



Netherlands Commission for
Environmental Assessment

Review in EIA

Memorandum by the NCEA

Part of a three year co-operation project on EIA between the Burundi Ministry for Water, Environment, Urbanism and Spatial Planning (MEEATU) and the NCEA.

(also available in French)



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MEMORANDUM

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This document has been developed in the course of a co-operation project on Environmental Impact Assessment between the Burundi Ministry for Water, Environment, Urbanism and Spatial Planning (MEEATU) and the Netherlands Commission for Environmental Assessment (NCEA). The NCEA is an independent expert body that provides advisory services and capacity development on environmental assessment.

This memo first sets out some key concepts and principles for EIA review. In section 2 it gives an overview of different approaches to EIA review, and what conditions are needed for each. In section 3 this memo describes a 4 step review process. In the Annex you will find a description of the Dutch EIA review approach.

1. Introduction

What is review in EIA?

Reviewing is the step in the EIA process that:

- determines whether the EIA study and report is an **adequate assessment** of the environmental impacts and options for dealing with these impacts;
- whether the EIA study is of sufficient relevance and quality for decision-making;
- determines whether the new project **complies with existing plans, policies and standards**;
- ensures that the EIA report and process **complies with the Terms of Reference** (if available).

In some cases the review-step also involves taking into account **stakeholder opinions** about the quality of the EIA contents and the process that was used.

Why do we undertake review?

The aim of the review is quality control. On the one hand it is a check whether the EIA report contains the information it should, in conformance with the regulations and the guidelines. But at the same time, a review looks at whether the EIA report contains the information (on environmental and other impacts and on options/alternatives to deal with these) that is needed for decision making on the specific project. The nature and level of detail of the information that is needed in the EIA depends on the nature and level of detail of this project. Review ensures that important impacts or options are not overlooked, and also enhances the credibility of the EIA report.

An EIA report should be adequate and should not contain inaccuracies. Serious shortcomings are identified during the review. Not every shortcoming in the EIA report has consequences for decision-



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making. The seriousness of a lack of information for decision-making must be assessed. In general, a review results in recommendations as to what should be done to deal with a lack of information or other shortcomings.

Who is involved?

In most countries, review is the responsibility of the competent authority on EIA or the competent authority for decision-making on a proposed project. Review takes place when the (draft) EIA report is ready and before the investment project is approved. There is not always a formal review stage, but competent authorities will usually undertake some kind of review before decision making. Quite often in EIA review the competent authority will involve other government authorities or departments with relevant expertise. External experts, such as consultants or academics, may also be asked to contribute to review.

In some situations an independent review might be preferable, meaning that the review is carried out by an organisation or team of experts that does not have any (perceived) interest in the project itself. Independent review can be useful, particularly in those cases where the competent authority and the proponent/project developer share a common interest or where the competent authority is the proponent/project developer and may tend to develop a preconceived opinion about decision making. Independent review is also useful for SEAs for controversial initiatives.

2. Different EIA review models

The design or improvement of a review system has to consider various components. Below each of these are discussed, including several options for each component, keeping in mind the Burundian context. The NCEA mentions good practice principles for effective EIA where these can be drawn from her own practice or insights into EIA review approaches around the world.

Component 1: Composition and organisation of the review team

The expertise required for review depends on the most important environmental (and social) issues and aspects of the project. Example: a review team for deciding on the location for a sanitary landfill (such as the one currently being planned for the city of Bujumbura) could include a landfill engineer, a geo-hydrologist and an ecologist.

Several **options** for composition and organisation of the review team exist for the Burundi situation, such as:

1. Review team within a the Ministry for Environment (MEEATU) with:
 - a. (voluntary/obligatory) consultation with environmental units within line Ministries or competent authority, responsible for decision-making and/or
 - b. (voluntary/obligatory) consultation with the Inter-ministerial Environment Committee (once revitalised), or the 'Committee Mixte' (as mentioned in the EIA Decree), or a similar body
2. Inter-sectoral team composed of representatives of MEEATU and line Ministries (MEEATU has the lead), possibly also including representatives of private sector and/or NGO's and/or universities etc.



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3. Review team within line Ministry responsible for the project, with obligatory consultation of MEEA-TU
4. Review on behalf of line Ministry or MEEATU by experts (certified or not), such as:
 - a. university scientists
 - b. fixed expert group (the same for each project)
 - c. expert network (specific team for each project)
 - d. independent expert body/commission
 - e. National Association for Environmental Impact Assessment (ABEIE)
5. Mix of representatives from Ministries/MEAATU and experts

Good practice principles for this component

- Review gains in **credibility** when there is an adequate level and balance of expertise in the review team.
- **Reduce subjectivity** in EIA review as much as possible: conduct the review with at least two people.
- **Consider independent review**, especially in projects with major environmental impacts, in complex projects or in cases where there is great controversy.

Component 2: Available time and funds for review

The available time depends on the period for review set by law and varies from country to country, from e.g. 2 days to 120 days. In some countries the available time is fixed, in other countries this can be variable, depending on the nature of the investment project. In Burundi the available time for review is fixed at a maximum of 3 months. The nature and complexity of the proposed investment project will determine the speed and intensity of the review. Controversial and complex projects may require more time for review or a more intensive use of the available time than the more common ones.

It is possible to do a quick (cheap) overview by one person, but a more in-depth (and costly) review by a team of experts will be more thorough. Funds available strongly determine the quality of the review experts: 'super-experts' that are at the top in their field cost more. Moreover, the (team of) expert(s) can operate more effectively if there is logistical or secretarial support to arrange such things as a site visit to the project area, meetings and background information. According to Burundian Decree on EIA, the MEEATU will conduct the review but may ask for advice from other involved ministries. It seems external experts could be engaged as well (or at least, the EIA Decree does not explicitly tell it's not allowed).

In general, several options are possible for time and funds: either fixed or variable for each review. The review costs can be paid from Government budget (Ministry of Environment or line ministry/competent authority) or by proponents/project developers.

Good practice principles for this component

- Review gains in **quality** with adequate funding and sufficient time
- Preferably, budget for review should be arranged for within government financing in a structural way
- If funding by project developers is required, the financial mechanism should be transparent, in order to assure that the review remains objective.



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Component 3: Scope and status of the review findings

In some countries, review is restricted to the contents of the EIA report. In other countries the process, or the way the EIA was undertaken (has public participation been given sufficient attention for instance), is also reviewed. The scope of the review can also vary in terms of coverage: check all information on completeness and correctness or focus on relevancy for decision-making. Finally, the scope of the review can be different in terms of:

- just checking if the contents of the report meet with the legal requirements, without checking the quality of the contents;
- judging if effects are acceptable according to policies, standards and norms;
- focusing more on the substance of the report: the review-team judges the selection of options/alternatives and the way that pros and cons of different options are evaluated.

The status of the review findings can in each case be advisory or binding.

In all cases above the review team does not judge whether the proposed project and its effects are acceptable or desirable. In some countries, the result of the review process also includes advice on whether or not to proceed with the investment project: the review is thus part of formal decision making.

As there are different possible approaches, it is important to be clear on which approach is being followed, within the review-team and when publishing review results.

Good practice principles for this component

- Review gains in **effectiveness** when it focuses on information relevant for decision-making.
- To increase credibility of EIA review and to prevent political influence, review of quality/relevance of the EIA-report should be **separated** from decision-making on whether the project should go ahead or not; technical review before administrative (political) review.

Component 4: Transparency, accountability and public participation in the review process

It is considered to be an added value to use input from public involvement to check and determine the quality of the descriptions in the EIA report including existing quality of the environment, the importance of the effects and the acceptability of possible alternatives. Generally, the decision on the investment project should also demonstrate how review findings were taken into consideration (accountability). There should be written justification in the project decision on how the review findings affected the decision.

Options for organisation of access to public participation information in the review stage: who is responsible and who pays for it? Either the review team organises this or the review team takes note of the results of public participation, as have been provided by the competent authority or the project proponent.

Good practice principles for this component

- Review gains in **transparency** when review findings are published before decision-making and appeal on decision-making is possible
- Review outcomes should be **self-explanatory** and should be given adequate **follow-up**



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3. Steps involved in reviewing an EIA report

Guidelines for the process of reviewing to be used by reviewers or review body

1) Preparation and organisation of the review

When an EIA report is submitted for review, the first step is to organize the reviewing process. The following points of attention may be useful for organisation:

- Make sure that sufficient copies of the EIA report and other relevant documents (e.g. the draft project plan and/or background material) are made available. This means that it is necessary to have an idea of the number of participants in the review-team. Probably the best option is to arrange that the body preparing the project/EIA-report delivers sufficient copies.
- Make a quick scan of the EIA report (and draft project plan) to identify which issues will be the most relevant for review: what is the nature of the project, which area(s) does it cover, which choices will be made, which environmental aspects are crucial.
- Determine which expertise is needed in the review-team and where to find this: within the Ministry or other Ministries? In municipalities or NGO's (for local knowledge)? It is important that members of the review-team:
 - are "objective": have no personal or organisational interest in the investment project
 - have the necessary knowledge and authority, as well as access to more specific knowledge if this is needed
 - are available during the reviewing-process, which means available to read the documents, to attend meetings and to contribute to the review-document
- When establishing the review-team it is crucial that the members of the team understand what input is expected from them and at which time. It can be useful to have some sort of instruction document for this.
- Members of the review-team should receive all relevant documents. Every member should have access to the complete EIA report¹ and preferably the draft project plan as well. Background information can be distributed among experts, depending on the subject.
- When the review-team is complete, make a (detailed) plan of the review-process: meetings, submission of comments, writing of review report, meeting with the body preparing the project plan/EIA-report etc.

¹ For every member of the review-team it is important to understand the context of the project and the choices that are involved. Therefore it is not enough to just read the information on one specific issue. Of course, it is acceptable if a specialist analyses the text on his/her specific issue closely, while going over the other sections more generally.



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2) Identifying the review criteria

The first step for the review-team will be to decide on the “review criteria”. To identify these, three key questions are relevant.

1. Which are the main aspects of the investment project?
 - In case there are any terms of reference (ToR)/scoping guidelines available for the review, use these as review framework
 - If no guidelines are available, the first task of the review is to scope the main aspects of the investment project:
 - objective of the project
 - policy context
 - existing environmental quality
 - description of activities
 - alternatives and mitigating measures
 - environmental impacts of activity
 - comparison of alternatives
 - This can be done with the help of general or generic checklists (e.g. World Bank, EU review checklist, national checklists)
2. Are reviews of EIA reports about comparable activities available?
 - Which information was considered essential in former cases?
 - Which problems occurred during implementation and operation?
 - Are relevant project implementation monitoring results available?
3. Which general review criteria should be observed?
 - Legal requirements (if any)
 - National and regional environmental target norms and standards, compliance with accepted plans and policies
 - Coverage of socio-economic impacts
 - State of the art of technological and environmental know-how
 - Quality of impact prediction and evaluation
 - Assessment and comparison of alternative options
 - Quality of mitigation proposed
 - Significance of impacts after mitigation for the decision
 - Involvement of stakeholders in the EIA process
 - Clarity of the EIA report and of the summary

It is advisable to use the first meeting of the review-team to discuss and decide on the criteria. It can be useful to combine this meeting with a site visit and/or a meeting with the body preparing the project/EIA-report, so the review-team has a chance to understand the context and nature of the project better and have the opportunity to ask questions. This is especially useful when the review-team has not been involved in the ToR-stage.



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3) Carrying out the review

The following working process for an EIA review-team is based on the experience of the NCEA. In carrying out the review the review-team will basically follow three steps.

Step 1:

Listing of all deficiencies of the EIA report on basis of ToR, review of any comparable EIA reports and general review criteria

For this purpose a checklist can be used, prepared by the Ministry. Each team member provides an overview of the parts of the EIA-report which are good, and which are problematic, relating to (at least) his/her specialism. At the same time, a first estimation of the importance of any inadequacies can be made. Although not all comments on the EIA report will necessarily be included in the review report, it is important at this stage to provide a complete overview of the main points which are presented incorrect or incomplete in the EIA-report.

Step 2:

Identifying the shortcomings which are essential, meaning that they directly influence the decision(s)

At the first meeting the review-team should discuss the "direction" the review report should take, based on the first impressions of the team members. The seriousness of inadequacies must be determined. If no serious omissions are found, the review report must state this clearly. Remarks about less important deficiencies which have no crucial significance to the decision(s) should be left out of the main review conclusion altogether, or where appropriate, be moved to an appendix of the review report.

Possible review conclusions and remedial options:

- 1) The EIA report has serious shortcomings and supplementary information is needed before the project design is finalized and decisions are made. The review report should then clearly state how to address this, and what additional information is expected. The arguments for the supplement should be clear, and the review team should communicate these clearly. The review team can expect complaints about delays to the planning process when it concludes that the EIA is not yet adequate.
- 2) The EIA report has minor shortcomings, but these are not of significant importance in this stage of decision-making. The review conclusions can then suggest to:
 - a) provide additional information by means of a set of explanations and conditions attached to the decision. Decision-making can proceed as planned without considerable delay, or
 - b) shortcomings can be solved in the implementation stage. The review may recommend monitoring the shortcomings and uncertainties during project implementation with possible corrective measures agreed on if impacts turn out to be worse than expected.
- 3) The EIA report is sufficient; the decision can be made

The comments of the review-team should be well explained. It is important that the competent authorities, stakeholders and public can understand why shortcomings are important for decision-making or why not.



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Step 3:

Drawing up the review-report

Based on the outcome of the discussion(s) on inadequacies of the EIA-report, a draft review report will be drawn up. This draft-report can be used for further discussion and/or comments of individual review-team members can be submitted and processed in next draft versions. It is important that the review report is balanced and that priorities are clear. If there are important shortcomings, the review-report should contain recommendations to the competent authority on how and when any serious shortcomings should be remedied.

Apart from the shortcomings, the review-team can decide to make other comments in the review report, for instance positive points and/or pointing out issues that the EIA-report mentions which will be crucial for decision-making. Sometimes a compliment is in order and can stimulate practice.

Before finalizing the review-report it is advisable to organize a meeting with the competent authorities and/or the body that has prepared the EIA-report to discuss the draft of the review-report. This to make sure that the review-report is clear and that there are no misunderstandings. Also this meeting can be used to discuss the need for and the contents of any supplements to the EIA-report if this is relevant. Make sure to be clear beforehand that the review conclusions are not up for negotiation, the meeting serves mostly for clarification.

4) Publication and follow-up

If the review concerns only a judgement of the quality and adequacy of the environmental and other information in the EIA report, the completion of the third step signals the end of the review. In this case, the review-report states the outcome and possible remedial action.

However, in some countries the result of the review process can also include advice on whether or not to proceed with the project, based on the policy framework and/or on balancing of pros and cons of the project. Then an additional step must be added to the three steps mentioned above:

Step 4:

Give either the green or the red light to the project. It may alternatively give a yellow light indicating a conditional decision.

This situation is not recommended as technical quality review of the EIA study then interferes with administrative/political decision making on project approval. However, if this extra step is required, it must be emphasised that the review should follow the three-step approach as outlined above and remain as objective as possible, before addressing the final question of whether to proceed with the proposed project or not. If this is not done, the review runs the risk of being prematurely oriented towards a decision in favour of a certain solution, without proper assessment of the quality of the information provided.

Annex 1: Independent review in the Netherlands

General

The NCEA has a formal role in most EIA and SEA procedures, in the scoping and review stage. The NCEA has a legal status and is characterised by the combination of independence and expertise. The Commission has a secretariat with 9 chairpersons, about 20 technical secretaries, support staff and some 600 experts (situation 2012). For each project or plan a working group is formed.

The technical secretary, in consultation with the chairperson and with (specialized) colleagues selects experts (generally 3–4) for participation in the working group, according to the characteristics of the project or plan. Experts cannot have any relationship with the project or plan. The secretary plans the meeting schedule, site visit and is responsible for advice preparation. For a **review** advice to the competent authority, the NCEA has a minimum of 6 weeks by law (sometimes longer, in consultation with the competent authority; this can depend on the complexity, results of participation² or the reviewing-period (holidays)). Generally 2 or 3 meetings take place. A final meeting is held with the competent authorities and project proponent(s)/plan developers. Then, the NCEA may answer questions on the draft. The proponent may point to a lack of clarity or to an unreasonable observation. The final review advice is then presented to the competent authority, together with an accompanying letter setting out any specific points with respect to the project or plan.

If the NCEA has been involved in the scoping stage (this is voluntarily), the working group for review of the EIA/SEA-report usually is the same as the one that prepared the scoping advice.

A review by the NCEA may contain the **following types of comments and conclusions**:

1. Essential information is lacking, thus the EIA/SEA-report does not make a useful contribution to decision-making: the NCEA advises to have the EIA/SEA-report supplemented. This “provisional review” advice is published, so the reviewing process is transparent for stakeholders and public. The provisional review includes the grounds why additional information was requested. The proponent/plan developer has a time span of 6 weeks to supplement the report. In the final review document the NCEA reviews the EIA/SEA-report and supplemental information together. In most cases the NCEA concludes that there is no essential information lacking anymore. In some cases the conclusion is that there is still essential information lacking. In these cases the NCEA will again recommend to supplement the report, but the review document will be final (there is no “second provisional review document”).
2. Important information is lacking, but the NCEA foresees that it is relatively easy to gather this information and that it will not alter the conclusion of the EIA/SEA-report. To avoid delays, the NCEA stresses the need to supply the information and advises to publish this data together with the draft permit, draft decision or draft plan.

² In the Netherlands, the competent authority can choose to involve the public review submissions in the review by the NCEA, but this is not compulsory. In that case the submissions are sent to the NCEA at the end of the term. The NCEA working group will then include issues from these submissions in the review advice if these are relevant for the review. If the competent authority chooses this, the reviewing period will be extended with approx. 3 weeks.



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3. Certain comments on the EIA/SEA-report can be used for the wording of a permit or a plan. The NCEA points to the usefulness of these passages for the permit or plan.
4. Certain comments on the EIA/SEA-report can lead to recommendations for the post-project evaluation or evaluation of plan implementation.
5. The quality of the EIA/SEA-report is of such a satisfactory nature that the decision-making can proceed as planned.

A review begins with a chapter on 'appraisal of the EIA/SEA-report on main points' in which the report is summarised, and which leads to the conclusion 'sufficient or insufficient information for decision-making' and to the main comments on the EIA/SEA-report. The remaining comments are grouped as to subject.

In reviewing an EIA/SEA-report in the Netherlands, the working group cannot give a verdict on the acceptability of a particular solution in respect of environmental impact and the conditions under which it is acceptable. Neither is it for a working group to prescribe how a project should be executed or a plan should be implemented. This is the responsibility of the governmental bodies concerned.

In case the NCEA wishes to make comments that are beyond the scope of its task, these can be expressed in the letter accompanying the review advice.

Confidentiality of information

Much attention is given in the EIA/SEA-procedure to public access to information. However, working group members may from time to time be faced with confidential documents or other information. In these cases the following guidelines will generally apply:

- Should the need arise for the exchange of information between a member of the working group and the proponent this will be arranged exclusively via the secretariat. The working group secretary ensures that the competent authority is informed of any such contacts.
- During the advisory period each member of the working group must refrain from making any statements about the project, in particular to the press or other media, interested groups that have made representations or competitor companies.
- All documents that are not to be made public, such as draft advisory reports, must be treated with due care. Only public documents may be deposited in libraries to which third parties have access.
- Working group members may not express, as a member of the NCEA or a working group, views held by the NCEA at a congress or seminar without previously consulting and receiving the approval of the chairman of the NCEA.

Confidential company information or security information may be subject to a secrecy procedure laid down in the Environmental Management Act. The working group will only be allowed access to confidential documents if this is deemed necessary for the execution of its task. This is decided by the competent authority.

Review in practice

The working group starts by forming a provisional opinion about the EIA/SEA-report. This is done on the basis of the main points of the guidelines (ToR) and legal demands. Usually, composing the review advice will be as follows:

- at the first meeting, an initial assessment of the EIA/SEA-report is carried out



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- at the second meeting the draft review comes up for discussion. This draft is put together by the technical secretary on the basis of amendments by the experts of the working group.
- sometimes a third meeting is necessary, if there are still issues to be discussed among the members of the working group
- observations from public participation are taken into account, if the competent authority has chosen to ask for this (see earlier).
- the technical secretary usually attends the public hearing.
- before the presentation of the review advisory report to the competent authorities, the proponent/plan developer and the competent authority have the opportunity to exchange views about the draft review report with the working group. The aim is not to negotiate the text, but to answer questions and identify inaccuracies. Following on this discussion, the NCEA finalises the advisory review.

Practical experience from the Netherlands

In some 50% of the EIA and SEA procedures, additional information is requested during reviewing (around 60–80 reviews per year). This is generally due to the following shortcomings that can be summarised as:

- scoping is lacking or too limited, leading to EIA/SEA-reports that are too extensive
- descriptively strong, but analytically weak
- objectives described too narrowly
- description does not cover entire activity
- selection of alternatives without environmental aspects
- existing problems or sensitive areas are not described
- environmental policy targets are not described properly
- scope, effectiveness and commitment to mitigating measures are insufficiently described
- possible mitigating measures are not considered at all
- serious impacts on the environment are described insufficient or not at all
- use of outdated prediction models
- weaknesses in impact prediction and determination of impact significance
- in comparing alternatives, incorrect conclusions are drawn