



Netherlands Commission for
Environmental Assessment

Most important issues to be included in 'TdR para elaboração do Plano Nacional de Desenvolvimento Territorial (PNDT)'

Memorandum by the NCEA

MOZAMBIQUE



REPÚBLICA DE MOÇAMBIQUE

MINISTÉRIO DA TERRA, AMBIENTE E DESENVOLVIMENTO RURAL

TERMOS DE REFERÊNCIA PARA ELABORAÇÃO DO PLANO NACIONAL DE DESENVOLVIMENTO TERRITORIAL (PNDT)

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Advice of the Secretariat

To MITADER, DINOTER

Attn Mr Arlindo Dgedge, Mr Lucas Cumbeza

From The Netherlands Commission for Environmental Assessment (NCEA)

Date 10 March 2017

Subject **Most important issues to be included in 'TdR para elaboração do Plano Nacional de Desenvolvimento Territorial (PNDT)' – Mozambique**

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1. Introduction

As a logical outcome of the PEOT/SEA process in the Zambezi Valley, MITADER intends to make SEA compulsory for physical planning. It solicited NCEA involvement in developing a legal base of SEA for physical planning. As part of NCEA's continued cooperation with MITADER, a new MoU was developed and approved covering the period 2016–2018. Amongst the more urgent needs for support, the following activities were made part of this MoU.

Assistance to the directorate of spatial planning and rural development (DINOTER) of MITADER in:

- developing ToR for introduction of the obligation to do SEA in the regulation for Physical Planning;
- including SEA requirements in the ToR for the National Physical Plan (PNDT).

On the first item, NCEA drafted an advisory report in July 2016 on the ToR for the revision of the Law and regulation for Physical planning, including a number of questions to be answered. Since then no further developments have taken place.

During an NCEA visit in March 2017, the second item received high priority, due to the fact that different parties demonstrated to be interested in funding the development of the PNDT (e.g. WB and UN habitat). A tender was issued for consultants to do the job, and 6 of them qualified. The ToR for the PNDT had not been shared with the interested consultants, because first the Council of Ministers had to approve the ToR. Once approval is there the selection process will start and may take another 2 or 3 months. The NCEA was asked to advise on whether SEA requirements were sufficiently integrated in the draft ToR (version April 2016). Currently the reference to SEA in the ToR is minimal e.g.: 'one of the expected products of the PNDT is a preliminar SEA'.

This advice is a so-called NCEA 'Advice of the secretariat'. Given the short time frame available, it was agreed that NCEA would suggest a set of most important issues to be included in the ToR when it comes to SEA requirements. The recommendations have been based on a desk review of the ToR only, and have been shared with DINOTER through e-mail on March 10, 2017. More detailed inputs can be given at a later stage. NCEA could also assist in reviewing the technical proposal of the 6 pre-selected consultants and/or of the selected consultant if DINOTER would ask this.

In chapter 2, the NCEA first presents the priority issues. NCEA has also made an effort to insert the observations in the relevant part of the ToR for the PNDT for easy incorporation (not included in this advice, but also sent to DINOTER on March 10).

2. Key observations

- **All AAE steps:** all the standard steps of Avaliação Ambiental Estratégica (AAE) procedure should be included in the ToR:
 - scoping (focusing on most important choices to be made, and determining the level of detail of the research that has to be done), with public participation;
 - drafting of the AAE report, with public participation;
 - reviewing the rapport;
 - approval of the AAE;
 - justification of the way in which the AAE report has been used to formulate the PNDDT itself).
- **Iterative process:** the NCEA advises to ask the consultants to specify how they will link the AAE process with the preparation of the PNDDT. It should be an iterative process:
 - information of the AAE should be used in the PNDDT process;
 - choices that are made in the PNDDT process should be backed by information in the AAE process.
- **Products:** the ToR mentions as specific on page 13 only: 'Elaborar o relatório preliminar sobre a Avaliação Ambiental Estratégica (AAE)'. This is indeed a logical product in the first phase 'para a caracterização territorial e ambiental exploratória' (page 14), but cannot however be the only product. This enumeration should also mention:
 - elaborate an AAE report;
 - a 'relatório' of the review of the AAE.The same goes for the 'resultados esparados' on page 7.
- **Procedure and competences:** given the fact that at this moment there is no legal framework for AAE, it is essential that the procedure is explicitly mentioned in the ToR of the PNDDT. This also entails that the ToR clearly indicates the competent authorities with regard to the AAE procedure: who approves the scoping report, who reviews the AAE, who approves the AAE and who justifies what has been done with it? The NCEA recommends that the authority that reviews and adopts the AAE should not be the same as the authority that adopts the plan. This will prevent a conflict of interests. The authority that adopts the plan is however the authority that should justify in the PNDDT the way in which the AAE has been taken into account in the PNDDT.
- **Scoping:** the ToR should explain briefly the purpose of the scoping phase and what it entails. Furthermore, the ToR should explicitly state that the final scoping report will serve as guidance for the drafting of the AAE and the reviewing of the AAE. It seems that the 'relatório preliminar sobre a Avaliação Ambiental Estratégica (AAE)' (page 14, under c) serves as the scoping report. The ToR should specify that most of the other products of Phase I (page 14, under a-g) form part of the scoping report (same enumeration, under c).
- **Drafting the report:** the ToR should explain that drafting of the report will be done on the basis of the scoping report and the input of public participation. Moreover, one of the more important features of SEA is the description and comparison of the impacts of different alternatives/strategic options for the plan. Interestingly enough, Phase II is titled

‘Definição de Opções Estratégicas...’, but does not mention this important feature of SEA in the description of Phase II itself.

- **Opções Estratégicas:** according to page 5 of the ToR one of the goals of the PNDT is to ‘acentuar os desequilíbrios e desigualdades de oportunidades existentes entre as várias regiões do espaço nacional moçambicano.’ This seems to be more a subject of economic policy than of territorial policy. The AAE could help identify the most important questions that the PNDT should deal with and describe different opções estratégicas how they can be resolved. The NCEA could provide technical assistance in this process.
- **Public participation:** the ToR mentions public participation in each of the five phases. However, the ToR does not explicitly mention that in all these phases public participation should also target the results of the AAE process, for ex.:
 - In scoping: the ToR should explicitly state that the draft scoping report in Phase I should be used in public participation (see page 14, under i). This means that the scoping report (page 14, under c) can only be finalized after public participation in Phase I is finalized.
 - In drafting the report: the public should be involved in the drafting of the AAE report itself. The ToR should more explicitly state that public participation in Phase II (under g) and III (under e) is also meant to draft the AAE.
 - In reviewing the report: The ToR should explicitly mention that public participation in Phase IV (under e) also targets the draft AAE report.
The final scoping report and the final AAE report should clearly indicate how input of public participation has influenced the reports, and justify why input was not used.
- **Reviewing the report:** the ToR does not explicitly mention review of the draft AAE report. On page 21 the ToR only mentions that the ‘Unidade de Apoio Técnico Administrativo’ is responsible for ‘assegurar a qualidade e consistência técnica do processo e dos relatórios produzidos’. There should however be a check whether all relevant environmental information that is needed for the adoption of the PNDT has been gathered. The NCEA recommends that MITADER should be made responsible for this check. Furthermore, the time-frame should take into account that this check can lead to more research for additional information.
The draft report should be finished at the same time as the draft of the PNDT, therefore in Phase IV.
- **PNDT documents:** in the current ToR AAE is mentioned as a document that forms part of the PNDT on page 17 of the ToR (under f), as are the ‘relatório da situação actual’ and the ‘Opções estratégicas’ (under a and b). The last two should however form part of the AAE itself.
- **Justification:** the NCEA stresses that it is essential to include in the PNDT a justification of the way the AAE report (and public participation for that matter) was used in the formulation of the PNDT itself. Only when a justification is included the AAE will actually play a role in the decision making procedure. Moreover, the justification makes transparent to all parties involved which role the AAE (and their opinions) have played in the decision making process.

- **Phases of the ToR:** The AAE steps that are not yet a part of the ToR (drafting of the AAE, review of the AAE, approval of the AAE, and justification of the way the AAE has influenced the PNDD) should be included in the phases that are described in the ToR.

In the current ToR, AAE is only mentioned in the first two phases:

- Fase I: estudos complementares => 'relatório preliminar da AAE'
- Fase II: definição de opções estratégicas => 'eventual reformulação dos objectivos e âmbitos temáticos iniciais fundamentados pela AAE nacional'

The drafting of the AAE could take place in 'Fase III' ('Proposta do Modelo Territorial'), the reviewing and approval of the rapport can take place in 'Fase IV' ('Proposta do Plano'), and the justification can be done in 'Fase V' ('Versão Final do PNDD').

- **Level of detail:** the PNDD is a plan on a national, strategic level. The level of detail of an AAE should fit a national plan. The ToR should indicate that the AAE will be on a global level. Page 15 of the ToR indicates that in Phase III a 'Programa de Acção, com estimativas de custo e capacidade de financiamento e uma análise de hierarquização das prioridades de execução' should be formulated. This seems to be much too detailed for a national plan on the whole territory.

- **Policy and legal framework:** the ToR states on page 6 that 'O PNDD será complementado por outros instrumentos de gestão territorial e económica'. The ToR could be more explicit which aspects will be dealt with in other policies and legislation (for ex. 'A preservação de áreas de alto valor ecológico' on page 6 is also dealt with in the 'Lei da Biodiversidade e Conservação').

Moreover, the 'Enquadramento Legal' on page 11 of the ToR fails to mention articles that provide a legal framework for the PNDD: articles 15, under a, 16, 17, 18, 19 and 20 of the 'Regulamento da Lei do Ordenamento do Território'. Especially, the last three articles contain detailed content requirements of the AAE.

- **Objective:** the NCEA recommends that the ToR explain the objective of AAE: to make sure that the environment will be taken seriously in the decision-making process with regard to the PNDD. To that objective all parties involved (including NGOs and the public) should have access to public information of the impacts of the plan on the environment.

- **National importance:** The NCEA recommends to specify explicitly which questions the PNDD will deal with. Logically, a national plan will focus on questions of national importance (see art. 10, paragraph 2, under a, of the LOT). It should be specified in the ToR which questions are of national importance, instead of 'todas as acções em curso e previstas' (p. 4).

The current ToR only mentions some of these questions on page 12 ('planeamento e materialização das malhas principais das infra-estruturas de transportes e comunicações, de energia, de obras hidráulicas incluindo abastecimento de água e saneamento que afectem territórios inter-provinciais e de obras marítimas de âmbito e significado nacional e internacional') and 13 ('sistema nacional de hierarquia dos centros urbanos', 'sistema de acessibilidade garantindo a coerência das intervenções nos âmbitos rodoviário, ferroviário, portuário e aeroportuário', and 'património cultural, arquitectónico e arqueológico').

The AAE should mainly focus on the interrelatedness of different aspects of national spatial planning. This concerns mainly:

- National vital infrastructure (air, road, rail, water)
 - Energy infrastructure (power plants, power lines)
 - Main industrial areas
 - Main exploration areas (oil, gas, mining)
 - Main residential areas
 - Nature conservation areas
 - Vital areas for food (agriculture, fishing) and drinking water supply
 - Main touristic areas
- **Binding force:** page 11–12 of the ToR states: ‘Segundo o Regulamento da Lei do Ordenamento do Território, artigo 14, o Plano Nacional de Desenvolvimento Territorial é um instrumento orientador que através de regras gerais da estratégia do ordenamento territorial, define acções de ordenamento de nível provincial, distrital e autárquico, compatibilizando as políticas sectoriais de desenvolvimento espacial.’ The ToR should make explicit in which way the PNDT is binding for the ‘ordenamento territorial de nível provincial, distrital e autárquico’.
According to art. 11 of the LOT, the PNDT is even a binding instrument for *a//* public and private entities (see ToR, p. 12). Does this mean that the PNDT can contain obligations for private entities?
 - **Transition period:** according to page 12 of the ToR, ‘instrumentos de ordenamento deverão ser ajustados de modo a respeitar os princípios e directivas constantes neste plano nacional, como também para os cidadãos, uma vez publicado no Boletim da República’ (art. 11 of the LOT). How long is the transition period? Who will control if this has been done? Is there a sanction, if it has not been done?