



Netherlands Commission for
Environmental Assessment

Review of relevance of doing an SEA for coordinated reconstruction planning from September 2005 onwards

Memorandum by the NCEA

28 September 2005



Draft Advice of the Secretariat

To The Central Environmental Authority of Sri Lanka
Attn Acting D.G. Ms. Ramani Ellepola
CC Netherlands Embassy in Colombo, Mr. Jan Huesken
From Mr. Reinoud Post (Technical Secretary - Netherlands Commission for Environmental Impact Assessment)
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Subject Review of relevance of doing an SEA for coordinated reconstruction planning from September 2005 onwards

By: Secretariat of the Netherlands Commission for EIA

Advice 2005-012

1. INTRODUCTION

After the tsunami on 26 December 2004, the president of Sri Lanka installed a national task force to plan and coordinate the reconstruction works (TAFREN). The CEA identified the necessity to assist post tsunami reconstruction planning with a Strategic Environmental Assessment. CEA proposed to the Netherlands Embassy to invite the Netherlands Commission to assist the CEA in this venture and to ask the Netherlands Commission to make available its administrative system for rapid deployment of all expertise that would be needed to perform the SEA. The Ministry for Environment and Natural Resources (MENR) had already engaged in a rapid assessment of tsunami damage to nature resources (green assessment) and CEA was preparing a rapid assessment of tsunami damage to the non nature areas (brown assessment).

On 29 January the NCEIA, in compliance with the ToR, submitted advice to the CEA on how to set up an SEA for post tsunami reconstruction planning. The advice included a draft MoU between the NCEIA and MENR, the agency envisaged to implement the SEA.

In a letter to the Netherlands Embassy, reacting on NCEIA's advice, MENR expressed the opinion that the proposed SEA should rather be directed towards capacity building as main objective instead of supporting real planning. MENR submitted a counter proposal in line with this opinion.

TAFREN made clear to the CEA and the Netherlands Embassy that it needed the proposed structure (as clearing house for reconstruction planning), but that the structure as presented in the advice was too complex and needed to be simplified.

Following a Mission in February 2005, the NCEIA submitted an adopted proposal, taking into account the observations of TAFREN and MENR.

Subsequently, the MENR formulated the “proposal on establishment of the Tsunami Environmental Response Platform (TERP)”, which the CEA sent to the NCEIA in June. This proposal, sent to NCEIA on 26 June, was based mainly on the February NCEIA proposal and accepted the establishment of a reconstruction planning platform and an environmental helpdesk. In addition, this proposal accepted to do an SEA for reconstruction planning.

Also in June 2005, confronted with the fact that for many sectors the stage of planning for reconstruction was over and the stage of doing EIAs was eminent, the CEA requested NCEIA’s assistance in preparing implementation of the TERP proposal. As neither the platform, nor the helpdesk had been established at that moment, NCEIA and the CEA agreed to plan the mission in August, assuming that by then the platform and the helpdesk would be functional.

2. CEA’S QUESTION

The CEA has invited the NCEIA to assist in adapting the SEA set-up from the NCEIA proposal to the current field situation, which has left the planning stage and gone into the implementation stage of reconstruction (see request in annex 1).

3. OUTPUT

In accordance with the request the output of the mission is this draft advice of the secretariat that:

- captures the current situation
- draws some conclusions with regard to present and future needs for planning and SEA
- comments on the TERP proposal and formulate recommendations for its strengthening
- proposes a logical sequence of actions for the platform agenda (with regard to policy development planning and SEA)
- proposes a logical training sequence on SEA for both the platform and the helpdesk
- singles out the main tasks for the long term SEA consultant foreseen in the TERP proposal
- and formulates NCEIA’s commitment to the work of the platform and the helpdesk

This output of the mission has been presented to CEA staff members on 2 September 2005. The meeting was chaired by the acting DG of the CEA, Ms. Ramani Ellepola. Unfortunately, the chair of the CEA, Mr. Tilak Ranaviraja, the chair of the coordination platform, Mr. M.A.R. Kularatne, the secretary of

MENR, Mr. Leelaratne and the add. secretary of MENR, Mr. Wickramasinghe, were unable to attend the presentation.

4. THE TERP PROPOSAL

4.1 General observations

Having studied the TERP proposal, the secretariat of the NCEIA observes that:

- it is a great achievement that there is now willingness to engage in coordinated sustainable planning of post tsunami reconstruction;
- in general terms, the TERP proposal establishes the structures needed to implement coordinated (integrated) sustainable planning;
- it has doubts with regard to the adequacy of the powers attributed to the proposed platform.

4.2 Institutional set-up and mandate

4.2.1 Detailed observations

- the TERP proposal implicitly acknowledges that TAFREN has no mandate or authority to take decisions on reconstruction planning and reconstruction activities¹;
- TERP proposal acknowledges that line ministries and other state agencies have the authority to take initiatives and decisions on Tsunami-urged policy reviews and on planning and executing post-tsunami reconstruction activities under their regular mandate;
- By proposing a planning platform, the TERP proposal acknowledges the necessity of establishing inter-sector coordination in sector policy reviews and in the planning of reconstruction activities;
- The TERP proposal has foreseen an advisory role for the Platform in matters of sector policy reviews;
- The TERP proposal seems to assume that the platform initiates SEA for policy reviews and advises the competent agency according to the outcome of the SEA;
- There is no evidence that government has given the TERP any formal authority to initiate reformulation of sector policies, nor that line agencies have been summoned to collaborate with TERP and adopt TERP advice.

¹ The environmental unit of TAFREN confirms that TAFREN, about to be restructured, has a facilitating function only. For the TAFREN Terms of Reference see web site on <http://www.tafren.gov.lk/>

4.2.2 Conclusion on the institutional set-up and mandate

On the basis of the information in the TERP proposal, the secretariat of the NCEIA concludes that:

- participation and collaboration of line ministries and line agencies in TERP is of a voluntary nature and, as the government has not given the platform a formal mandate, non-committal;
- there is no guarantee that line agencies will, indeed, collaborate if TERP proposes review of a policy (with an SEA) under their mandate;
- There is no guarantee that the results of a TERP-triggered policy review (with SEA) will lead to the formulation and gazetting of an adapted policy.

Conclusion : TERP needs to be given a formal mandate

4.2.3 Recommendation on TERP mandate

The NCEIA recommends to vest the Tsunami Response Planning Platform with the following powers:

- To implement an inventory of policies bearing on the Tsunami affected areas and issues and review those policies on their adequacy;
- To identify areas and sectors for which policies should be formulated as a consequence of the occurrence of the tsunami;
- To summon initiative, collaboration and leadership of the agencies mandated to (re)formulate policies that TERP considers absent or not (or no longer) adequate.

4.3 Relevance of SEA for reconstruction 9 months after the tsunami

4.3.1 Assessment of the current situation

- 9 months have passed since the tsunami;
- Many plans have been developed and decided and haven or are now (being) executed;
- Accomplished facts have been created in the field, not allowing for major changes of plans and programmes, possibly only allowing for mitigating measures and redressing erroneous designs in some of the plans.

4.3.2 Conclusions and recommendations with regard to SEA and EIA

Having assessed the current situation, the secretariat of NCEIA concludes that:

- an SEA for assessing and adjusting the full post tsunami reconstruction plan seems no longer relevant

- project EIA for specific actions is most probably very useful (e.g. sand mining)
- SEAs or technology assessment accompanied planning to solve certain strategic bottlenecks in reconstruction might be useful (e.g surface and ground water rehabilitation techniques, debris handling). NCEIA advises to make an inventory.

However, devastation caused by Tsunami has shown that simply reconstituting the pre-tsunami situation is probably not a wise thing to do because:

- The pre-tsunami situation of coastal systems and coastal communities has shown to be pretty vulnerable and more disasters are not excluded;
- The clean-sweeping of the coast-line by the tsunami has offered opportunities for rearranging the physical situation, making it less vulnerable to disasters and more efficient in exploiting economic potentials;

The secretariat of the NCEAI concludes that:

- a review of the policies that relate to management of coastal areas and reformulation of those policies that prove inadequate seems useful;
- it is useful to identify areas for which no policies exist and that are in need of policy development.

A non-exhaustive list of policies that might be considered for (re)formulation would include:

- Vulnerability zoning
- Site selection for solid waste land fill sites
- Site selection for drinking water extraction
- Site selection for (re)settlement
- Provision of building materials
- Development of the fishery sector
- Development of the tourism sector
- Integrated coastal zone management
- Sanitation

As all these policies will have serious environmental and social implications, the secretariat advises to (re)formulate these policies using Strategic Environmental Assessment.

4.3.3 Further recommendations on policy (re)formulation with SEA

With regard to policy (re)formulation with SEA under TERP, the secretariat recommends the following:

- For reformulation of a policy considered inadequate (or no longer adequate), the mandated line agency should take the lead (in the reformulation process and the SEA)

- Until there is certainty about the number and character on SEAs that will be carried out and until there is the certainty of full collaboration of the mandated line agencies (preferably based on a formal mandate of TERP to summon such collaboration), there seems to be little use in engaging a SEA expert as per TERP-proposal.
- The secretariat of the NCEIA suggests the following logical sequence of SEA related actions to be undertaken by MENR:
 - Seek a solution for indispensable SEA-coaching of MENR and CEA prior to engagement of the permanent expert²;
 - Vesting the platform with the suggested powers;
 - Training the platform and the helpdesk;
 - Inventory of policies with a bearing on tsunami affected areas and issues;
 - Review and selection of policies to be re)formulated;
 - Engagement of long term SEA expert;
 - Reformulation of selected policies + SEA;
 - Quality review of SEA's;
 - Decision making on policies;
 - Monitoring of implementation and enforcement of policies.

4.4 Training

With regard to training of the various bodies proposed under TERP, the secretariat of NCEIA recommends:

For Tsunami Environmental Response Platform members a

- Training in negotiation techniques (5 days, costs app. 75.000 US\$ for 30-35 participants);
- Basic training in SEA (2 days, mainly based on case study analysis) leading to full understanding of use of SEA for different planning purposes;
- Role-specific training on SEA, addressing the role that platform members will have to play in SEA processes (2 days, including exercises and simulations).

For Environmental Helpdesk members a(n)

- Basic training in SEA (2 days, mainly based on case study analysis) leading to full understanding of purpose of SEA;

² In addition: As in most countries in Europe the EU directive on Strategic Environmental Assessment is currently being implemented and SEA- experts are scarce, it will be difficult to find in Europe such an expert for a long-term assignment.

- In-depth training on current and useful prediction techniques used in SEA. (5 days, including exercises and simulations, costs to be assessed);
- ‘on the job’ training in the first actual SEA cases identified by the platform (by permanent SEA expert).

4.5 ToR for SEA expert

In annexe 2, the secretariat of NCEIA provides detailed advice on CEA’s draft-ToR for the SEA-expert. Here, only assumed major task are mentioned.

The SEA expert is suggested to:

- provide in-depth training of the SEA teams
- Coach/assist lead agency and platform in
 - Selecting policies in need of (re)formulation
 - Developing proper SEA processes
 - Identifying stakeholders for each SEA
 - Translating SEA results in policy proposals
- Coach and assist the SEA teams
 - in doing the SAE
 - Compiling the SEA report
 - Self-evaluation
- Perform the final editing of the SEA reports

5. ENFORCEMENT OF REGULATIONS AND POLICIES

Part of the damage done by the tsunami seems to have been caused or increased by the effects of human activities that were not allowed according to the existing policy and regulatory framework.

Non-enforcement is partly caused by reluctance to enforce policies and regulations that have serious social and socio-economic consequences, partly because the agencies that have the powers to enforce lack capacity and capability.

To tackle this fundamental weakness in environmental management in Sri Lanka, the secretariat of the NCEIA recommends:

- to formulate policies and regulations an such a way that they can be enforced.

Policies and regulations can be made more enforceable if their social and socioeconomic consequences are known beforehand, if alternatives are developed that have less negative consequences and if mitigating measures are developed for remaining negative consequences. Strategic Environmental Assessment can help developing policies and regulations in that way.

- to seriously consider engaging an independent expert body to do a thorough review and analysis of current enforcement deficiencies³ and recommend on enforcement strengthening;

³ NCEIA is aware that many studies have already been done on this topic and a lot of knowledge on the causes of non-enforcement is available.

- that, based on the results of the review mentioned in the previous point, the platform formulates and implements a master plan for enforcement strengthening.

6. NCEIA COMMITMENT

The NCEIA is willing to provide the following assistance to MENR and the CEA in order to make the TERP a success:

- the NCEIA is prepared to assist upon request in the basic SEA training of the helpdesk and the platform and in the role-specific training of the platform by providing the trainers
- the NCEIA commits to provide upon request assistance to the platform in establishing ToR for SEA's initiated and led by the competent line-agency and in quality review of those SEAs
- the NCEIA commits to assist upon request in identifying suitable candidates for medium and short term international experts

In order to secure priority service, the NCEIA recommends that MENR develops a draft MoU on collaboration between MENR/CEA and NCEIA and submits that draft to the NCEIA for consideration.

7. THIS ADVICE AND THE REQUEST

Evaluation:

1. Develop a framework for the SEA which suits the present scenario, where some of the reconstruction projects are already underway.
SEA for reconstruction is no longer considered relevant. Advice given to do SEAs for policy (re)formulation.
2. Assist in the formation of the SEA team through the identification of the required fields of expertise.
SEA for reconstruction considered no longer relevant. SEAs for distinct policies considered relevant. Composing teams only becomes relevant when lead agency starts up policy (re)formulation process.
3. Organize and conduct training on SEA for SEA team of Help desk.
Helpdesk not yet in place at the time of the mission.
4. Guide the platform on implementation of the SEA. Guide the SEA team throughout the process.
SEA for reconstruction considered no longer relevant. Advice provides guidance on how to proceed and start up SEAs for policy (re)formulations
5. Ensure quality control of the process as well as Review implementation of the SEA as required.

Not relevant at this stage. Commitment of NCEIA to do quality assurance for future SEAs given.