business, How to Develop a Human Rights Policy](#), 2011, p. 5.

⁴⁸ See for instance, OHCHR, [A Guide for Business, How to Develop a Human Rights Policy](#); OHCHR, [The corporate responsibility to respect human rights, an interpretive guide](#), 2012; Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 6.

⁴⁹ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, [Business, human rights and conflict-affected regions: towards heightened action](#), A/75/212, 21 July 2020 (UN Working Group’s

7. Since the adoption of UNGP a large body of other standards have emerged at the international level in the area of business and human rights at the initiative of a variety of actors including States, international organisations and in particular the OECD,⁵⁰ civil society and businesses themselves. Notably, it includes the International Finance Corporation (IFC) Environmental and Social Performance Standards⁵¹ and the Voluntary Principles on Security and Human Rights (VPSHR), both referred to in the Project’s HRDD Assessment.⁵² Whilst approaches and strategies behind those standards are multiple, they all aim at ensuring the respect of international human rights by businesses and are contributing to the emergence of a more and more compelling body of rules.
8. This report includes an examination of the methodology and comprehensiveness of the HRDD Assessment. To conduct its HRDD Assessment, LKL relied on: (1) the “full spectrum” of human rights using the UNGP framework; (2) the guidance to conduct human rights impact assessment proposed by the Danish Institute for Human Rights;⁵³ (3) TotalEnergies’ General Specification 103 on “Human Rights Impact Assessment (HRIA)” (GS 103 on HRIA);⁵⁴ (4) the IFC Environmental and Social Performance Standards; and (5) the VPSHR. The review of the HRDD Assessment was conducted in light of the standards and best practices relied upon by LKL itself.
9. This report further compares the alignment of the HRDD Action Plan and the Human Rights Policy with the recommendations contained in the HRDD Assessment. Finally, it provides a review of the HRDD documents in light of TotalEnergies actions on the ground, the human rights situation in Cabo Delgado Province, and, in particular, the ongoing armed conflict that started in 2017. To assess TotalEnergies’ HRDD actions and the human rights situation in Cabo Delgado Province, the report relies on: (1) information publicly available from TotalEnergies; (2) documentation conducted, and information compiled by the organisations that commissioned the report; and (3) public documents from other sources considered credible and reliable.
10. The Report first provides an overview of the three key HRDD documents of the Project (III). It then presents an analysis of the most significant problematic issues identified in the Project HRDD process (IV).

2020 Report). This report was transformed in 2022 into a guide to conduct heightened human rights due diligence for business in conflicts-affected contexts. See OHCHR-UNDP, [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts – A Guide](#), 2022.

⁵⁰ See OECD, [Guidelines for Multinational Enterprises on Responsible Business Conduct](#), last updated on 8 June 2023.

⁵¹ IFC is an international institution member of the World Bank Group. IFC developed an Environmental and Social Performance Standards that define IFC clients’ responsibilities for managing their environmental and social risks. See [IFC Performance Standards on Environmental and Social Sustainability](#).

⁵² VPSHR are principles aiming to guide companies on providing security for their operations while respecting human rights. They were drafted in 2000 by the Voluntary Principles Initiative who is composed of governments, international non-governmental organizations, and companies. TotalEnergies is a member of the initiative, but Mozambique is not. It includes the necessity to conduct a risk assessment and regulate interactions between companies and public security as well as with private security. See The Voluntary Principles Initiative, [The Voluntary Principles Initiative: Voluntary Principles on Security and Human Rights](#).

⁵³ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 6. (“The purpose of this Guidance and Toolbox is to provide those who are involved in conducting, commissioning, reviewing or monitoring Human Rights Impact Assessments (HRIAs) of business projects and activities with guidance and practical tools, with a view to ensuring that such assessments apply a human rights-based approach and are consistent with the United Nations Guiding Principles on Business and Human Rights”)

⁵⁴ Total’s General Specification 103, [Human Rights impact assessment \(HRIA\)](#), August 2015 (GS 103 on HRIA). This document is TotalEnergies internal guidelines to conduct HRIA.

III. Presentation of the Project’s Human Rights Due Diligence

11. This section provides an overview of the HRDD steps taken by the Project since TotalEnergies became the operator of the Project in September 2019. It includes a presentation of the three key documents under scrutiny in this report namely: (1) the HRDD Assessment of the Project conducted by the external consulting firm LKL in 2020; (2) the HRDD Action Plan and (3) the Human Rights Policy, both adopted by the Project following the HRDD Assessment in the first quarter of 2021.

1. The HRDD Assessment

12. After TotalEnergies became the operator of the Project, it contracted in the last quarter of 2019 an external consultancy firm LKL to update the HRIA initially conducted by the Project in 2015.⁵⁵ LKL conducted the HRDD Assessment between December 2019 and August 2020 and delivered its 47-page long final report in December 2020.⁵⁶ The HRDD Assessment is publicly available on the Project website.

13. The HRDD Assessment includes (1) an updated HRIA; (2) a Voluntary Principles on Security and Human Rights (VPSHR) Assessment; and (3) a Social Performance Assessment.⁵⁷ The HRDD Assessment’s methodology included desk research, meetings in Paris, a mission in Mozambique, analysis and reporting.⁵⁸ Because of travel restrictions related to the Coronavirus pandemic, a second planned visit to Mozambique could not take place creating “limitations” in relation to the assessment team’s “engagement with affected stakeholders and civil society organizations in Mozambique”.⁵⁹

14. The HRDD Assessment identifies six salient human rights issues - defined as “those that risk the most severe negative impact to people as a result of the company’s activities or business relationships”: (1) Security (community security and interaction with public security providers); (2) Community well-being (resettlement, livelihoods and community health and safety); (3) Women’s rights and gender equality; (4) Project-induced-in-Migration; (5) Workers’ rights; and (6) Access to remedy.⁶⁰ Furthermore, the HRDD Assessment lists a number of other issues at the end of the report that were not prioritized as salient at this point of time but that were considered during the HRDD Assessment.⁶¹

15. All human rights impacts on people, not only the most severe ones, need to be addressed in a HRIA. However, where it is not possible to address all impacts simultaneously, the impacts should be

⁵⁵ HRDD Action plan, p. 4 (2015 HRIA identified 4 key human rights risk areas: grievance redress and access to remedy; respect of labor rights in the supply chain; respect of human rights in security; and land access and resettlement); Mozambique LNG Website, [Human rights commitments](#).

⁵⁶ HRDD Assessment, front page, p. 1.

⁵⁷ HRDD Assessment, pp. 1, 4. According to the Danish Institute for Human Rights, conducting a HRIA can be done as a stand alone or as in this case, together with other types of impact and risk assessment as part of an integrated approach. Both approaches have advantages and inconveniences depending on the circumstances. See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp. 23-28.

⁵⁸ HRDD Assessment, p. 5.

⁵⁹ HRDD Assessment, pp. 5, 7.

⁶⁰ HRDD Assessment, p. 8.

⁶¹ HRDD Assessment, pp. 8, 30-33.

addressed in order of priority based on their “severity” assessed in light of the scope, scale and irremediability of the negative impact.⁶² There is “no universal threshold for when impacts are “severe” and it is a case by case assessment.”⁶³ The HRDD Assessment appears to have followed this logic of prioritization while also mentioning other human rights issues.

16. However, the assessment team also noted that because it was not able to conduct all intended engagement with affected stakeholders and civil society organisations in Mozambique due to COVID-19, “insufficient verification and stakeholder engagement activities have been undertaken to make a salience assessment in relation to the actual impacts”.⁶⁴ As explained in detail below, this acknowledgement from the assessment team led to conclude that the HRDD Assessment is incomplete and contains flaws that have not been properly addressed by TotalEnergies.⁶⁵
17. For each of the six salient issues identified, the HRDD Assessment: (1) identifies the key human rights standards applicable to the issue; (2) provides a general analysis of the issue; and (3) provides some recommendations for the Project HRRD process (headings “next steps”). Nevertheless, for all the salient issues assessed in this report, the HRDD Assessment indicates that it provided only “a high-level overview and is not intended to be exhaustive”.⁶⁶ In practice, it means that the HRDD Assessment often contains inadequate explanations and does not provide the details of its reasoning and conclusions. This lack of specificity makes it difficult for external observers to assess the comprehensiveness of the HRDD Assessment and created some limitations in this review process.⁶⁷
18. Finally, the HRDD Assessment includes at the end a HRDD Action Plan Framework aiming to assist in the establishment of a HRDD Action Plan for the Project that aligned with UNGP.⁶⁸

2. The HRDD Action Plan

19. The Project’s HRDD Action Plan is publicly available on the Project website. The date of its adoption is unclear, but it seems to have been adopted in January 2021 given that the timeline for its implementation starts in January 2021.⁶⁹ The version available on the website seems to be from March 2021 as shown by the plan tracker attached in Appendix I.⁷⁰ The HRDD Action Plan relies largely on the HRDD Action Plan Framework proposed by LKL in the HRDD Assessment. It also includes implementation charts with a timeline throughout 2021.⁷¹

⁶² See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp. 89-90.

⁶³ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 92.

⁶⁴ HRDD Assessment, p. 8.

⁶⁵ See below, para. 56.

⁶⁶ HRDD Assessment, pp. 9, 13, 18, 19, 21, 23, 29.

⁶⁷ For instance, the HRRD Assessment indicates that the Project has established “multiple grievances channels for community members, workers and (sub) contractors” but does not provide an explanation on what those grievances mechanisms actually cover and how they operate. Moreover, the HRDD Assessment seems to have identified some issues with several of those grievances mechanisms as it recommends strengthening (1) accessibility for women and the processes for managing grievances related to harassment or gender-based violence and (2) the procedures for raising grievances against the JTF. However, because the HRDD Assessment is not explaining what the issues were or specifying what needed to be strengthened in the process, it was not possible to provide a useful assessment of the salient issue of Access to remedy. See HRRD Assessment, para. 30.

⁶⁸ HRDD Assessment, pp.34-35, Appendix II, HRDD Action Plan Framework.

⁶⁹ HRDD Action plan, Appendix.

⁷⁰ HRDD Action plan, Appendix I -HRDD Monitoring Framework.

⁷¹ HRDD Action plan, p. 5.

20. Although presented in a slightly different format than the template proposed by the HRDD Assessment, the HRDD Action Plan incorporates all the salient issues identified by the HRDD Assessment.⁷² It also includes other issues, such as Emergency Response Plan, Occupational Health and Safety, Direct Workers, and Environment, as recommended by the HRDD Assessment.⁷³
21. In terms of implementation, the HRDD Action Plan assigns each of the salient issues to a functional entity and a specific manager within the Project. Each manager is given a list of HRDD activities to complete for their areas of responsibility.⁷⁴ It adds that the Human Rights Lead - to be recruited - will have the responsibility for monitoring the ongoing implementation of the HRDD Action. A HRDD Steering Committee should also be established to “oversee implementation of the HRDD Action Plan” during quarterly meetings.⁷⁵ The HRDD Assessment suggested, in addition to the Steering Committee, the creation of a “Strategic Above-Ground Risk Working Group” to provide a coordinated approach for above-ground risks including security, human rights, and social performance.⁷⁶ However, the HRDD Action Plan does not mention the establishment of such a working group.
22. The Project is using a monitoring matrix (Appendix A to H) that contains a table for each salient issue with all the actions to be undertaken as well as a proposed timeframe for implementation. It also includes a monthly progress tracker for the first three months of 2021. However, progress is tracked in percentage without an explanation of what it practically represents. It is also very partial and does not contain all the issues covered in the HRDD Action Plan. As a result, almost nothing can be drawn from it by an external reader.⁷⁷
23. The HRDD Action Plan provides for the drafting of an annual report to describe implementation of the plan and to “provide an update regarding the delivery of actions addressing the recommendations for key salient issues.”⁷⁸ It adds that “the final report will be made available to internal and external stakeholders in both English and Portuguese”, be presented to Mozambican stakeholders and be disclosed on the Project website.⁷⁹ No updated version of the HRDD Action Plan tracker was posted on the Project website since March 2021. Nor is there a publicly available annual report. This suggests that the implementation of the HRDD Action Plan has – at least for a large part – been put on hold since TotalEnergies declared force majeure in April 2021.

⁷² HRDD Action plan, pp.5-6.

⁷³ HRDD Action plan, pp.6-7 compare with HRDD Assessment pp. 31-33.

⁷⁴ HRDD Action plan, pp.7-8.

⁷⁵ HRDD Action Plan p. 9.

⁷⁶ HRDD Assessment, p. 34.

⁷⁷ HRDD Action plan, Appendix I.

⁷⁸ HRDD Action Plan, p. 9.

⁷⁹ HRDD Action Plan, pp.9-10 (“The Human Rights Lead will establish and maintain relationships with Mozambican stakeholders including the Mozambican Human Rights Commission, non-governmental and civil society organization with an interest in Mozambique LNG Project management of human rights impacts and risks and, the Independent CSO/NGO Monitoring Platform (ICSMP). In addition, periodic updates of the progress in implementing the HRDD Action Plan will be provided through the Project’s monthly CSO/NGO engagement meetings. As described above the annual progress report will be made available in English and Portuguese. A specific meeting to present the report will be arranged with Mozambican Human rights stakeholders. The report will also be disclosed on the project website, specifically on the human rights and security page.”)

3. The Human Rights Policy

24. The Project adopted a Human Rights Policy on 12 March 2021.⁸⁰ This one-page document is publicly available on the website of the Project. In December 2020, the HRDD Assessment noted that the Project was working on the adoption of a stand-alone Human Rights Policy.⁸¹ The HRDD Assessment does not provide further guidance to the Project on the form or the content that this human rights policy should take in order to respect international best practices. However, it highlighted, as an important step for developing this key document in a rights-based manner, the need to consult and engage with affected stakeholders and civil society organizations. According to the HRRD Assessment, the Project committed to do so before finalizing its policy.⁸²
25. UNGP Principle 15 provides that in order to meet their responsibility to respect human rights, business enterprises should have in place “a policy commitment to meet their responsibility to respect human rights”. The aim of the policy commitment is to ensure that businesses “embed their responsibility to respect human rights throughout the entire business”, and it sends a clear signal to internal and external stakeholders that the business is striving toward that goal and takes its commitment seriously.⁸³ While the policy commitment can take many forms, UNGP Principle 16 specifies that it should meet the following requirements: the policy “(a) Is approved at the most senior level of the business enterprise; (b) Is informed by relevant internal and/or external expertise; (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.”
26. The adoption of a stand-alone Human Rights Policy appears to be a positive step taken by the Project in terms of respecting UNGP. In general terms, the Human Rights Policy appears to respect the minimum requirements required by international best practices. The document is signed by the Director General of TEPMA1 and is publicly available. It contains notably a statement to respect internationally recognized human rights standards; identifies some specific human rights issues particularly important in relation to the Project; explains how the policy will be implemented in terms of operational policies and procedures; and includes the Project’s human rights expectations *vis à vis* their employees and business partners.⁸⁴
27. One area of concern is the absence of information about the drafting and adoption process of the Human Rights Policy as it does not specify whether the Project consulted with affected stakeholders and civil society organizations before finalizing the policy. In order to ensure that the policy commitment is well informed and perceived as credible by relevant external stakeholders, international best practices suggest that to elicit feedbacks on the draft policy from relevant stakeholders can bring important input on the human rights risks areas to consider and increase

⁸⁰ TEPMA1, [Human Rights Policy](#), 12 March 2021

⁸¹ HRDD Assessment, p. 35.

⁸² HRDD Assessment, p. 35.

⁸³ OHCHR, A guide for Business, How to Develop a Human Rights Policy, p. 4. See also Maddalena Neglia, Guiding Principle 16: Policy Commitments, p. 119, para. 16.02

⁸⁴ Compare UNGP 16 and OHCHR, A guide for Business, How to Develop a Human Rights Policy with the Human Rights policy and TEPMA1, [Human Rights Policy](#), 12 March 2021.

chances that engaged stakeholders become allies during the later due diligence phases.⁸⁵ The Human Rights Policy does not provide any information about its adoption process and whether the Project engaged with relevant stakeholders. As explained below, it is likely that, despite specific recommendations of the HRDD Assessment in this regard, stakeholder engagement did not take place for the adoption process of the Human Rights Policy.⁸⁶

28. Finally, studies assessing business practices in light of UNGP noted that there seems to be some important disconnect between commitment and process from businesses on the one hand and actual performance and results on the ground the other.⁸⁷ Thus it is only by assessing the HRDD process – in particular, the HRDD Assessment, the HRDD Action Plan and the human rights situation on the ground – that one can determine whether the Project’s public commitment in its Human Rights Policy to respect human rights in all aspects of its operations, is truly translating into practice. The next section of the report aims at reviewing this HRDD process.

⁸⁵ OHCHR, A guide for Business, How to Develop a Human Rights Policy, p. 12; OHCHR, the corporate responsibility to respect human rights, an interpretive guide, 2012, p. 29.

⁸⁶ See below, para. 60.

⁸⁷ Word Benchmarking Alliance, [Corporate Human Rights Benchmark](#), 2020, p. 3 (“The second challenge is arguably more pernicious and relates to the disconnect between commitments and processes on the one hand and actual performance and results on the other. Even for those companies with robust commitments and management systems, these do not automatically translate at a practical level, with allegations of severe human rights violations regularly raised, even against some of the highest scoring companies”), 9-10 (“Even though we are seeing encouraging progress from a number of companies, with some meeting most of the fundamental requirements of policy commitments and human rights due diligence, there seems to be a concerning disconnect between these commitments and processes and impacts on the ground. Of the 229 companies assessed, 104 had at least one allegation of a serious human rights impact meeting the CHRB severity threshold, with 1 Key finding Corporate Human Rights Benchmark 9 225 allegations reported in total. Companies engaged in a dialogue with stakeholders in less than a third of cases and provided effective remedy that was satisfactory to the victims in only 4% of cases.”) TotalEnergies is one of company assessed by the Corporate Human Rights Benchmark that year.

IV. Problematic Areas in HRDD process

29. This section provides an analysis of the problematic issues identified in the Project’s HRDD process. It focuses on the human rights situation in Cabo Delgado Province in light of the armed conflict. The report does not aim to be exhaustive and as a result, does not necessarily identify all the potential problematic areas in the HRDD process or the areas for which no specific issues were identified.
30. The report identifies the following problematic areas in the HRDD process: (1) the belated timing of the HRDD Assessment; (2) lacunae with stakeholder’s engagement process; (3) the HRDD process’ disregards of the armed conflict; and (4) the failure to assess the resettlement plan to the situation on the ground. Each section explains principles and standards on business and human rights relevant to the problematic area and then analyses the facts in question to assess the HRDD process.

1. Belated Timing for the HRDD Assessment

31. TotalEnergies only contracted LKL to conduct the HRDD Assessment in the last quarter of 2019, after officially becoming the operator of the Project.⁸⁸ As explained in this section, the timing of the HRDD Assessment appears to be tardy given the changing circumstances in the Project area and in light of international standards and best practices.
32. According to UNGP Principle 17(c), HRDD “should be ongoing, recognizing that the human rights risks may change over time as ... operating context evolve.” HRIA should be conducted “at regular intervals” considering the “dynamic” nature of human rights situations.⁸⁹ For example, companies should assess human rights impacts of their operations “prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.”⁹⁰
33. Ongoing HRDD is even more pertinent in conflict-affected areas where “businesses should ensure that they have adequate processes in place to respond to changing circumstances and the corresponding impacts of their actions.”⁹¹ The Danish Institute for Human Rights points out that “critical project gateways” and “significant changes in social and political circumstances” call for re-evaluation of existing HRIA results.⁹² It also recommends that businesses undertake HRIA when beginning a “high-impact, high-risk” large construction project.⁹³

⁸⁸ HRDD Action Plan, p. 4.

⁸⁹ [UNGP](#), Commentary to Principle 18, p. 20.

⁹⁰ [UNGP](#), Commentary to Principle 18, p. 20. See also, OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#), 2018, p. 26 (“Reassess impacts at regular intervals as needed: prior to major decisions or changes in the activity (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or in anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship”).

⁹¹ UN Working Group’s 2020 Report, para. 52.

⁹² Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 19.

⁹³ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 18.

34. As to the decision to undertake an HRIA, TotalEnergies GS 103 on HRIA states that this decision can happen “at any point in time.”⁹⁴ It recommends that “the decision be taken as early as possible in the lifetime of an actual or potential Project.”⁹⁵ It adds that “internal or external circumstances may change and warrant an HRIA to be carried out in any phase of the Project and so the need to conduct an HRIA should be reevaluated at key project milestones.”⁹⁶
35. Anadarko was the first operator of the Project and held 26.5% operated interest in the Project.⁹⁷ On 3 May 2019, TotalEnergies concluded an agreement with Occidental (the company that acquired Anadarko⁹⁸) stipulating that Occidental would sell to TotalEnergies Anadarko’s assets in Africa, including its shares in the Mozambique LNG Project.⁹⁹ On 30 September 2019 TotalEnergies acquired 26.5% operated interest of Anadarko for \$ 3.9 billion and became the operator of the Project.¹⁰⁰ The final investment decision for the Project was taken on 18 June 2019 when Anadarko was still the operator of the Project but after it was clear that TotalEnergies would buy Anadarko’s shares from Occidental to become the next operator of the Project with the highest stakes.
36. The Project conducted its first HRIA in 2015.¹⁰¹ There is no indication that Anadarko updated this HRIA before the final investment decision. TotalEnergies did not carry out any HRIA before its deal with Occidental in May 2019, nor before becoming the operator of the Project in September 2019, despite international standards recommending doing so prior to major decisions or changes in the operation of business. TotalEnergies only contracted LKL to conduct the HRDD Assessment in the last quarter of 2019, after becoming the operator of the Project.¹⁰²
37. Furthermore, the Project covers a large area of construction that includes a wide range of components including among others some offshore gas wells, onshore LNG facilities, LNG marine terminal, an airstrip, gas turbines, and water and waste management infrastructures.¹⁰³ The construction started in August 2019,¹⁰⁴ and the Project is planning to extract up to 43 million tons per annum of natural gas.¹⁰⁵ In light of international standards and best practices, it is problematic that before starting the development of such a high-impact, high-risk large construction project, the Project and the companies involved (the previous operator, Anadarko, and the current one, TotalEnergies) did not conduct a new HRIA re-evaluating the results of the 2015 HRIA earlier in the process.

⁹⁴ GS 103 on HRIA, p. 7.

⁹⁵ GS 103 on HRIA, p. 7.

⁹⁶ GS 103 on HRIA, p. 7.

⁹⁷ Offshore Technology, [Mozambique Offshore Area 1 Project, Mozambique](#), 4 June 2021.

⁹⁸ U.S. Securities and Exchange Commission, Press Release, “[Occidental Completes Acquisition of Anadarko](#)”, 8 August 2019.

⁹⁹ TotalEnergies, News, [Total Closes the Acquisition of Anadarko’s Shareholding in Mozambique LNG](#), 30 September 2019 .

¹⁰⁰ TotalEnergies, News, [Total Closes the Acquisition of Anadarko’s Shareholding in Mozambique LNG](#), 30 September 2019 ; Project’s website, [Project Milestones](#); HRDD Assessment p. 1, fn. 1.

¹⁰¹ 2015 HRIA is not publicly available. HRDD Action Plan, p. 4; Mozambique LNG website, [Human Rights Commitments](#).

¹⁰² HRDD Action Plan, p. 4.

¹⁰³ [Mozambique LNG, Environmental, Social and Health Impact Assessment \(ESHIA\) Executive Summary and Update](#), p. 11. For photos and additional information about the construction area, see [Environmental Justice Atlas, Afungi LNG airport and construction camps, Mozambique](#).

¹⁰⁴ Mozambique LNG Website, [Project Milestones](#).

¹⁰⁵ Mozambique LNG Website, [About the Project](#).

38. The absence of a timely HRDD Assessment appears particularly problematic given the drastic change in operating environment since the 2015 HRIA. An insurgent group emerged in the region and conducted its first military attack against three police stations in Mocimboa da Praia, Cabo Delgado province on 5 October 2017.¹⁰⁶ There has been an ongoing non-international armed conflict between the Government of Mozambique and the armed group in the region since then.¹⁰⁷ The existence of armed conflict and changes in the social and political circumstances should have triggered TotalEnergies to re-evaluate the 2015 HRIA results prior to its decision to acquire the majority stake in the Project. However, TotalEnergies did not conduct such a HRDD Assessment at all beforehand, even less updated it with a heightened HRDD required in light of the existing armed conflict.¹⁰⁸

2. Lacunae with stakeholder engagement

39. Stakeholder engagement is at the core of a HRIA as it enables businesses to assess their human rights impacts accurately. UNGP Principle 18(b) recommends that the process of identification and assessment of any potential or actual human rights impacts with which business enterprises may be involved should include “meaningful consultation with potentially affected groups and other relevant stakeholders.” Stakeholder engagement “should occur throughout the impact assessment process, as well as for the life of the business project or activities.”¹⁰⁹

40. In terms of the methodology for stakeholder engagement during the HRIA, the Danish Institute for Human Rights recommends to (1) identify and map the relevant stakeholders to engage with; (2) engage with stakeholders; (3) being transparent with the potential limitations in engaging; and, (4) follow an appropriate methodology when engaging taking into account specificities of individuals or groups who may be vulnerable or marginalized.¹¹⁰ To ensure a meaningful engagement and the quality of the findings of the HRIA, sufficient resources and time should be allocated for the data collection phase.¹¹¹

41. Stakeholder mapping should give special attention to rights-holders namely those who are actually or potentially adversely affected by the business project or activities.¹¹² The Danish Institute for Human Rights emphasizes the importance of effective representation during stakeholder engagement to ensure that the assessment teams adequately reflect the perspectives of vulnerable individuals or groups.¹¹³ Special attention should be given to individuals or groups at high risk of vulnerability or marginalization, keeping in mind that women and men may face different risks as

¹⁰⁶ Geneva Academy, RULAC, [Mozambique](#).

¹⁰⁷ Geneva Academy, RULAC, [Mozambique](#).

¹⁰⁸ See below, paras. 89-94.

¹⁰⁹ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 119.

¹¹⁰ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp. 116-153.

¹¹¹ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 62. In practice, the assessment team shall collect data to be used throughout the HRIA through fieldwork, interviews, and other types of stakeholder engagement. Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 62.

¹¹² Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 54. Stakeholders to be engaged in a HRIA shall include rights-holders, duty-bearers (actors who have human rights duties or responsibilities towards rights-holders) and other relevant parties that can assist in the assessment of human rights impacts. See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp. 117-118.

¹¹³ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp. 69, 139-142.

a result of business projects or activities.¹¹⁴ Businesses should directly consult potentially affected stakeholders “in a manner that takes into account language and other potential barriers to effective engagement.”¹¹⁵

42. Data collection and stakeholder engagement in conflict-affected contexts, like in the Cabo Delgado Province, present unique challenges and practical difficulties for the assessment teams, such as restricted access, threats to safety of the members of the assessment team and participants, and presence of security personnel or army.¹¹⁶ In such contexts, the Working Group on Business and Human Rights emphasizes “the need for robust stakeholder engagement” to adequately respond to changing circumstances and the corresponding impacts of actions taken by businesses.¹¹⁷ Furthermore, it calls for a “broad” stakeholder engagement “in order to mitigate the lack of information, the polarization and the high level of mistrust which usually exist among groups and communities, and to get a sense not only of the facts but of the perception of the situation by different stakeholders.”¹¹⁸ The assessment teams should adopt conflict-sensitive approach to data collection.¹¹⁹
43. GS 103 on HRIA acknowledges that in conflict-affected contexts, direct consultation may not be possible due to pressure on companies not to engage with particular stakeholders such as armed groups, human rights NGOs, and opposition parties.¹²⁰ If that is the case, the assessment team should consider alternative ways such as contacting embassies and civil society organizations to be intermediary or organizing group meetings.¹²¹ GS 103 on HRIA requires that relevant stakeholders should receive a presentation of final findings of the HRIA, that their comments should be noted in the final report, and that a summary of the findings of the HRIA should be made available to stakeholders.¹²²
44. The following sections analyse (A) the lack of effective representation in stakeholder engagement and transparency in its methodology in the context of the HRDD Assessment; (B) the adoption of a HRDD Action Plan based on incomplete HRDD Assessment; and (C) the lack of participation in the development of the HRDD Action Plan and Human Rights Policy.

¹¹⁴ [UNGP](#), Commentary to Principle 18, p. 20; Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 126 (“Care should be taken to identify any differences in how impacts are experienced by women, men and children, including through taking gender-sensitive and child-rights approaches to engagement.”).

¹¹⁵ [UNGP](#), Commentary to Principle 18, p. 20. IFC also requires that the extent and level of engagement with local communities directly affected by a particular project is commensurate with the project’s risks and adverse impacts and that the consultation process should be tailored to language preferences of affected community members, their decision-making process, and the needs of vulnerable groups. [IFC Performance Standards on Environmental and Social Sustainability](#), Performance Standard 1, paras 25, 30.

¹¹⁶ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp.71-72.

¹¹⁷ UN Working Group’s 2020 Report, para. 52.

¹¹⁸ UN Working Group’s 2020 Report, para. 53.

¹¹⁹ It shall “avoid the appearance of only gathering information from one ethnic or religious group, one side of the conflict, or groups who stand to benefit from the company’s presence.” See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 72.

¹²⁰ GS 103 on HRIA, p. 18.

¹²¹ GS 103 on HRIA, p. 18.

¹²² GS 103 on HRIA, p. 30.

A. Lack of effective representation in stakeholder engagement and transparency in its methodology in the context of the HRDD Assessment

45. The HRDD Assessment presents all the stakeholders consulted by the LKL assessment team during its only field visit in Mozambique in January 2020 by location and theme in Table 2.1.¹²³ There are two main concerns with respect to this Table and the stakeholder engagement conducted by the assessment team: lack of effective representation in stakeholder engagement and lack of transparency regarding the methodology used to engage with affected stakeholders. These concerns lead to the question of the level of stakeholder engagement itself and, as a result, the sufficiency and the quality of the information and data collected by the LKL assessment team to conduct the HRDD Assessment.
46. In relation to the lack of effective representation, stakeholder engagement as presented in Table 2.1 is deficient in many aspects. To describe community members, it uses general terms such as “community members in Senga”, “resettled community members in Quitunda”, “vulnerable people in Quitunda” and “intertidal collectors in Quitunda” without providing further information on their number, their gender, sub-groups, if any, and the percentage in the entire stakeholder engagement process.¹²⁴
47. Moreover, it is not clear from Table 2.1 whether the assessment team met community members who were still waiting to be relocated to Quitunda Village. Because they are not explicitly mentioned in Table 2.1 and that the HHRD Assessment indicates that the focus of the assessment was primarily on those who were already resettled to Quitunda between July and December 2019,¹²⁵ the HRDD Assessment seems to have left out stakeholder engagement with communities who have yet to be resettled. The HRDD Assessment did not explain the reasons for this exclusion.¹²⁶
48. Notably, the assessment team did not collect data from rights-holders affected by the armed conflict who are not part of the resettlement process. Themes discussed included social performance, human rights, and resettlement, but not the conflict.¹²⁷ Although the conflict-affected contexts require “robust” and “broad” stakeholder engagement, the assessment team did not collect information to gain insight into the perception of the conflict and related potential human rights impacts on different stakeholders, including the communities already affected by the conflict for several years who are not part of the resettlement process.¹²⁸

¹²³ HRDD Assessment, pp. 5-6.

¹²⁴ HRDD Assessment, p. 6. According to the [Project's website](#), intertidal collectors mainly consist of women. However, the HRDD Assessment does not indicate whether “intertidal collectors in Quitunda” with whom the Assessment team engaged included women.

¹²⁵ HRDD Assessment, p. 15.

¹²⁶ See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 126 (“It is important to take the time to engage and consult with as many different rights-holders within communities as possible in order to identify precisely who is affected, how and to what degree. It may not always be possible to include everyone at each stage of the assessment or to ensure that all views are represented. In these cases, consultation with legitimate representatives could be a viable solution. *If some groups are left out, the reasons for this must be justified and clearly stated in the assessment findings.*”) (Emphasis added).

¹²⁷ See Table 2.1 in HRDD Assessment, pp.5-6. “Security and VPSHR” were amongst the topics that were discussed but stakeholders mainly consisted of security managers and did not include any affected community members.

¹²⁸ See UN Working Group’s 2020 Report, paras 52-53.

49. In addition, there is no indication in Table 2.1, that the assessment team engaged with other relevant parties that can assist in the assessment of human rights impacts with the exception of the Mozambique Human Rights Commission (CNDH) in Maputo.¹²⁹ Civil society groups or other relevant information providers on the human rights situation in Cabo Delgado such as journalists for instance, are not expressly mentioned in the table summarizing the stakeholders consulted by the assessment team.
50. Furthermore, there is limited information available on the location of the meetings with stakeholders. Except for the meetings held in the capital city, Maputo (which did not include direct engagement with rights-holders),¹³⁰ Table 2.1 refers to “Afungi” as the location of the remaining meetings without providing details on the geographic location of the cities or villages where the meetings took place. Afungi is the name of the peninsula which covers a large area where the Project has construction sites. Based on the information provided in Table 2.1, it is unclear which cities and villages the LKL team visited during their assessment. This stands in stark contrast to the level of details provided on the locations of stakeholder engagement in other HRIAs conducted for TotalEnergies by LKL in other contexts.¹³¹ Despite the lack of clarity, Table 2.1 could be read to imply that the assessment team only met right-holders in Quitunda and Senga. If that is the case, it raises questions as to whether the engagement with affected stakeholders can be considered sufficiently representative.
51. The second concern relates to the lack of transparency regarding the methodology used to conduct stakeholder engagement, in particular, with impacted community members. Although the HRDD Assessment claims to rely on the methodology provided by the Danish Institute for Human Rights to conduct its own assessment,¹³² it fails to explain how the assessment team conducted community engagement during the field mission in January 2020, which constitutes the only data collection phase in the entire HRDD Assessment.¹³³ The absence of explanation leaves numerous questions unanswered, such as:
- How did the assessment team identify community members to be consulted?
 - How many community members did the assessment team meet?
 - What methodology did the assessment team use to conduct the interviews with affected stakeholders?
 - Given the existing armed conflict, did the assessment team adopt a conflict-sensitive approach to stakeholder’s engagement?
 - Did the assessment team conduct separate female and male focus group sessions, and how many of the consulted persons were men and how many of them were women?
 - Did the assessment team engage with community members from different professions, such as farmers and fishermen affected by the resettlement inland from the coast?
 - From which cities or villages were persons who were consulted displaced?

¹²⁹ HRDD Assessment, pp. 5-6.

¹³⁰ According to the table, meetings in Maputo mainly relate to projects managers (or business partners) except for the Mozambique Human Rights Commission which can assist in the assessment of human rights impacts but is not a direct right-holder.

¹³¹ LKL International Consulting Inc, East Africa Crude Oil Pipeline (EACOP), [Provisional HRIA report](#), September 2018, pp. 33-35; LKL International Consulting Inc, [Tilenga Project](#), January 2022, pp.7-10.

¹³² HRDD Assessment, p. 4.

¹³³ Cf. Danish Institute for Human Rights, [Papua LNG Human Rights Impact Assessment](#), January 2019, pp.40-41.

- How many language groups were represented in these meetings considering that people in Cabo Delgado Province where the Project operates speak different languages?¹³⁴
- What does the term “vulnerable people in Quitunda” refer to in terms of vulnerability (women, children, persons with disabilities etc.)?
- Were company representatives present at the meetings with community members?¹³⁵
- Given the heavy presence of army and police in the region that protect the Project site, were security personnel, including members of the Joint Task Force (JTF), present at the meetings with community members?
- Were other relevant parties that can assist in the assessment of human rights impacts such as civil society consulted? If so, what precautions were taken given the threats they faced and what methodology did the assessment team use to conduct the interviews with these stakeholders?

52. The answers to these questions are fundamental to ensure that the assessment team properly conducted meaningful engagement with different community members affected by the Project and its activities. However, the HRDD Assessment does not transparently provide answers to these questions that should have been part of the methodology section for stakeholder engagement in the HRDD Assessment.

53. A transparent methodology is important for the credibility of the stakeholder engagement conducted by the assessment team. In the past, there has been allegations of intimidation, repression, and limitation of freedom of expression of community members, journalists, and human rights activists in relation to the Project due to the presence of police at meetings between the authorities, investors, and communities.¹³⁶ In such circumstances, it is hard to have a genuine stakeholder engagement process whereby everyone feels free to express their opinions. In its methodology, the HRDD Assessment did not explain whether there was police or military presence at the meetings with community members and how the assessment team overcame this concrete challenge of intimidation to ensure meaningful stakeholder engagement.

54. A transparent methodology in stakeholder engagement is fundamental as it allows for scrutiny and it guarantees that the best methodological steps for stakeholder engagement were followed and that as a result the information collected to conduct the assessment are of quality.¹³⁷

¹³⁴ e.g., Makhuwa, Makonde, and Mwani. See Translators without Borders, [Cabo Delgado Province Language Map](#) (26 April 2019).

¹³⁵ For challenges and advantages of the presence of company representatives in meetings with rights-holders, see Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp.130-131.

¹³⁶ Business & Human Rights Resource Center, [Mozambique: Consultations for Total’s project in the Afungi peninsula were marked by intimidation and limitation of freedom of expression of community members; says activist](#), 14 May 2021. The founder of the environmental organisation Centro Terra Viva, activist Alda Salomão, said to a local newspaper: “In fact, many of us who were there trying to accompany the communities and families were threatened by the government and the police, because [in the authorities’ understanding] we were inciting the families to oppose the project. She alleged that the police had been always “on top” and that anyone who spoke out against the Project would be imprisoned. See [Mozambique: Government failed to seek local consent for gas projects – activist](#), Macau Business, 11 May 2021.

¹³⁷ Without judging on the overall HRDD process it can be useful to compare how the methodology in stakeholder engagement was presented in the context of the Papua LNG Project in Papua New Guinea. In its HRIA Report for the Papua LNG Project in Papua New Guinea dated January 2019, the Danish Institute for Human Rights in line with its proposed methodology, explained in details community groups engaged for the HRIA according to exact location of the meetings, language groups represented in the region, number of persons, and female and male focused groups. It also presented how the community engagement had proceeded in five steps, including giving advance notice to community members about the arrival of the assessment team and the purpose of

55. To conclude, the LKL assessment team endorsed the Danish Institute for Human Rights' HRIA Guidance and Toolbox as well as its methodology in conducting the HRDD Assessment¹³⁸ yet it did not appear to have properly followed its recommendations for stakeholder engagement. Based on the information available in the HRDD Assessment, it is thus not possible to assess the methodology it applied to conduct the stakeholder engagement process. The lack of transparency inevitably leads to the question of whether the assessment team applied an appropriate methodology based on established standards and best practices for conducting HRIA. As a result, it raises serious doubts as to the sufficiency of the engagement and the quality of the information and data collected to conduct analysis in the HRDD Assessment.

B. Adoption of the HRDD Action Plan based on incomplete HRDD Assessment

56. The HRDD Assessment emphasizes that the assessment team had limitations as it was not able to conduct all intended engagement with affected stakeholders and civil society organizations in Mozambique due to COVID-19, which led to insufficient participation of affected stakeholders in the assessment process.¹³⁹ As a result, the HRDD Assessment lacks a complete verification of the salient issues and a thorough assessment as to their actual impacts.¹⁴⁰ In other words, while recognizing elsewhere that engagement with affected stakeholders is a fundamental part of the process,¹⁴¹ the HRDD Assessment acknowledges that it is incomplete as it was not able, under the circumstances in question, to collect sufficient information from affected stakeholders to provide a comprehensive human rights impact assessment.

57. To address these limitations, the HRDD Assessment recommended TotalEnergies to conduct additional engagement activities with stakeholders during the process of adoption of the HRDD Action Plan and to analyse if there are any additional salient issues to be prioritized based on feedback from affected stakeholders.¹⁴² Furthermore, the HRDD Assessment recommends TotalEnergies to verify salient issues identified in the HRDD Assessment by completing additional stakeholder engagement with an aim to collect further information about stakeholder perceptions and priorities and actual human rights impacts.¹⁴³ In this regard, the focus must be on expanding direct engagement beyond the communities affected by the resettlement.¹⁴⁴ Additionally, the HRDD Assessment proposes to use the development of the HRDD Action Plan as an opportunity “to consult with and mobilize business partners for the management of the salient issues.”¹⁴⁵

their visit and explaining the structure and content of the focus group discussions. See Danish Institute for Human Rights, [Papua LNG Human Rights Impact Assessment](#), January 2019, Table 1, pp. 40-41. For another example, conducted by LKL this time, see LKL International Consulting Inc; East Africa Crude Oil Pipeline (EACOP), [Provisional HRIA report](#), September 2018, pp. 31-32.

¹³⁸ HRDD Assessment, p. 4.

¹³⁹ HRDD Assessment, p. 6.

¹⁴⁰ HRDD Assessment, p. 8.

¹⁴¹ HRDD Assessment, p. 4.

¹⁴² HRDD Assessment, pp. 6, 8.

¹⁴³ HRDD Assessment, p. 39.

¹⁴⁴ HRDD Assessment, p. 43.

¹⁴⁵ HRDD Assessment, p. 7.

58. It is questionable whether TotalEnergies followed these recommendations before adopting the HRDD Action Plan. According to the timeline provided for in the Action Plan, the task of developing a HRDD Action Plan should be delivered in January 2021, and the action of completing additional stakeholder engagement with affected stakeholders and the Independent Civil Society Monitoring Platform (ICSMP) should be completed between February-June 2021. The timeline speaks for itself in that the HRDD Action Plan would be adopted before completing additional stakeholder engagement. Indeed, while the Action plan and the HR policy were adopted, the Plan Tracker for the HRDD Monitoring Framework indicates 0% progress for the task of “completing additional stakeholder engagement and verification on salient issues identified in the HRDD Assessment to gather further information about actual impacts and stakeholder perceptions and priorities.”¹⁴⁶ As a result, the HRDD Action Plan adopted by the Project was based on an incomplete HRDD Assessment that remained uncorrected despite clear recommendations from the assessment team.

C. Lack of participation in the development of the HRDD Action Plan and HR Policy

59. In addition, the HRDD Assessment suggests developing a HRDD Action Plan and Human Rights Policy “in a participatory manner”¹⁴⁷ and proactively involving affected stakeholders and the ICSMP in the development and implementation of the HRDD Action Plan Framework.¹⁴⁸ The HRDD Assessment states that “prior to finalizing” the HR Policy and the HRDD Action Plan, the Project committed to engage with affected stakeholders and civil society organizations.¹⁴⁹

60. As to the task of “develop[ing] a stand-alone Human Rights Policy and HRDD Action Plan in a participatory manner”, the Plan Tracker shows 0% progress in January and February 2021 and 60% progress in March 2021. It is not entirely clear what the figure of 60% represents and whether development of these documents was conducted in a participatory manner, as recommended. There is a lack of information in the Action Plan regarding the meaning of the percentages in the Plan Tracker. Bearing it in mind, 60% progress may mean the signing of the HR Policy Plan on 12 March 2021 and the completion of the draft HRDD Action Plan.¹⁵⁰ However, it is not possible to deduce from it an answer to the question of whether these documents were adopted in a participatory manner. Nor is it explained to what the remaining 40% refer. For all these reasons, there is no indication that TotalEnergies adopted the HRDD Action Plan and HR Policy in a participatory manner.

¹⁴⁶ HRDD Action Plan, p. 25.

¹⁴⁷ HRDD Assessment, p. 39.

¹⁴⁸ HRDD Assessment, pp. 20, 43.

¹⁴⁹ HRDD Assessment, p. 35.

¹⁵⁰ HRDD Action Plan, p. 27 (as mentioned under the first and third points in the progress report on the salient issue of HR Policy and HRDD Action Plan in March 2021).

3. The HRDD process disregards the armed conflict in Mozambique.

A. Relevant facts regarding the conflict in Mozambique

a. Armed conflict

61. In October 2017, an insurgency started in northern Mozambique, notably in Cabo Delgado province, led by a militant youth group that initially referred to itself as “Ahlu Sunna wal-Jama’a”¹⁵¹ and then used the name “al-Shabab”.¹⁵² Insurgents conducted their first military attack against three police stations in Mocímboa da Praia in Cabo Delgado province on 5 October 2017 and have since then launched numerous military attacks against Mozambican security forces and civilians.¹⁵³ The situation is classified as a non-international armed conflict opposing the al-Shabab armed group and the Mozambican security forces.¹⁵⁴ While the drivers behind the conflict are complex and multiple, the development of the Project and other gas projects appears to have contributed to increasing the tensions.¹⁵⁵
62. The conflict has been extremely violent and the civilian population have paid the highest price since 2017. Al-Shabab attacked many villages and town in particular in Cabo Delgado province and the military response from the Mozambican security forces also led to numerous exactions against the population. As of 4 June 2023, the ACLED conflict observatory Cabo Ligado has reported 1,645 political violence events, 4,688 fatalities from political violence, and 2,003 fatalities from political violence targeting civilians.¹⁵⁶ Al-Shabab, the Mozambican security forces and the Dyck Advisory Group have all been accused by civil society organizations of the potential commission of serious human rights violations and war crimes. Atrocities attributed to Al-Shabab includes numerous killings of civilians often by beheadings and sometimes in mass, abduction in particular young women and girls, use of child soldiers, rape, and other sexual violence, looting and burning of government properties and civilian homes. The Mozambican security forces have been regularly accused of harassment, extortion, and mistreatment of the civilian population as well as of torture, ill-treatment, rape, and extrajudicial executions.¹⁵⁷ The UNHCR reported that more than 700,000 people had been displaced in Cabo Delgado, Nampula, Niassa, Sofala and Zambezia provinces since October 2017.¹⁵⁸

¹⁵¹ The UN Security Council refers to the group as Ahlu Sunna wal-Jama’a (ASWJ). See, e.g., UN Security Council, “Letter dated 13 February 2023 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council”, [S/2023/95](#) (S/2023/95 Report), paras. 8-13.

¹⁵² Not linked to Al-Shabab, a separate insurgency operating in Somalia. The group is also locally named by civilians as *machababos*. See International Crisis Group, “[Stemming the Insurrection in Mozambique’s Cabo Delgado](#)”, Africa Report N°303, 11 June 2021, p. 9.

¹⁵³ International Crisis Group, “[Stemming the Insurrection in Mozambique’s Cabo Delgado](#)”, Africa Report N°303, 11 June 2021, p. 10; Geneva Academy Rulac, [Non-international Armed Conflicts in Mozambique](#).

¹⁵⁴ Geneva Academy Rulac, [Non-international Armed Conflicts in Mozambique](#).

¹⁵⁵ International Crisis Group, “[Stemming the Insurrection in Mozambique’s Cabo Delgado](#)”, Africa Report N°303, 11 June 2021, p. 6 ; Friends of the Earth International, Les amis de la terre France, *De l’Eldorado gazier au Chaos, quand la France pousse le Mozambique dans le piège du Gaz*, June 2020, p. 23.

¹⁵⁶ ACLED Data, [Cabo Ligado Weekly: 29 May-4 June 2023](#), 7 June 2023. The period covers between 1 October 2017 and 4 June 2023, see map at p. 5.

¹⁵⁷ See Amnesty International, “[What I Saw is Death: War Crimes in Mozambique’s Forgotten Cape](#)”, March 2021, pp. 13-17; HRW, [Violence Increases in Northern Mozambique](#), 17 March 2022; HRW, [Mozambique: Hundreds of Women and Girls abducted](#), 7 December 2021; HRW, [Mozambique: ISI-Linked Group Using Child Soldiers](#), 29 September 2021.

¹⁵⁸ UNHCR, “[Nearly 30,000 people displaced by March attacks in northern Mozambique](#)”, 30 April 2021.

63. With the escalation of violence, Mozambican authorities contracted private security companies to support its counter-insurgency activities, including first the Wagner Group¹⁵⁹ (private Russian paramilitary unit of mercenaries) and then the Dyck Advisory Group (South African private military company).¹⁶⁰
64. The armed conflict threatening the security of the region also called for a regional military intervention in Cabo Delgado province. On 9 and 15 July 2021, respectively, Mozambique approved the deployment of forces from Rwanda and the Southern African Development Community (SADC) Mission in Mozambique (SAMIM).¹⁶¹ The deployment of regional forces disrupted al-Shabab’s leadership, command structures and bases and reduced its forces from “an initial 2,500 fighters” to currently around “280 adult male fighters.”¹⁶²
65. The UN Analytical Support and Sanctions Monitoring Team (UN Team), pursuant to resolution 2368 (2017) concerning ISIL (Da’esh), Al-Qaida and associated individuals and entities, reports that al-Shabab pledged allegiance to Islamic State in Iraq and the Levant (ISIL) although there is no clear evidence of “command and control orders” from ISIL over al-Shabab in Mozambique.¹⁶³ According to the UN team, ISIL recently referred to al-Shabab as ISIL-Mozambique, a separate affiliate.¹⁶⁴

*b. Attacks near the Project area of operations*¹⁶⁵

66. There have been violent attacks by insurgents in the vicinity of the Project construction site in the Afungi peninsula and against vehicles of contractors/subcontractors of the Project. Threats from insurgents led Anadarko Petroleum Corp. – the previous operator of the Project – to place its staff under lock-down in June 2018.¹⁶⁶ The first attack by insurgents against an Anadarko convoy took place approximately 20 km from the Project site on 21 February 2019, injuring six workers, and

¹⁵⁹ The Wagner Group ended its operation in November 2019 due to heavy losses suffered by the Group. DefenceWeb, [An overview of foreign security involvement in Mozambique](#), 7 April 2021.

¹⁶⁰ The 12-month contract with the Dyck Advisory Group ended on 6 April 2021. Zitamar News, “[DAG mercenaries to leave Cabo Delgado in April as Mozambique’s military takes over](#)”, 23 March 2021; News24, “[Fresh attacks in Mozambique as SA military company’s contract comes to an end](#)”, 24 March 2021.

¹⁶¹ UN Security Council, “Letter dated 3 February 2022 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council”, [S/2022/83](#), para. 9; Ministry of Defence of Rwanda, “[Rwanda Deploys Joint Force to Mozambique](#)”, 10 July 2021; SADC, “[SADC Mission in Mozambique \(SAMIM\) in Brief](#)”, 10 November 2021.

¹⁶² S/2023/95 Report, para. 8.

¹⁶³ UN Security Council, “Letter dated 3 February 2022 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council”, [S/2022/83](#), para. 9; S/2023/95 Report, para. 13.

¹⁶⁴ S/2023/95 Report, para. 13.

¹⁶⁵ Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 6 (defining “Project Area of Operation” as “the primary Project site(s) and related facilities, associated facilities whose viability and existence depend exclusively on the Project and whose goods or services are essential for the successful operation of the Project; areas potentially impacted by cumulative impacts from further planned development of the Project; and areas potentially affected by impacts from unplanned but predictable developments caused by the Project that may occur later or at a different location.”).

¹⁶⁶ Reuters, “[Anadarko staff under lock-down in Mozambique after attacks](#)”, 19 June 2018.

the second related attack on the same day killed a Mozambican driver from a Portuguese construction company, Gabriel Couto, contracted by Anadarko to build an aerodrome in Afungi.¹⁶⁷

67. These first attacks on the oil and gas industry in Mozambique sent alarms through the industry,¹⁶⁸ and Anadarko suspended its activities, which it later resumed on 8 May 2019.¹⁶⁹ Two days after Anadarko resumed its activities, the insurgents attacked a public bus and shot an Anadarko contractor in the knee on 10 May 2019.¹⁷⁰
68. Attacks by insurgents continued after TotalEnergies became the operator in Area 1 of the Project in September 2019. On 27 June 2020 the insurgents attacked a vehicle of Fenix Construction, one of the Project sub-contractors, approximately 60 kms south of the Project construction site, four kms north of Mocímboa da Praia in Cabo Delgado province.¹⁷¹ Of the 14 passengers in the vehicle, eight people lost their lives, three managed to escape, and three others remained missing.¹⁷²
69. To ensure the security of the Project activities in Afungi site and across the broader area of operations of the Project, on 24 August 2020 TEPMA1 and the government of Mozambique signed an updated Memorandum of Understanding which provides an increased number of personnel for the Joint Task Force (JTF) composed of the Mozambican military and police force who are stationed in the Project area of operations.¹⁷³
70. From late December 2020 through early January 2021, several insurgent attacks took place in the immediate vicinity of the Project construction site, including an attack on 1 January 2021 against Quitunda village located within the LNG project's concession area, which was built by the Project to resettle local communities displaced because of the Project.¹⁷⁴ Similar to the previous operator Anadarko's experience in the Project back in February 2019, TotalEnergies also decided to suspend its activities in the Project on 4 January 2021 and to evacuate non-security personnel by air from the Afungi airstrip.¹⁷⁵

¹⁶⁷ Zitamar News, "[Anadarko convoy attacked by gunmen in Cabo Delgado](#)", 21 February 2019; Reuters, "[UPDATE 3-U.S. energy company Anadarko says worker killed in Mozambique attack](#)", 22 February 2019; Club of Mozambique, "[Mozambique attacks: LNG consortium 'working with the relevant authorities' – Total](#)", 4 March 2020.

¹⁶⁸ Bloomberg, "[Anadarko Mozambique Attacked for First Time Amid Insurgency](#)", 22 February 2019; Oilprice.com, "[Gunmen Attack Anadarko LNG Project In Mozambique](#)", 22 February 2019.

¹⁶⁹ Club of Mozambique, "[Anadarko Petroleum resumes activity in Mozambique following security assurances](#)", 8 May 2019.

¹⁷⁰ Zitamar News, "[Anadarko contractor shot in 10 May Cabo Delgado attack](#)", 16 May 2019; Lusa, "[Moçambique/Ataques: petrolífera trabalha com Governo e afasta ligações ao projeto](#)", 17 May 2019.

¹⁷¹ Zitamar News, "[At least eight dead in Mocímboa ambush on construction workers](#)", 6 July 2020; Upstream, "[Eight killed in Mozambique insurgents' ambush on LNG contractor vehicle](#)", 8 July 2020.

¹⁷² Global Construction Review, "[Eight construction workers on Total's Mozambique LNG project gunned down in vehicle](#)", 6 July 2020.

¹⁷³ TotalEnergies, Press Release, "[Total signs agreement with the Government of Mozambique regarding the security of Mozambique LNG project](#)", 27 August 2020; HRDD Assessment, p. 9. A first version of the Memorandum of Understanding was signed in March 2019 by Anadarko. See also HRDD Assessment, p. 11, fn 7.

¹⁷⁴ Zitamar News, "[Total suspends construction at Mozambique LNG as fighting reaches project perimeter](#)", 4 January 2021; International Crisis Group, "[Stemming the Insurrection in Mozambique's Cabo Delgado](#)", Africa Report N°303, 11 June 2021, p. 40 ("December 2020: Several attacks near LNG project in Afungi.").

¹⁷⁵ Zitamar News, "[Total suspends construction at Mozambique LNG as fighting reaches project perimeter](#)", 4 January 2021; International Crisis Group, "[Stemming the Insurrection in Mozambique's Cabo Delgado](#)", Africa Report N°303, 11 June 2021, p. 40 ("4 January 2021: Total confirms suspension of operations and withdraws non-security personnel.").

71. After the suspension of Project activities in January 2021, TotalEnergies and the government of Mozambique implemented additional security measures around the construction site. The government of Mozambique declared the area within a 25 km perimeter surrounding the Project as a special security area, control of which is exclusively maintained by public security forces assigned by the Ministries of Defence and Interior of Mozambique.¹⁷⁶ Around 700 soldiers were stationed inside the Project complex to protect it.¹⁷⁷ Analysis by the New York Times of satellite imagery showed “at least nine recently constructed military outposts at key positions around the site,” which made the Project “the most secure place” during insurgent attacks.¹⁷⁸
72. Following these security measures, TotalEnergies announced that it would progressively resume construction activities in the Project on 24 March 2021.¹⁷⁹

c. Palma attack

73. On 24 March 2021, the day that TotalEnergies planned to resume its activities, the insurgents launched an attack on Palma town, killing civilians, looting, destroying government buildings, kidnapping, and forcing thousands of people to flee.¹⁸⁰ In addition, like in many previous attacks, the insurgents abducted hundreds of women and girls and submitted them to sexual abuse and forced marriage.¹⁸¹ The government security forces clashed with insurgents until the former regained control of Palma town on 4 April 2021.¹⁸² Although information available suggests that Mozambican soldiers, TotalEnergies’ security team and security officer from CCS JV (the principal onshore contractor for the Project) had been aware of al-Shabab’s move towards Palma two days in advance, they did not raise any alarm.¹⁸³
74. While clashes were ongoing, an estimated 220 people, including foreign workers and local people, sheltered inside the Amarula Hotel in Palma town.¹⁸⁴ Helicopters operated by the Dyck Advisory Group conducted rescue flights and evacuated 22 people.¹⁸⁵ The founder of the Dyck Advisory Group, Lionel Dyck, stated that “it was a total chaos” and that “there was no evacuation plan.”¹⁸⁶ TotalEnergies did not take part in any rescue from the Amarula Hotel during the Palma attack. On

¹⁷⁶ Mozambique LNG, Press Release, “[Mozambique LNG Project Resumes Construction Activities](#)”, 24 March 2021 (announcing that “[t]he Mozambique LNG Project, which is in charge of the security of the construction site itself, does not use the services of any armed private security providers.”).

¹⁷⁷ Outside, Alex Perry, “[I’m Still Alive but Sh*t Is Getting Wild](#)”: Inside the Siege of the Amarula, 1 June 2022.

¹⁷⁸ New York Times, “[Video: Militants Attacked a Key Town in Mozambique. Where Was the Government?](#)”, 26 May 2021, 13:02 (“In the months before the [Palma] attack, insurgents were getting closer to Palma, prompting Total to strike a deal with the Mozambican government for better security at the multibillion-dollar gas site. [New York Times] analysed satellite imagery which shows at least nine recently constructed military outposts at key positions around the site. It is clear that natural gas project, and not the town, is the most secure place when insurgents move in.”).

¹⁷⁹ Mozambique LNG, Press Release, “[Mozambique LNG Project Resumes Construction Activities](#)”, 24 March 2021.

¹⁸⁰ International Crisis Group, “[Stemming the Insurrection in Mozambique’s Cabo Delgado](#)”, Africa Report N°303, 11 June 2021, p. 15; ACLED Data, [Cabo Ligado Monthly: March 2021](#), 15 April 2021.

¹⁸¹ HRW, Mozambique : [Hundreds of Women, Girls Abducted](#), 7 December 2021.

¹⁸² International Crisis Group, “[Stemming the Insurrection in Mozambique’s Cabo Delgado](#)”, Africa Report N°303, 11 June 2021, p. 16.

¹⁸³ Outside, Alex Perry, “[I’m Still Alive but Sh*t Is Getting Wild](#)”: Inside the Siege of the Amarula,” 1 June 2022.

¹⁸⁴ Amnesty International, “[Mozambique: Rescue attempts jeopardized by racial discrimination following Palma attack – new survivors’ testimony](#)”, 13 May 2021.

¹⁸⁵ New York Times, “[As Militants Seize Mozambique Gas Hub, a Dash for Safety Turns Deadly](#)”, 28 March 2021, updated 8 October 2021.

¹⁸⁶ New York Times, “[As Militants Seize Mozambique Gas Hub, a Dash for Safety Turns Deadly](#)”, 28 March 2021, updated 8 October 2021.

26 March 2021 the remaining dozens of people left the hotel with a convoy of 17 vehicles to escape to Quelinde beach where they hoped to travel to Afungi by boat.¹⁸⁷ However, the insurgents ambushed the convoy, and only seven vehicles managed to escape and complete the trip.¹⁸⁸ At least 1,193 people were killed or are missing and 209 were kidnapped including children among civilians residents of Palma, as a result of insurgent attacks.¹⁸⁹ Around 130 survivors were transported by two boat trips from Quelinde to Afungi.¹⁹⁰

75. On 2 April 2021 insurgents clashed with Mozambican security forces and attacked civilians near the LNG plant in Afungi.¹⁹¹ The conflict observatory Cabo Ligado reported that at least 10,000 internally displaced persons (IDPs) had gathered outside the LNG Project site secured by the government forces.¹⁹² The media reported that civilians had been often denied entrance to the LNG Project site.¹⁹³
76. On 27 March 2021, TotalEnergies announced that it suspended its operations and declared *force majeure* on the Project on 26 April 2021, raising serious concerns about people it left behind, including local people resettled by TotalEnergies, and its contractors and subcontractors.¹⁹⁴ The New York Times reported that TotalEnergies had not checked on the safety of its contractors and subcontractors.¹⁹⁵
77. On 30 April 2021 the UNHCR reported that nearly 30,000 people had fled from Palma town since the attacks on 24 March 2021.¹⁹⁶ The International Organization for Migration estimated that by the end of April 2021, there had been 662,828 IDPs in Cabo Delgado province since the insurgency began in October 2017.¹⁹⁷

¹⁸⁷ New York Times, "[As Militants Seize Mozambique Gas Hub, a Dash for Safety Turns Deadly](#)", 28 March 2021, updated 8 October 2021.

¹⁸⁸ New York Times, "[As Militants Seize Mozambique Gas Hub, a Dash for Safety Turns Deadly](#)", 28 March 2021, updated 8 October 2021.

¹⁸⁹ Alex Perry, [Palma Massacre](#), 19 June 2023.

¹⁹⁰ Amnesty International, "[Mozambique: Rescue attempts jeopardized by racial discrimination following Palma attack – new survivors' testimony](#)", 14 May 2021.

¹⁹¹ Cabo Ligado, [Cabo Ligado Weekly: 29 March-4 April 2021](#), 6 April 2021.

¹⁹² Cabo Ligado, [Cabo Ligado Weekly: 29 March-4 April 2021](#), 6 April 2021. Mail Guardian, "[Frelimo gambled everything on gas – and lost](#)", 8 April 2021 (the author reporting that "[t]here was no security protecting the [Palma] town, although 800 soldiers were inside the walls at Afungi protecting Total workers.").

¹⁹³ New York Times, "[Video: Militants Attacked a Key Town in Mozambique. Where Was the Government?](#)", 26 May 2021, 13:02 ("Many more people line up at the natural gas site run by Total, where at least some government security is present. Sources tell [New York Times] that civilians were often denied entrance."); Outside, Alex Perry, "[I'm Still Alive but Sh*t Is Getting Wild': Inside the Siege of the Amarula](#)", 1 June 2022 (reporting as follows: "In its statement, Total went on to claim that it provided 'food and water to refugees arriving in Afungi,' which was true as far it went but ignored that Total's security guards stopped thousands of refugees from entering Afungi. Finally, Total wrote that it had 'made available its facilities (port, airport, clinic) to assist the refugees, to provide urgent medical aid to the wounded and to evacuate by air and sea the most vulnerable ones, mainly women and children.' In truth, Total's guards shut down its facilities and kept crowds of refugees outside its gates.").

¹⁹⁴ International Crisis Group, "[Stemming the Insurrection in Mozambique's Cabo Delgado](#)", Africa Report N°303, 11 June 2021, pp.15, 40; TotalEnergies, "[Total declares Force Majeure on Mozambique LNG project](#)", 26 April 2021.

¹⁹⁵ New York Times, "[Video: Militants Attacked a Key Town in Mozambique. Where Was the Government?](#)", 26 May 2021, 13:02 ("Dozens of Total's contractors and subcontractors still remain in Palma. Some told the [New York] Times that the company [TotalEnergies] hasn't checked on their safety.").

¹⁹⁶ UNHCR, "[Nearly 30,000 people displaced by March attacks in northern Mozambique](#)", 30 April 2021.

¹⁹⁷ IOM, Global Data Institute Displacement Tracking Matrix, [Northern Mozambique Crisis — Baseline Assessment Report Round 12 \(April 2021\)](#), pp.4, 8.

78. Quitunda village, which was initially built to accommodate 300 families displaced by the Project, turned into a huge shelter for 30,000 IDPs after the Palma attack.¹⁹⁸ Local newspaper reported that displaced people in Quitunda village were “desperate to get home as soon as possible” and that there was a “widespread” “distrust of the government and the LNG companies.”¹⁹⁹
79. Most recently in March 2023, civilians displaced by the armed conflict began to return to Palma and Mocímboa da Praia in Cabo Delgado province where basic State functions are absent, including health and education services.²⁰⁰

B. Heightened HRDD in conflict-affected areas

80. For businesses operating in conflict-affected contexts, UNGP provides that because the risk of gross human rights abuses is heightened in conflict-affected areas, businesses should conduct more complex HRDD.²⁰¹ Moreover, in 2020 the UN Working Group on business and human rights recognized the increased complexity of HRDD process in conflict-affected areas by producing a report on the issue entitled “Business, human rights, and conflict-affected regions: towards heightened action”. It clarifies that businesses operating in conflict-affected contexts should exercise heightened HRDD that considers the impacts of business not only on human rights but also on conflict.²⁰²
81. Armed conflict in a country is “the most obvious trigger for heightened due diligence” that should be conducted by businesses operating in such context.²⁰³ Since “the risk of gross human rights abuses is heightened in conflict-affected areas”, human rights due diligence should be proportionately heightened as well.²⁰⁴ Commentary to UNGP Principle 7 highlights that “[s]ome of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.”²⁰⁵
82. OHCHR Interpretive Guide states that “[i]f the area is affected by, or prone to, conflict, there may be particular risks with regard to security, the right to life and ethnic discrimination.”²⁰⁶ Therefore, conflict-affected areas “should automatically raise red flags within the enterprise and trigger human rights due diligence processes that are finely tuned and sensitive to this higher level of risk” of

¹⁹⁸ Zitamar News, “[Civilians return to Mocímboa da Praia amid security concerns](#)”, 13 June 2022. In Quitunda village, there were also a number of displaced persons who had originally fled to Palma from Mocímboa da Praia, after the latter was taken by insurgents in August 2020, [Cabo Ligado Weekly: 6-12 June 2022](#), Cabo Ligado, 14 June 2022.

¹⁹⁹ Zitamar News, “[Civilians return to Mocímboa da Praia amid security concerns](#)”, 13 June 2022 (reporting that “...many living in camps are convinced that the government is allowing attacks to take place in Palma to deliberately deter people from moving home so that the LNG companies do not have to pay out compensation to people affected by the gas project. Theories such as this reflect a dire lack of confidence in the authorities.”).

²⁰⁰ Zitamar News, “[Basic services still absent as IDPs return to Palma and Mocímboa — report](#)”, 10 March 2023.

²⁰¹ [Guiding Principles on Business and Human Rights](#), Principles 7 and 17.

²⁰² UN Working Group’s 2020 Report, paras 41-71.

²⁰³ UN Working Group’s 2020 Report, para. 16.

²⁰⁴ UNGP, Principle 7; UN Working Group’s 2020 Report, para. 13.

²⁰⁵ [Guiding Principles on Business and Human Rights](#), Commentary to Principle 7, p. 9.

²⁰⁶ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), p. 21.

being involved in serious human rights abuses.²⁰⁷ These red flags may include activities such as forcibly displacing people from their communities and using abusive government or private security forces.²⁰⁸ In complex contexts such as conflict-affected areas, “business enterprises should ensure that they do not exacerbate the situation.”²⁰⁹

83. According to the UN Working Group, HRDD in conflict-affected areas must “be complemented by a conflict-sensitive approach”, which includes three main steps on which business should focus: (i) “identify[ing] the root causes of tensions and potential triggers”; (ii) “map[ing] the main actors in the conflict and their motives, capacities and opportunities to inflict violence”; and (iii) “identify[ing] and anticipat[ing] the ways in which the businesses’ own operations, products or services impact upon existing social tensions and relationships between the various groups, and/or create new tensions or conflicts.”²¹⁰ The Danish Institute for Human rights also explains that in conducting HRIA in conflict-affected areas, the assessment team “must pay special attention to considerations such as the legacy of conflict, conflict dynamics, conflicting parties and their objectives, geographic areas of the conflict, and grievances and drivers of conflict.”²¹¹
84. As to armed non-State actors, the UN Working Group explains that “[h]aving a clear understanding of their structure, their control of territory and population, their objectives, their political agenda and the support from the local population are essential to identifying how likely it is that the armed group will interact with the business.”²¹² While some armed groups may attack a business because it represents foreign interests, other armed groups may regard business as a source of revenue.²¹³
85. In addition to international human rights standards set out in UNGP Principle 12, in situations of armed conflict, the legal framework of international humanitarian law (IHL) also apply to all actors whose activities are closely linked to armed conflict, including business enterprises.²¹⁴ IHL “imposes obligations on managers and staff not to breach international humanitarian law and exposes them – and the enterprises themselves – to the risk of criminal or civil liability in the event that they do so.”²¹⁵ ICRC study on Business and IHL explains that “business enterprises operating in zones of armed conflict should use extreme caution and be aware that their actions may be considered to be closely linked to the conflict even though they do not take place during fighting or on the battlefield.”²¹⁶

²⁰⁷ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), p. 80.

²⁰⁸ UN Working Group’s 2020 Report, para. 12. See [Red Flags: Liability Risks for Businesses Operating in High-Risk Zones](#).

²⁰⁹ [Guiding Principles on Business and Human Rights](#), Commentary to Principle 23, p. 26. For example, as a response to attacks on Anadarko convoy, Joseph Hanlon, an expert on Mozambique, said: “I genuinely don’t understand how these companies thought they could do this [Mozambique LNG] project without triggering a reaction”. See Financial Times, “[Anadarko Petroleum attacked in Mozambique](#)”, 22 February 2019.

²¹⁰ UN Working Group’s 2020 Report, paras. 44-48.

²¹¹ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 53.

²¹² UN Working Group’s 2020 Report, para. 58.

²¹³ UN Working Group’s 2020 Report, para. 58.

²¹⁴ [Guiding Principles on Business and Human Rights](#), Commentary to Principle 12, p. 14; ICRC, [Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law](#), December 2006, p. 14; UN Working Group’s 2020 Report, para. 10.

²¹⁵ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), p. 12.

²¹⁶ ICRC, [Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law](#), December 2006, p. 14.

86. International criminal law (ICL) is also relevant for businesses operating in conflict-affected contexts as they may be held criminally liable or be complicit for causing or contributing to international crimes. In that regard, commentary to UNGP Principle 17 refers to jurisprudence of ICL for the standard for aiding and abetting, that is, “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”²¹⁷
87. The UN Working Group also noted that “it is important for business to realize the specific experience of women and girls in conflict and post-conflict situations and, given the risks to women and girls of sexual violence, discrimination and pervasive inequality, the private sector should address gender and conflict as part of any heightened human rights due diligence”.²¹⁸ In particular, “the security sector is a key sector for which a gender lens needs to be applied in order to prevent abuses and gender-based discrimination by security forces.”²¹⁹
88. According to Total’s GS 103, the Consultant conducting the HRIA, (LKL in this case), is responsible for adapting the themes addressed in HRIA according to “context, scope, size and location of the Project.”²²⁰ GS 103 states that “HRIA is an iterative process that is responsive to changes in the context.”²²¹ It indicates that there is a need for a “dedicated HRIA” in a context where “Project or License area is totally, or partially, situated in a conflict affected area or in an area where International Humanitarian Law applies.”²²² GS 103 also requires that the content of HRIA must address potential risks and impacts in at least five different areas, including armed conflict.²²³ If any relevant human rights topic is excluded in the HRIA, the Assessment team must identify and explain the reasons for this exclusion.²²⁴

C. The HRDD Assessment and the HRDD Action Plan neglected heightened HRDD.

89. The HRDD Assessment explains briefly the security context in Cabo Delgado province and the existence of insurgent attacks, which, in its view, presents “the most serious human rights risks” for the Project.²²⁵ It adds that in the context of ongoing conflict, “there are heightened expectations for HRDD according to UNGPs” and touches upon the report of UN Working Group’s 2020 Report in a footnote.²²⁶ Despite this clear statement, the HRDD Assessment does not include in its methodology heightened HRDD nor did it implement it in the Project’s context other than one

²¹⁷ [Guiding Principles on Business and Human Rights](#), Commentary to Principle 17, p. 19.

²¹⁸ UN Working Group’s 2020 Report, para. 62.

²¹⁹ UN Working Group’s 2020 Report, para. 63.

²²⁰ Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 14.

²²¹ Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 10.

²²² Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 8.

²²³ Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 10 (Five areas include: “1. Civil and Political Rights; 2. Economic, Social and Cultural Rights; 3. Labor Rights; 4. Gender and the rights of individuals requiring particular attention or protection, vulnerable persons, and groups, in particular Indigenous People; 5. Conflict (whether armed or social, or relating to e.g., land, religion)”).

²²⁴ Total, [General Specification 103: Human Rights Impact Assessment \(HRIA\)](#), August 2015, p. 12.

²²⁵ HRDD Assessment, pp. 9-10.

²²⁶ HRDD Assessment, pp. 9, fn. 5.

reference in a footnote. Both the HRDD Assessment and the HRDD Action Plan neglected heightened HRDD as explained below.

a. *Failure to prioritize and to complement the HRIA with a conflict-sensitive approach.*

90. Firstly, the HRDD Assessment does not address activities linking the Project to the conflict as a separate salient issue although the operating context of the Project in Mozambique is in an area of armed conflict since 2017. As noted by the UN Working Group’s 2020 Report, “[c]onflict-sensitivity will be important if business needs to prioritize which impacts to address first. According to the Guiding Principles, the order in which impacts are addressed is based on their severity. In conflict situations, prioritization requires businesses to think about the likelihood and consequences of conflict as a crucial element.”²²⁷ The sector and operating context of business enterprise – in the case of the Project, the existence of an armed conflict with increased violence – must have been relevant to determine salient human rights on which business should concentrate its primary efforts.²²⁸ However, the HRDD Assessment fails to address this salient issue and does not explain the reasons for this exclusion contrary to what is required by GS 103.
91. Secondly, the HRDD Assessment does not complement its human rights impact assessment with a conflict-sensitive approach. Indeed, it does not provide any information on the historical context, primary drivers of the conflict,²²⁹ or the parties to the conflict, including al-Shabab armed group, its structure, control of territory, objectives, and political agenda. Having a clear understanding of these fundamental issues about conflict and its main actors is essential to identifying the Project’s actual or potential impacts on conflict and measures to mitigate those impacts.
92. For instance, as noted by Jean-Christophe Rufin in his analysis of the conflict, there is a participation of local elements in al-Shabab armed group, and the rebellion is rooted in the strong inequalities and the underdevelopment of Cabo Delgado province; thus, the conflict cannot be reduced to “foreign contamination,” and it is important for the Project to understand that “actions in favour of local populations are an undeniable way to reduce their propensity to support violent rebellions.”²³⁰ It is also crucial for the Project to comprehend the probability of any interaction of the members of al-Shabab with the Project, including its staff, contractors, and members of the JTF, so as to avoid contributing to human rights or IHL violations. However, the HRDD Assessment lacks such a critical conflict sensitivity analysis, and the HRDD Action Plan does not address it either.
93. Thirdly, the HRDD Assessment and the HRDD Action Plan failed to consider whether the Project’s presence and activities cause or contribute to the armed conflict and how TotalEnergies’ operations impact upon the wider context in Mozambique. For example, when addressing the relationship with the security forces, the HRDD Assessment does not address whether the high number of forces present in the area to protect the Afungi site and the increase in their number with the updated MOU could be influencing the conflict dynamics and the increase in human rights violations that the population of Cabo Delgado may face. As another example, the founder of the environmental

²²⁷ UN Working Group’s 2020 Report, para. 50.

²²⁸ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), pp. 8, 20, 21.

²²⁹ Cf. Danish Institute for Human Rights, [Papua LNG Human Rights Impact Assessment](#), January 2019, pp. 33-34.

²³⁰ Jean-Christophe Rufin Report, pp. 5-6.

organisation Centro Terra Viva, Alda Salomão, stated to a local newspaper: “when the Government decided to use the police to impose the company’s presence in the villages [in the area set aside for the LNG project] we immediately said that ... it was an attitude that had all the ingredients to produce revolt”.²³¹ She warned that the “process [of implementing the LNG Project] [would] have contributed, to a large extent, to the feeling of revolt” in the region.²³²

94. As noted by the UN Working Group’s 2020 Report, “businesses are not neutral actors; their presence is not without impact. Even if business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics.”²³³ As a result of the failure of the HRDD Assessment to assess the potential or actual impact in relation to the presence and activities of the Project and the conflict, TotalEnergies lacked an understanding of the potential impacts of the Project and its operations on conflict like its potential role in fuelling the conflict and the impact of its presence and operations for the security of the communities and therefore was unprepared for any escalation of armed conflict around the Project site.
95. Finally, while the HRDD Assessment briefly mentions gender-based violence related to the joint task force and the need to prioritize the issue given the vulnerability of women and girls in conflicts situations and the severity of the potential impacts,²³⁴ it did not comprehensively address gender and conflict as part of any heightened human rights due diligence. As noted by the UN Working Group, it is essential for business to realize the specific experience of women and girls in conflict situations including but not limited to the risks of sexual violence. Gender lens on the conflict also includes discrimination and pervasive inequality. In its section on Women’s rights and Gender Equality, the HRDD Assessment does not address whether the conflict had exacerbated the existing gender-based discrimination nor whether women and girls were disproportionately affected by the conflict.

b. Failure to consider IHL and ICL as relevant legal frameworks.

96. Neither the HRDD Assessment nor the HRDD Action Plan refers to IHL or ICL as legal frameworks applicable in the Project’s operating context. The failure to consider these legal frameworks is particularly relevant to the relationship between the Project and the Mozambique security forces. To maintain security of the Project area of operations, TotalEnergies relies on the JTF, composed of members of Mozambican security forces, a party to the ongoing armed conflict.
97. While the HRDD Assessment mentions the initial and the updated MOU providing an increased number of personnel for the JTF stationed in the Project area of operations,²³⁵ it does not explain the nature of the relationship between the Project and the JTF. The updated MOU is not publicly available and the summary of its contents on the webpage of the Project only broadly mentions

²³¹ Business & Human Rights Resource Center, [Mozambique: Consultations for Total’s project in the Afungi peninsula were marked by intimidation and limitation of freedom of expression of community members; says activist](#), 11 May 2021; [Mozambique: Government failed to seek local consent for gas projects – activist](#), *Macau Business*, 11 May 2021.

²³² Business & Human Rights Resource Center, [Mozambique: Consultations for Total’s project in the Afungi peninsula were marked by intimidation and limitation of freedom of expression of community members; says activist](#), 11 May 2021; [Mozambique: Government failed to seek local consent for gas projects – activist](#), *Macau Business*, 11 May 2021.

²³³ UN Working Group’s 2020 Report, para. 43.

²³⁴ HRDD Assessment

²³⁵ TotalEnergies, Press Release, “[Total signs agreement with the Government of Mozambique regarding the security of Mozambique LNG project](#)”, 27 August 2020; HRDD Assessment, p. 9. A first version of the Memorandum of understanding was signed in March 2019 by Anadarko. See also HRDD Assessment, p. 11, fn 7.

“logistical support” provided to the JTF by the Project.²³⁶ However, in its recent report, Jean-Christophe Rufin explains that the support provided by the Project to the JTF includes: accommodation, food, equipment, and the payment of a bonus to the JTF depending on the grades with the condition that any violation of human rights attributed to the JTF will entail the withdrawal of this bonus.²³⁷

98. The HRDD Assessment indicates that because of the nature of the relationship with the JTF, the Project may be “in a position of potentially contributing to adverse impacts on human rights that are caused by members of the JTF.”²³⁸ While this seems correct considering the relationship described above and in the context of the human rights framework, the HRDD Assessment falls short of assessing the nature of this relationship under the IHL and ICL frameworks. If the HRDD Assessment had considered these frameworks, it may have realised that the relationship between the Project and the Mozambican armed forces could be considered as a form of assistance or support from the Project to the JTF part of the Mozambican armed forces, a party to the conflict. In addition, the attacks around the Project site demonstrate that the security-related activities of the Project could be considered linked with the hostilities. Moreover, allegations of human rights violations committed by the Mozambican armed forces, including sometimes the JTF, are regularly reported²³⁹ and there have been serious allegations of war crimes committed by the government military forces in relation to the conflict.²⁴⁰
99. As a result, there is a real risk that the same armed forces that TotalEnergies contracted to maintain security of the Project area may commit IHL violations or international crimes. Therefore, TotalEnergies must be aware of IHL and ICL standards and the scope of their application to its business activities in Mozambique, as the relationship between the Project and the JTF makes the impartiality of the Project vis-à-vis the parties to the conflicts questionable and creates a risk of being considered complicit in potential and actual IHL violations or war crimes committed by the Mozambican armed forces. The risk for senior representatives of businesses to be prosecuted for war crimes is real and the charges brought in 2021 in Sweden against two executives of a Lundin Petroleum for complicity of war crimes in Sudan from 1999 to 2003 illustrates it.²⁴¹
100. As noted by the ICRC, “Business enterprises that hire security or military forces who do not respect the rules of international humanitarian law while engaged in armed conflict may, under certain circumstances, be legally liable for assisting the commission of violations of international humanitarian law, even if they did not intend the violations to occur and if the offences were not perpetrated on their behalf. Indeed, because attacking civilians violates the most basic principle of

²³⁶ Mozambique LNG Project Webpage, [Human Rights and Security, Security](#).

²³⁷ Jean-Christophe Rufin Report, p. 20.

²³⁸ HRDD Assessment, p. 11.

²³⁹ Jean-Christophe Rufin Report, p. 3 (“Many abuses committed by the armed forces and the police are regularly reported but rarely result in sanctions”); HRDD Assessment, p. 11 (“Stakeholder feedback during the assessment raised concerns about road safety, and past incidents of physical assault, theft and harassment by the JTF”); Friends of the Earth International, *Les amis de la terre France, De l’Eldorado gazier au Chaos, quand la France pousse le Mozambique dans le piège du Gaz*, June 2020, p. 29 (“Les femmes sont particulièrement menacées, à la fois par les groupes d’insurgés – plusieurs cas de kidnapping ont été recensés – et par l’armée. Plusieurs femmes ont été victimes d’abus sexuels par les militaires, mais ont peur de parler.”); Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022, p. 21.

²⁴⁰ See Amnesty International, [“What I Saw is Death”: War Crimes in Mozambique’s Forgotten Cape](#), March 2021, pp.13-17.

²⁴¹ See AP, Sweden charges 2 oil executive for war crimes in Sudan, 11 November 2021.

international humanitarian law, companies that knowingly engage or collaborate with groups involved in such actions may run the risk of criminal and civil liability. In any event, engaging military protection from forces that do not respect the laws of war is incompatible with an undertaking to promote international humanitarian law.”²⁴²

c. Failure to assess whether the Community-Based Security Plan was suited to address potential or actual human rights impacts in relation to the security of the community.

101. The HRRD Assessment notes that the highest risks in terms of security are related to community security affected by “insurgency attacks” and interactions with the JTF.²⁴³ The HRDD Assessment mentions that “community feedback highlighted concerns about insurgent attacks on civilians and the Project’s role in contributing to community security in this context.”²⁴⁴ It is unclear from the report what exactly those concerns are. They might be related to previous incidents where the JTF allegedly refused to assist the civilian population victims of attacks close to the area of operation of the Project stating that the JTF was there to protect the Afungi site and not the civilian population.²⁴⁵
102. The HRDD Assessment highlights that the community concerns are being positively addressed by the Project’s “new layered approach to community security, whereby it is working with the government to provide security ‘outside the fence’.”²⁴⁶ The HRDD Assessment does not provide further explanation on how providing security “outside the fence” for communities is unfolding in practice. The HRDD Assessment notes the existence of a Community-Based Security Plan, but this document is not publicly available and there is no indication as to when it has been adopted.²⁴⁷
103. The HRDD Assessment is very scarce in terms of analysis when it comes to community security despite the high risk identified in this area. In particular, it does not provide an assessment of whether the Community-Based Security Plan was actually suited to mitigate or address potential or actual human rights impacts in relation to community security in the context of the conflict. In the absence of such an assessment, the external reader is left to speculate on the meaning of the unspecific recommendation given by the HRDD Assessment that the Project shall continue to develop the layered strategy to community security.²⁴⁸ The HRDD Assessment appears to be generally satisfied with the approach taken by the Project in this regard.
104. Information available about the situation on the ground in the context of the Palma attack that occurred just a few months after the Assessment is in sharp contrast with the seemingly positive conclusion of the HRRD Assessment.

²⁴² ICRC, [Business and international humanitarian law, 30 November 2006](#).

²⁴³ HRDD Assessment, p. 10.

²⁴⁴ HRDD Assessment, p. 10.

²⁴⁵ JA! You Tube, [Testimony of Maria after the displacement by Total](#).

²⁴⁶ HRDD Assessment, p. 10.

²⁴⁷ The Community-Based Security Plan also seems unknown to civil society organisations working on these issues on the ground. This seems at odds with the HRDD Assessment statement that the new approach to community security shall be an opportunity for information-sharing with the communities. See HRDD Assessment, p. 11.

²⁴⁸ HRDD Assessment, p. 10.

105. First, TotalEnergies did not take part in rescue efforts from the Amarula Hotel during the Palma attack. Although it had a unique position to conduct rescue operations with its some 700 security personnel and equipment (personnel carrier-type choppers, airport, and aviation fuel), it did not use this ability and resources.²⁴⁹ Nor did it exercise its leverage with the Mozambican government to activate its help for those in need. There are allegations that during rescue operations from the Amarula Hotel, TotalEnergies refused to supply fuel to rescue helicopters of the Dyck Advisory Group that Mozambican authorities had contracted to support its counter-insurgency activities.²⁵⁰
106. Second, on 2 April 2021 insurgents clashed with Mozambican security forces and attacked civilians near the LNG plant in Afungi.²⁵¹ The conflict observatory Cabo Ligado reported that at least 10,000 terrified IDPs left to run to an unprotected town on their own in the midst of the violence, had gathered outside the LNG Project site secured by the government forces.²⁵² The media reported that civilians had often been denied entrance to the LNG Project site.²⁵³ This incident shows that TotalEnergies seemed not to feel responsible for thousands of civilians whom the Project's presence put at risk despite the "outside the fence" approach claimed by the Project and seemingly validated by the HRDD Assessment. Furthermore, TotalEnergies' lack of interest in protecting people – except its own staff and those working for CCS JV that had been relocated inside the Afungi site – seems to have frustrated hundreds of persons living in worker camps outside the Afungi site.²⁵⁴

d. Inadequate timeframe in the HRDD Action Plan to implement actions related to the conflict.

107. As a result of the failure of the HRDD Assessment to conduct and prioritize heightened HRDD, the timeframe for the implementation of the actions related to the conflict was not properly

²⁴⁹ Outside, Alex Perry, "[I'm Still Alive but Sh*t Is Getting Wild](#)": Inside the Siege of the Amarula, 1 June 2022 ("A lot more might be possible with the assistance of the 700 soldiers at Afungi or the three large gunships stationed there. The Russian choppers, especially, could be a game changer. Equipped with rockets and heavy machine guns, they could also carry 30 people at a time.") (Reporting TotalEnergies' behaviour during the Palma attack through statements by workers in the Project: "'Personnel carrier-type choppers, all those troops, an airport, and aviation fuel less than a five-minute flight to where we were,' Nick said. 'I'm sure if Total had picked up the phone to the government there and said, 'Listen, you guys need to get some people over there ASAP...'" The unavoidable conclusion, Tobias said, was that Total had the ability and resources to save people but didn't. 'Every single person that died that day,' he said, 'every drop of blood that was spilled, is on Total's hands.'")

²⁵⁰ Outside, Alex Perry, "[I'm Still Alive but Sh*t Is Getting Wild](#)": Inside the Siege of the Amarula, 1 June 2022 ("The refusal to give fuel to rescuers trying to save civilians was stunning, and crippling. Afungi was a three-minute flight from Palma. Based there, each [Dyck Advisory Group] helicopter could have made dozens of sorties per day, potentially picking up hundreds. Instead, they would now be forced to fly an hour to Pemba or Mueda, deep in the interior, to refuel, then fly an hour back again.")

²⁵¹ Cabo Ligado, [Cabo Ligado Weekly: 29 March-4 April 2021](#), 6 April 2021.

²⁵² Cabo Ligado, [Cabo Ligado Weekly: 29 March-4 April 2021](#), 6 April 2021. "[Frelimo gambled everything on gas – and lost](#)", Mail Guardian, 8 April 2021 (the author reporting that "[t]here was no security protecting the [Palma] town, although 800 soldiers were inside the walls at Afungi protecting Total workers.")

²⁵³ New York Times, "[Video: Militants Attacked a Key Town in Mozambique. Where Was the Government?](#)", 26 May 2021, 13:02 ("Many more people line up at the natural gas site run by Total, where at least some government security is present. Sources tell [New York Times] that civilians were often denied entrance."); Outside, Alex Perry, "[I'm Still Alive but Sh*t Is Getting Wild](#)": Inside the Siege of the Amarula, 1 June 2022 (reporting as follows: "In its statement, Total went on to claim that it provided 'food and water to refugees arriving in Afungi,' which was true as far it went but ignored that Total's security guards stopped thousands of refugees from entering Afungi. Finally, Total wrote that it had 'made available its facilities (port, airport, clinic) to assist the refugees, to provide urgent medical aid to the wounded and to evacuate by air and sea the most vulnerable ones, mainly women and children.' In truth, Total's guards shut down its facilities and kept crowds of refugees outside its gates.")

²⁵⁴ Outside, Alex Perry, "[I'm Still Alive but Sh*t Is Getting Wild](#)": Inside the Siege of the Amarula, 1 June 2022. TotalEnergies located worker camps outside the Afungi site but relocated its primary contractor CCS JV inside the Afungi site where security is higher.

identified in the Project HRDD Action Plan. The HRDD Assessment recommends TotalEnergies to “adapt the Project’s ongoing due diligence efforts in light of the evolving context of conflict and insecurity in Cabo Delgado.”²⁵⁵ The HRDD Action Plan envisages to “complete enhanced due diligence for conflict-affected area” only in June 2021, six months after the finalisation of HRDD Assessment report and while the conflict pre-dates several years the HRDD exercise.²⁵⁶ For this task, the Plan Tracker shows 0% progress in January and February 2021, 45% progress in March 2021 and 55% remaining action without any explanation as to what kind of progress has been done to complete heightened HRDD.²⁵⁷ In addition, TotalEnergies was only planning to include emergency preparedness as a salient issue for both workers and communities in June 2021.

108. There is no information publicly available indicating that TotalEnergies would have completed enhanced due diligence for conflict-affected area since the suspension of the operations and subsequent announcement of force majeure by TotalEnergies. This belated proposed timeframe for the implementation of the HRDD Action Plan is hard to be justified given that the Project has been operating in a conflict-affected area since 2017 and that TotalEnergies became the operator of the project in September 2019. It also shows how the absence of a conflict-sensitive analysis in the HRDD Assessment affected the HRDD process as a whole.

109. In sum, the HRDD Assessment did not implement heightened HRDD and failed to “identify, prevent, mitigate and account for” how the Project must address its adverse impacts on both human rights and conflict with a conflict-sensitive approach.²⁵⁸ Attacks near the Project area of operations were sending alarms throughout the whole gas industry since the first attack against Anadarko on 21 February 2019. Despite this, TotalEnergies continued with business as usual before and after becoming the main operator and did not conduct any heightened HRDD, thereby failing to integrate conflict sensitive analysis into its human rights impact assessment and the HRDD Action Plan.

e. Lack of responsible exit plan

110. Business may decide to suspend or terminate its activities in conflict-affected areas. To address adverse human rights impacts, the decision to exit can be seen as an option for business.²⁵⁹ However, “at all times, enterprises need to be aware of any risks that a particular course of action may pose to affected stakeholders and take these into account in their decisions”, including the decision to exit.²⁶⁰ Business enterprises must be “aware of the human rights impact that could result from terminating its activities.”²⁶¹

²⁵⁵ HRDD Assessment, p. 6.

²⁵⁶ HRDD Action Plan, p. 12.

²⁵⁷ HRDD Action Plan, p. 25.

²⁵⁸ UNGP Principle 17; UN Working Group’s 2020 Report, para. 44.

²⁵⁹ [Guiding Principles on Business and Human Rights](#), OHCHR Commentary to Principle 19, p. 22. (“There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider *ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.*”) (Emphasis added). [OECD Guidelines for Multinational Enterprises](#), (2011), p. 25, para 22 (“Appropriate responses with regard to the business relationship may include [...] as a last resort, *disengagement* with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. *The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.*”) (Emphasis added).

²⁶⁰ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), p. 79.

²⁶¹ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#), p. 32.

111. Since the decision to exit is the consequence of a deteriorating situation over a period, business must “anticipate and plan a clear exit strategy in advance”.²⁶² The UN Working Group on Business and Human Rights explains that a responsible exit must “allow the business to identify and assess the impacts of disengagement with affected people, including business partners and communities, and to develop mitigation strategies”, which “may include: providing reasonable notice to communities, suppliers, workers and other partners of the pending disengagement; ensuring that staff continue to receive income for the duration of the crisis, in the event of temporary suspension or training, and capacity-building to mitigate the loss of employment; and ensuring the security of remaining staff who cannot be evacuated.”²⁶³
112. The Danish Institute for Human Rights recommends that business enterprises reassess their human rights impacts “whenever the scale, scope or nature of the project or business activities changes, such as during project expansion or preparation for decommissioning and closure.”²⁶⁴
113. TotalEnergies did not get caught up in the outbreak of a conflict in Mozambique; it entered business activities in Cabo Delgado province with knowledge that there had been an ongoing armed conflict in the region since October 2017. When it decided to acquire Anadarko’s stake in the Project and finalised that acquisition in September 2020, it should have conducted heightened HRDD and have anticipated challenges that its operating context could pose in relation to potential and adverse human rights impacts related to the conflict. Therefore, TotalEnergies should have developed a responsible and clear strategy in advance for potential suspension or termination of its activities in the Project.
114. The potential need for a decision to suspend or terminate Project activities was foreseeable to TotalEnergies due to allegations of serious human rights violations and war crimes committed by both parties to the conflict and the escalating violence and insurgent attacks near the Project area of operations. The HRDD Assessment, lacking conflict-sensitivity analysis, did not identify the necessity for the Project to develop a responsible exit plan and take steps to avoid adverse consequences of leaving the Project in Afungi. Nor did it address how to prevent or mitigate negative impacts on both human rights and conflict of a potential exit decision.
115. As a result, when TotalEnergies declared *force majeure* because of the security situation, it was not ready to prevent or mitigate negative impacts on human rights of a potential exit decision. Notably, before leaving the country, TotalEnergies did not develop any responsible and clear strategy as to how it would continue the resettlement plan including the compensation scheme and protect the safety of community members who were resettled to, or waiting for resettlement to, Quitunda Village. The attacks on Quitunda village on 1 January 2021 did not create a wakeup call for TotalEnergies to be well prepared in case of a potential indefinite suspension of Project activities and its consequences on Project-affected communities.
116. When business activities changed with the decisions of suspension on 4 January 2021 and on 27 March 2021 and later with the declaration of *force majeure* on 26 April 2021, TotalEnergies was not prepared for a responsible exit. As a result, prior to any of these major decisions, TotalEnergies

²⁶² UN Working Group’s 2020 Report, para. 65.

²⁶³ UN Working Group’s 2020 Report, para. 65.

²⁶⁴ Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), p. 19.

did not provide reasonable notice to Project-affected communities, workers, and contractors. There is a lack of transparency in relation to TotalEnergies' decision to terminate its operations in Mozambique after the Palma attack.²⁶⁵ The declaration of *force majeure* left numerous Mozambican contractors without a job and a source of income overnight. If the HRDD Assessment had been conducted with a conflict-sensitive lens, the Project would arguably have developed a responsible and clear strategy in advance to address human rights impacts on Project-affected communities that might result from the termination of its activities. However, neither the HRDD Assessment nor the HRDD Action Plan addressed this issue.

4. Failure to assess the resettlement plan to the situation on the ground.

117. The development of the Project (and of Area 4) involves a significant resettlement process.²⁶⁶ The resettlement process involves 6.625 hectares of land for the construction of the Project including the replacement of 3.612 hectares of agricultural land.²⁶⁷ It includes the physical displacement of people from Quitupo and Senga to the newly built village of Quitunda as well as economic displacement of households cultivating lands within the Project area. 556 households (approximately 2.446 people) are in the process of being physically displaced and another 952 households (approximately 4760 people) are being economically displaced through the full or partial loss of their land assets such as machambas, crops and productive trees.²⁶⁸

118. The resettlement process started in 2012.²⁶⁹ In May 2016 after several years of planning, Anadarko, then operator of the Project, issued a Resettlement Plan which was approved by the Government of Mozambique in November that same year.²⁷⁰ The implementation of the resettlement plan started in late 2017 and have been ongoing since then. The construction of the new village of Quitunda built to host households affected by physical displacement started in 2018.²⁷¹ Between July and December 2019 phase 1 of the relocation process was implemented and as a result some households (163 according to the webpage of the Project) were relocated to the newly created Quitunda Village.²⁷² A number of households have also been economically displaced and impacted by partial loss of their land's assets such as machambas, crops and productive trees.

²⁶⁵ See and compare [the complaint](#) filed by the Centre for Research on Multinational Corporations (SOMO) on behalf of 474 Myanmar-based civil society organisations against Telenor (telecommunications company) to the Norwegian National Contact Point under OECD Guidelines for Multinational Enterprises on 27 July 2021. The complaint alleges, among others, that Telenor has not been transparent in relation to its decision to disengage from its Myanmar operations after the coup.

²⁶⁶ HRDD Assessment, p. 13.

²⁶⁷ HRDD Assessment, p. 13.

²⁶⁸ HRDD Assessment, p. 13 ; African Development Bank Group, Mozambique LNG, [Resettlement Action Plan \(RAP\) Summary](#), p. 3. As for the maritime environment, the estimate is that 1379 fishermen and 2425 inter-tidal collectors – almost exclusively women – will be affected by the development of the project in the future. Compensation will be made available to the latest when the fishermen and inter-tidal collectors will lose access to habitual fishing grounds. See HRDD Assessment, p. 13.

²⁶⁹ See Decree 31/2012, [Regulations for the resettlement Process Resulting from Economic Activities](#), 8 August 2012. See also, HRW, [Human Rights Watch Recommendations for the Mozambique's Resettlement Decree](#), 17 September 2012.

²⁷⁰ HRDD Assessment, p. 14 ; Mozambique Gas Development Project, Volume 1, [Resettlement Plan](#), May 2016. See also African Development Bank Group, Mozambique LNG, [Resettlement Action Plan \(RAP\) Summary](#).

²⁷¹ HRDD Assessment, p. 16. See also Mozambique LNG, [Resettlement, Quitunda Village](#).

²⁷² HRDD Assessment, p. 15. According to the [Project webpage](#), the village was handed over to the district government in July 2019.

As noted in the HRRD Assessment, there have been delays in the allocation of replacement land for an unspecified number of households.²⁷³

119. The HRDD Assessment relies on the IFC standard as its benchmark to conduct its assessment of resettlement and explains that the resettlement process has been undertaken in accordance with Performance Standard 5 (PS5) of the IFC standard.²⁷⁴ The IFC, an international institution member of the World Bank Group, has developed Environmental and Social Performance Standards that define IFC clients' responsibilities for managing their environmental and social risks.²⁷⁵ PS5 provides detailed guidelines for businesses dealing with land acquisition and involuntary resettlement.²⁷⁶ According to PS5 of the IFC Standard: “Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the Affected Communities and persons, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced.” Thus, involuntary resettlement should be avoided and if unavoidable, be minimized and appropriate measures carefully planned and implemented to mitigate adverse impacts on displaced persons and host communities.

120. As noted in the HRRD Assessment, resettlement can adversely impact the enjoyment of a wide range of human rights by the communities living in the Project area including civil and political rights, economic, social and cultural rights and in particular the right of everyone to an adequate standard of living for himself and his family.²⁷⁷ Moreover, the issue of resettlement is of particular importance as the potential or actual adverse human rights impacts that relate to the resettlement process can be considered directly linked to the Project operations and thus directly caused by the Project.²⁷⁸ According to UNGP Principle 13, the responsibility to respect human rights requires that a business enterprise: “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.” The commentary of UNGP Principle 19 states that “where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.”²⁷⁹

121. The HRDD Assessment and the HRDD Action Plan were the first opportunity for TotalEnergies to assess the resettlement process from a HRDD perspective since it became the operator of the Project in September 2019. Despite numerous issues raised over the years by affected communities with the process and detailed below, the HRDD Assessment and the HRDD Action Plan appear to endorse the existing resettlement plan and process without providing an assessment as to whether its implementation had caused adverse human rights impacts for the communities involved (A). In addition, while the HRDD Assessment identifies some potential/actual adverse human rights impacts related to the security situation on the implementation of the resettlement process, no steps

²⁷³ HRDD Assessment, p. 17.

²⁷⁴ HRDD Assessment, pp. 4, 15.

²⁷⁵ IFC, [IFC Performance Standards on Environmental and Social Sustainability](#), 1 January 2012.

²⁷⁶ See HRDD Assessment, p. 13 also referring to PS1.8; PS1.22 and PS1.25 related to the assessment and management of environment and social Risks and impacts.

²⁷⁷ HRDD Assessment, pp. 15. It includes for instance Articles 17 (right to own property) and 25 (right to a standard of living adequate for the health and well-being of himself and of his family) of the Universal Declaration of Human Rights and Article 11 (the right of everyone to an adequate standard of living for himself and his family) of the International Covenant on Economic, Social and Cultural Rights.

²⁷⁸ HRDD Assessment, p. 7.

²⁷⁹ [UNGP](#), Commentary to Principle 19, p. 21.

have been seriously taken by TotalEnergies since April 2021 and the declaration of *force majeure*, to prevent them or make them cease (B).

A. Endorsement of the existing resettlement plan without addressing its potential or actual adverse human rights impacts

122. The Resettlement Plan was adopted and started being implemented by Anadarko after the initial 2015 HRIA. Therefore, the HRRD Assessment was the first occasion to effectively scrutinize its content and its implementation with respect to potential or actual adverse human rights impacts. The HRDD Assessment describes the Resettlement Plan as being based on the “high standard” of PS5 of the IFC standard and to include a “full range of livelihood restoration programs” for physical displacement and livelihood restoration program.²⁸⁰ The HRDD Assessment seems to endorse the Resettlement Plan but does not provide any analysis on whether the Resettlement Plan itself or its implementation effectively meet the requirements of PS5 of the IFC standard.

123. Since inception, numerous issues about the implementation of the resettlement process have been publicly raised by affected communities. Issues with this process include the choice of the location for Quitunda village that failed to take into account religious dynamics and relocated fishermen away from the sea side;²⁸¹ the lack of transparency about the initial consultation and agreement process;²⁸² inadequate compensation and the loss of livelihoods for people that were involuntarily or economically displaced;²⁸³ the failure to sufficiently recognize the contribution of women,²⁸⁴ as well as the lack of trust in communities’ representatives in the resettlement committees to represent the interests of the communities and to bring up their complaints.²⁸⁵ The HRDD Assessment does not address any of these issues and their potential or actual adverse human rights impact. It states that “resettled people in focus groups confirmed that their questions and concerns about entitlements and compensation are addressed regularly through dialogue and engagement with the Project and that they were aware of the mechanisms available to make formal grievance”.²⁸⁶

²⁸⁰ HRDD Action Plan, p. 7; HRDD Assessment, p. 15. The HRDD Assessment further indicates that “it is apparent that resettlement has been taken seriously” in terms of “planning, coordination, financial and human resources”. See HRDD Assessment, p. 15.

²⁸¹ Friends of the Earth International, Les amis de la terre France, De l’Eldorado gazier au Chaos, quand la France pousse le Mozambique dans le piège du Gaz, June 2020, p. 27, [Cabo Ligado : monthly, February 2023](#), 16 March 2023 (“The Quitunda resettlement village, built next to the camp to receive 600 families from the concession area for the project, has been criticized for taking the fishing community away from the coast. These days, people in Quitunda are taken by bus to fish on the shores of Afungi, which is not a sustainable solution in the long term.”); Friends of the Earth, [Villagers suffer at the hands of Mozambique’s LNG gas development](#), June 2016; YouTube, JA! [Impactos das Plantações de Monocultura nas Mulheres Rurais](#); Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022, p. 19.

²⁸² International Crisis Group, [“Stemming the Insurrection in Mozambique’s Cabo Delgado”](#), Africa Report N°303, 11 June 2021, p. 6; Friends of the Earth, [Villagers suffer at the hands of Mozambique’s LNG gas development](#), June 2016; JA4CHANGE, [Trapped -How to break a community that resists ?](#), 21 February 2023 ; Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022, pp. 18-19. But see also Jean-Christophe Rufin, Ingrid Glowacki, Report on the socio-economic, humanitarian, and human rights situation in Palma-Afungi-Mocimba area (Cabo Delgado), March 2023 (Jean-Christophe Rufin’s Report) fn. 20 (The Mozambican Bar Association filed a complaint against the Mozambican State in the administrative court, challenging the legality of the DUAT on the basis of the lack of community consultations. This was rejected by way of an administrative tribunal decision on 18 July 2019. An appeal was filed, which was rejected by way of a decision dated 16 April 2020.)

²⁸³ International Crisis Group, [“Stemming the Insurrection in Mozambique’s Cabo Delgado”](#), Africa Report N°303, 11 June 2021, p. 6; YouTube, JA! [Broken Lives, Stolen Future](#); Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022, p. 19.

²⁸⁴ Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022, p. 19.

²⁸⁵ JA4CHANGE, [Trapped -How to break a community that resists ?](#), 21 February 2023.

²⁸⁶ HRDD Assessment, p. 16.

However, it does not specify what those grievances were, whether they were appropriately addressed from a human rights perspective and whether the requirements of PS5 of the IFC standard were actually respected.

124. For instance, PS5 of the IFC standard indicates that the resettlement plan must improve, or restore, the livelihoods and standards of living of displaced persons and to provide relocation assistance suited to the needs of each group of displaced persons. While the HRDD Assessment notes that Quitunda village “has been constructed to very high standards for housing and infrastructures”,²⁸⁷ it does not address whether the livelihoods and standards of living of displaced persons have been restored or improved. To the contrary, testimonies available from affected stakeholders suggest that because of the choice of the location of the village – which lead to the relocation of fishermen far from the sea and the loss of lands assets such as machambas, crops and productive trees – and the way they were compensated (inadequate land compensation that do not allow to restore previous livelihoods and delays in the compensation process that create situations of tensions where relocated family wants to exploit the land assigned to them but find the former occupant on site who refuses to release it), number of resettled people consider that their livelihoods and standards of living and those of their family have deteriorated.²⁸⁸

125. In addition, PS5 of the IFC standard requires ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected. While the Resettlement Plan may provide this in theory, the HRDD Assessment does not question whether it has been the case in practice given that the lack of consent or information has been an issue regularly raised by affected communities over the years. In his report for TotalEnergies, Jean-Christophe Rufin also noted, based on his engagement with affected stakeholders, “a lack of awareness about the evaluation process, land allocation, project start dates, actual compensation payment dates, their rights and claims mechanisms, and more broadly the risks of negative or positive impacts of the project.”²⁸⁹

126. Given the scarcity of information available about the methodology used by the assessment team to conduct stakeholder engagement,²⁹⁰ it is not possible to confirm whether the resettled people who took part in the focus group were representative and whether the conditions of the engagement allowed them to freely express their grievances. That the HRDD Assessment does not mention any of the grievances raised by affected communities appears at odds with the information gathered by Jean-Christophe Rufin early 2023 for his report commissioned by TotalEnergies. Reporting on information directly collected from affected stakeholders,²⁹¹ he indicates that affected communities have expressed reservations regarding a lack of consent or information, the assessment of damages and the compensation and the payment of such compensation.²⁹² Given the number of resettlement issues raised by affected communities over the years and the potential direct responsibility of

²⁸⁷ HRDD Assessment, p. 16. See also Mozambique LNG, [Resettlement, Quitunda Village](#).

²⁸⁸ Friends of the Earth International, Les amis de la terre France, De l’Eldorado gazier au Chaos, quand la France pousse le Mozambique dans le piège du Gaz, June 2020, p. 28 ; Friends of the Earth, [Fuelling the crisis in Mozambique](#), 16 May 2022 ; Jean-Christophe Rufin’s Report, p. 32.

²⁸⁹ Jean-Christophe Rufin’s Report, p. 26.

²⁹⁰ See above, paras. 45-55.

²⁹¹ For explanation of his methodology see Jean-Christophe Rufin’s Report Appendix 1.

²⁹² Jean-Christophe Rufin’s Report, p. 26.

TotalEnergies in case of adverse human rights impacts on the affected communities, the HRDD Assessment, similar to Rufin’s report,²⁹³ should have analysed the potential or actual adverse human rights impact of the resettlement and the effective implementation of the Resettlement Plan and provided recommendations to TotalEnergies in this regard.²⁹⁴

127. The CEO of TotalEnergies has been aware of some of the issues surrounding resettlement as he stated that the location of the village was decided by the previous operator, Anadarko, under great pressure from the Mozambican government and that “there have been some controversies about human rights around the project, not because of us. We inherited that from the Anadarko acquisition.”²⁹⁵ This statement appears at odds with the HRDD process that seems to have fully endorsed the current resettlement process. The webpage of the Project presents the Resettlement Plan as “our”.²⁹⁶ TotalEnergies did not question its content when it became the operator of the Project and has continued its implementation since then. Furthermore, the HRDD Action Plan approves the existing Resettlement Plan without questioning its implementation.

128. The HRDD Assessment and the HRDD Action Plan were the first opportunity for the Project to assess the resettlement process from a HRDD perspective. However, TotalEnergies failed to seriously consider some of the past and current issues concerning the implementation of the resettlement plan. The report of Jean-Christophe Rufin addresses some of these shortcomings by providing an evaluation of the effective implementation of the relocation and compensation procedure and proposes concrete recommendations to address the issue identified in the process.²⁹⁷ The fact that his recommendations have been mostly transposed into concrete measures to be implemented in the action plan adopted by TotalEnergies following Jean -Christophe Rufin’s report, is a positive step. Nevertheless, it further highlights the lacunae of the HRDD process in assessing the implementation of resettlement plan.

B. Failure to address the impact of the conflict on the implementation of the resettlement process and to restore the livelihoods of affected right-holders.

129. Both the HRDD Assessment and the HRDD Action Plan acknowledge that already in December 2020/beginning of 2021, the implementation of physical relocation and the delivery of livelihood restoration programs “have been delayed and/or experienced some dis-continuity in delivery” notably because of the prevailing insecurity in the Cabo Delgado region.²⁹⁸

130. Regarding relocation to Quitunda village, according to the website of the Project, Phase 2 and Phase 3 of relocation were initially supposed to be implemented in the 2nd and 3rd quarter of 2020 and at the end of the 4th quarter of 2020, respectively. The Project estimates that it concerns 385 households.²⁹⁹ The HRDD Assessment indicates that with the exception of the people who have already been relocated between July and December 2019 as part of phase 1, as of December 2020

²⁹³ Jean-Christophe Rufin’s Report, pp. 25-35.

²⁹⁴ See Danish Institute for Human Rights, [HRIA Guidance and Toolbox](#), pp.35, 83-84.

²⁹⁵ Cabo Ligado, [Cabo Ligado Monthly: February 2023](#).

²⁹⁶ Mozambique LNG, [Resettlement, Resettlement plan](#).

²⁹⁷ Jean-Christophe Rufin’s Report, pp. 25-35, 41-44.

²⁹⁸ HRDD Action Plan, p. 7; HRDD Assessment, pp.15-17.

²⁹⁹ Mozambique LNG, [Resettlement, Resettlement plan](#).

there were delays to the planned timelines for the next phases of resettlement for several reasons including the security situation.³⁰⁰ TotalEnergies declared *force majeure* in April 2021, and thus phases 2 and 3 of the resettlement are still at a standstill today. In its report Jean-Christophe Rufin estimated that as of beginning of 2023, this concerns approximately 200 families.³⁰¹

131. As noted in the HRDD Assessment in December 2020, “if delays goes on for a significant amount of time, there can be adverse impacts on people as they are unable to plan and get on with their lives”.³⁰² It seems that, if it was not already the case in late 2020, two and a half years after this statement, the adverse impact on people who are still waiting to be resettled to plan and get on with their lives have now materialized. The absence of preparedness from the Project on how to deal with the delays in the implementation of the Resettlement Plan in light of the security situation on the ground (aggravated by the declaration of *force majeure*) has brought the life of the people still waiting for resettlement to a standstill for years now.³⁰³

132. The HRDD Assessment does not assess whether the delays had already adversely impacted the human rights situation of the people for which the resettlement was delayed in December 2020. It merely stated that “if delays go on for a significant amount of time, there can be adverse impacts on people as they are unable to plan and get on with their lives.”³⁰⁴ This gap in the analysis may be explained by the lack of stakeholders’ engagement by the assessment team with the communities whose relocation was being delayed. Indeed, there is no explanation in the report as to why the focus of the HRDD Assessment was “primarily on the people who had already been relocated to Quitunda village”³⁰⁵ but not on the people whose relocation was being delayed. As noted elsewhere, the HRDD Assessment seems to have left out engagement with communities who have yet to be resettled.³⁰⁶ If the HRDD Assessment team had met with those affected communities, they may have found out, like Jean-Christophe Rufin did, that they are not allowed to do work on their house and to plant on their land while not yet benefiting from the new houses and lands and have difficulties to access fishing areas.³⁰⁷

133. For the delay in the allocation of agricultural land as compensation, the HRDD Assessment notes that “in cases where replacement agricultural land has been delayed, affected households have been provided with transitional allowances in the form of food baskets.”³⁰⁸ The HRDD Assessment suggests that there are delays in the implementation of the allocation of replacement land and vulnerable people’s programs because of security causing “greater reliance than anticipated on the project for food security and other transitional supports for the households that have already been

³⁰⁰ HRDD Assessment, pp. 15-16.

³⁰¹ Jean-Christophe Rufin’s Report, p. 33.

³⁰² HRDD Assessment, pp. 15-16.

³⁰³ JA4CHANGE, [Trapped -How to break a community that resists?](#), 21 February 2023.

³⁰⁴ HRDD Assessment, pp. 15-16.

³⁰⁵ HRDD Assessment, p. 15.

³⁰⁶ See *supra*, para. 47.

³⁰⁷ Jean-Christophe Rufin’s Report, p. 33. It should also be emphasized that the remaining people still living in Quitupo are now surrounded by a fence which construction started in 2021 and are now trapped inside that fenced area without permission to develop farming and fishing activities within the fenced area. See JA4CHANGE, [Trapped -How to break a community that resists?](#), 21 February 2023.

³⁰⁸ HRDD Assessment, p. 16.

affected by resettlement.”³⁰⁹ It adds that the Project maintained its support through the continuation of food baskets but emphasized the risk of creating dependency when the intention was to be creating opportunities and building resilience.³¹⁰ In other words, the HRDD Assessment already acknowledges in late 2020 that the delays in the implementation of replacement agricultural land failed to restore the livelihoods of the people economically displaced and created dependency. Jean-Christophe Rufin’s Report confirms that more than two years later not all the families have access to the plots that were allocated to them as compensation.³¹¹

134. The HRRD Assessment identified the delays in the allocation of agricultural land, the security situation that was adversely impacting the livelihoods of the economically displaced persons and even raised doubt as to whether the livelihood restoration plan could actually be implemented in the future.³¹² Nevertheless it did not provide TotalEnergies with any tangible solutions for affected people other than generally recommending to focus on the ongoing delays and to assess the impacts of the changing context on resettlement plan delivery and undertake adaptive management including potentially transitional support and assistance as appropriate. While this vague recommendation was reproduced in the HRRD Action Plan,³¹³ it can be concluded that even if TotalEnergies had continued with distributing food baskets after the declaration of force majeure, the livelihood of people waiting for land compensation and livelihood restoration program would have not been restored and have deteriorated. This is confirmed by Jean-Christophe Rufin’s Report when he states that delays in financial compensation “poses supplies issues to already displaced persons, who, unable to cultivate new lands, and having abandoned the previous ones, find themselves without resources.”³¹⁴

135. To conclude, the HRDD Assessment had already pointed out in late 2020 that the security situation in Cabo Delgado Region was putting people affected by the resettlement at risk of adverse human rights impacts. The conclusions in the HRDD Assessment should have raised questions from the assessment team and from the Project as to whether it was possible, given the conflict, to implement the Resettlement Plan while respecting human rights. It should also have raised alarm bells on the preparedness of TotalEnergies to deal with this issue considering the continuing degrading security situation. Nevertheless, the absence of proper heightened HRDD, have left people still in the process of being resettled or waiting for land offered as compensation in limbo and without concrete solutions to adequately restore their livelihoods.

³⁰⁹ HRDD Assessment, p. 17.

³¹⁰ HRDD Assessment, p. 17.

³¹¹ Jean-Christophe Rufin’s Report, p. 32.

³¹² HRDD Assessment, p. 17.

³¹³ HRDD Action Plan, p. 7.

³¹⁴ Jean-Christophe Rufin’s Report, p. 37.

V. Conclusion

136. This report shows that there is a significant disconnect between the Project's public commitment in its Human Rights Policy to respect human rights in all aspects of its operations and the actual implementation of HRDD process and the concrete human rights situation on the ground.
137. This independent review demonstrates that the HRDD Assessment is incomplete and contains flaws that have not been properly addressed by TotalEnergies in its HRDD Action Plan. While some of limitations encountered in conducting the HRDD Assessment may be related to the circumstances, notably the COVID-19 pandemic, it does not obliterate all the shortcomings identified in this report.
138. The main area of concern relates to the disregard by the HRDD process of the armed conflict in Mozambique. The LKL HRDD Assessment conducted in 2020 and the following Action Plan of TotalEnergies fail to properly prioritize and consider the armed conflict and to conduct heightened HRDD with a conflict-sensitive approach. No justification can be found for such a disregard given that the LNG project has been operating in a conflict-affected area since 2017 and that TotalEnergies became the operator of the project in September 2019.
139. As a result of this important gap, the HRDD process almost entirely disregards the potential and actual human rights impacts of the Project in relation to the armed conflict. Notably, the HRDD process fails to accurately assess the potential human rights impact of the Project on the security situation of the communities vis-à-vis the insurgents and the Mozambique security forces. It also fails to consider international humanitarian and criminal law as relevant legal frameworks despite their undeniable applicability to the context of the Project's operation. Consequently, the HRDD process fails to assess risk of being considered complicit in potential and actual international humanitarian law violations or war crimes committed by the Mozambican armed forces. Furthermore, the HRDD process did not comprehensively address gender and conflict as part of any heightened human rights due diligence.
140. If the HRDD process had been conducted with a conflict-sensitive lens, the Project would have developed a responsible and clear strategy in advance to address the potential human rights impacts that might result from the termination or suspension of its activities. Because it did not, TotalEnergies was not prepared when it declared *force majeure* and did not have any clear strategy as to how it would continue the implementation of the resettlement plan and the protection of the communities who were resettled to, or waiting for resettlement to, Quitunda Village, thus leaving affected communities in limbo. Two other examples indicate that TotalEnergies' HRDD policies and practices were not suited to address potential or actual human rights impacts in relation to the security of the community. Firstly, TotalEnergies did not take part in rescue efforts from the Amarula Hotel during the Palma attack. Although it had a unique position to conduct rescue operations with its some 700 security personnel and equipment (personnel carrier-type choppers, airport, and aviation fuel), it did not use this ability and resources. Nor did it exercise its leverage with the Mozambican government to activate its help for those in need. Secondly, when insurgents clashed with Mozambican security forces and attacked civilians near the LNG plant in Afungi, at least 10,000 IDPs had gathered outside the LNG Project site secured by the government forces. Media reported that civilians had often been denied entrance to the LNG Project site. This incident shows that TotalEnergies seemed not to feel responsible for thousands of civilians.

141. Besides the armed conflict, this report identifies other problematic areas in the HRDD process:
- There was the belated timing of the HRDD Assessment. TotalEnergies did not carry out any HRIA before it engaged in the project and again not before it became the operator in 2019.
 - There were the lacunae with stakeholder engagement processes, raising serious doubts as to the sufficiency of the engagement and the quality of the information collected to conduct analysis in the HRDD Assessment. Key stakeholder groups (like communities who yet have to be resettled and civil society in Cabo Delgado) appears not to have been consulted and methodology used to engage with affected stakeholders was not transparent.
 - And there was the failure of the HRDD documents to assess the Resettlement Plan to the reality of the situation on the ground. Despite numerous issues raised over the years by affected communities with the resettlement process, the HRDD Assessment and the HRDD Action Plan appear to endorse the existing resettlement plan and process without assessing its human rights impact on the ground.
142. Jean-Christophe Rufin's Report brings out some shortcomings of the Project's HRDD. While his assessment and recommendations, adopted by TotalEnergies in an action plan, are going in the right direction and could address some of the issues identified in the HRDD process of the Project, his report is not a HRDD assessment, even less a comprehensive one.