



Netherlands Commission for
Environmental Assessment

NCEA recommendations on Governance and Terms of References for Minas Gerais State mining plan and SEA for Iron Ore

Brazil



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Advisory Report by the NCEA

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| To | Secretaria de Estado de Desenvolvimento Econômico (SEDE) and Fundação Estadual do Meio Ambiente (FEAM), Minas Gerais, Brazil |
| Attn | Mr. Juliano Alves Pinto and colleagues |
| Date | 25 June 2020 |
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1. Introduction

The government of the State of Minas Gerais in Brazil requested NCEA support on a proposed SEA for a State mining plan. The NCEA will act as an independent advisor and quality assessor in the process (see Annex 1 with letter of request and agreed approach).

Initially, a visit to Belo Horizonte was planned late March to:

- show examples/benefits of SEA and discuss the most valuable and tailor-made SEA application in Minas Gerais;
- gain more insight into the institutional and legal framework in Minas Gerais, state of affairs of the SEA and how the SEA can be organized in terms of budget/timing etc.;
- make agreements about involvement of the NCEA with the SEA and jointly agree on a plan/roadmap on how the SEA can be undertaken.

The NCEA elaborated a program for this preparatory visit: an interactive SEA design workshop was proposed and developed, aiming at enabling a smooth start of the SEA and agreement by all relevant stakeholders on the most useful initial scope of the SEA.

These plans had to be changed because of Covid-19. In addition, it appeared that Minas Gerais State was already much more advanced in terms of preparatory activities for the State Mining Plan and SEA than the NCEA was aware of. Because of this, instead of the proposed visit/workshop, a series of Video-meetings was held.

1.1 Overview of Video meetings

Following video meetings on March 20, April 1, April 24 and 29 and May 15, 2020 between representatives of the NCEA, MG State (SEDE, SEMAD and FEAM) and the Netherlands Business Support Office, it was agreed that the NCEA would provide comments on: (1) the governance structure of the SEA, and (2) the draft Terms of References for both the Strategic Environmental Assessment (SEA) of Iron ore and the State Mining Plan (SMP). Both ToRs were shared with the NCEA on March 23, with the observation that the ToR of the SEA was more advanced. MG State expected the beginning of the bidding process for hiring consultants as early as April, after the conclusion of an agreement between State Economic Development Secretariat (SEDE) and FEAM (environment). However, this original time schedule could not be maintained, due to some internal matters at MG State level.

During the video meeting on April 1, clarifications were given by SEDE and FEAM on some of the issues above, and notes were taken by SEDE and FEAM representatives. A first draft of the NCEA observations was prepared and shared on March 30, as an input to this video meeting. This draft included the two ToRs with detailed NCEA remarks in track change mode.

It was agreed on April 1 that MG state would:

- improve the ToRs based on the discussion and NCEA comments as far as possible¹ and share again with the NCEA;
- indicate their expectations concerning any further/future NCEA support

This way of support (e.g. 2 weekly video-meetings) could be continued depending on need and whenever required support is within NCEA's mandate, until the conclusion of the first phase of NCEA support (see 1.2 below)

¹ The NCEA was informed that substantial changes to the ToR for the Iron Ore SEA would be difficult to make, as contents already had been agreed upon at high level.

During video meetings on April 24 and 29, discussions were held to redefine the scope of NCEA support as compared to what had been originally agreed in February 2020. The results thereof are presented in 1.2 below.

Late April MG State also provided answers to the general and detailed comments made by the NCEA regarding the ToR of the State Mining Plan and Iron Ore SEA. MG State indicated that most of the NCEA recommendations are relevant and will be their focus during the analysis of the technical proposals that will be submitted by the consulting companies, to select the one that presents the most efficient and comprehensive methodology for the success of the SEA. MG State also indicated to see to it that NCEA recommendations would be incorporated into the elaboration of the SEA itself.

During the video meeting on May 15, the governance framework of the mining and environment sectors in Brazil and Minas Gerais State was presented and the implications for the SEA discussed. SEDE requested the NCEA to come up with recommendations concerning the governance structure for the SEA process.

This updated version of the NCEA recommendations (first draft was shared on March 30th) incorporates:

- the earlier comments on the ToRs for SEA and SMP, including MG State reaction to these comments as well as
- the analysis and recommendations on the governance of the SEA process.

This updated version was shared on May 28 with MG State representatives

Thereafter two meetings took place to update the newly selected Superintendent of Mining, Energy and Logistics Policy at SEDE (June 9th) and to discuss with representatives of the Public Ministry (June 15th).

Thereafter SEDE and FEAM have adapted the ToR, including the most important NCEA recommendations and those of the Public Ministry. In a separate note, MG state provided some clarifications. These adapted ToR have been shared again with NCEA for final observations, which have been made on 23 June.

1.2 Redefined scope and phasing of NCEA support to MG SEA

From the discussion of expectations of the NCEA assistance the following activities and phases were distinguished and agreed:

SEA examples, information sharing:

The SEDE team already looked for SEA information on the web, but indicated that it is still helpful to have other examples that the NCEA could share. It was agreed that the NCEA can share information it may have meeting specific demands of the SEDE technical team. So far, the NCEA has provided

- An information leaflet on SEA costs;
- A short presentation on an SEA done for mine closure;
- Examples of other SEAs on how scenario development was done in those cases.

Further NCEA involvement in the SEA process

After discussing whether NCEA input should mainly focus on the SEA or also on the SMP, SEDE/FEAM indicated to expect a focus on the SEA, although SMP developments will be shared as well.

It was agreed that the NCEA can have a role in the following 3 phases of the SEA process:

I: Preparatory phase, 1–3: the NCEA will review the scoping/inception approach as suggested by the selected consultant. Preferably, and if feasible (possible travel restrictions), the NCEA will pay a site visit to Brazil with working group of experts, chairperson and technical secretary during this phase.

II: Diagnosis, 4–6: the NCEA can review interim SEA products. Such a preliminary independent review provides the opportunity to correct the process if needed. (will have to be checked given available budget for NCEA involvement as approved by Dutch Ministry of Foreign Affairs.

III: After phases 7–10: Final independent review by NCEA

We also discussed that the cooperation activities so far between March–June 2020 could be considered as a phase 0 (replacing the originally planned reconnaissance visit). We discussed that each of the four phases (0, I, II and III) will result in an NCEA advisory report. It is NCEA's policy that these advisory reports will be published on NCEA's web-site: www.eia.nl, but timing of publication will be consulted with SEDE/FEAM/SEMAD beforehand.

The NCEA involvement in the remainder of the SEA process is being outlined in an MoU between MG State and the NCEA. MG State has shared a draft of this MoU, with an action plan in the Annex. This is currently being revised by both parties.

This document with NCEA comments, constitutes the final product of phase 0 of the cooperation.

2. Analysis and recommendations on the Governance of the SEA Iron Ore, Minas Gerais State, Brazil

2.1 Background and justification

From the ToR for the SEA, it is noted that the rationale for making the SEA is based on the recommendations from the Auditoria Operacional nº 951.431 do Tribunal de Contas do Estado de Minas Gerais. This could be understood as an 'administrative' justification for the SEA.

The report of the Dutch Risk Reduction missions and stakeholder workshops in October and November 2019 observed that the environmental and social problems connected with the mining industry in Minas Gerais State in general, and following the Mariana – Brumadinho disasters in particular, have damaged the trust of society in not only the mining industry, but also in the government as a regulator and guardian of society as a whole. Thus the social

contract² between society and government appears to have been damaged. The report also suggested that the SEA might serve the purpose of contributing towards the renewal of this 'social contract'. This could therefore also be an additional, more politically motivated justification for having the SEA in place.

In the light of the above, the NCEA recommends to review the ambition level of the SEA. Is there mostly an administrative reason, as currently specified in the ToR documents? Or should the SEA also contribute to improved support from society for the mining sector in general and the regulatory role of the MG State government in particular?

2.2 Stakeholder engagement

The NCEA understands that there is currently no formal legal basis in Brazil for the structural implementation of Strategic Environmental Assessment as an instrument. This implies that there is no legally agreed structure for its governance or for decision making on the outcomes of the SEA. Logically the three responsible institutions for this SEA, being SEDE, SEMAD and FEAM, have a major role in the governance.

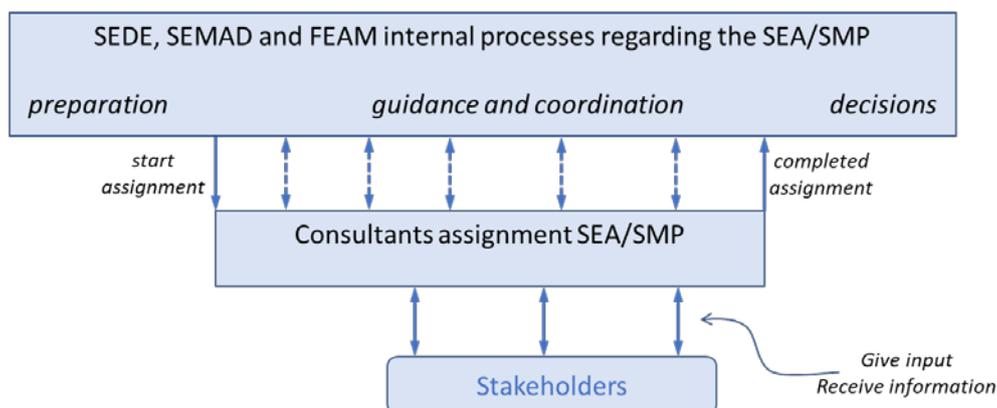
The ToR for the SEA and the SMP stipulate the consultation of stakeholders in the preparation process of the SEA and SMP documents. We observe from the draft ToR that the involvement of stakeholders is planned relatively late in the work processes of the consultants. Earlier stage involvement of stakeholders in the work of the consultants teams would be beneficial.

In the video call technical meeting on 15 May 2020, SEDE and FEAM presented the governance framework for the mining and environmental sectors in Brazil at federal level and Minas Gerais State level. With respect to the decision making following the conclusion of the SEA document, no other arrangements appear to have been made than approval by the three responsible institutions: SEDE, SEMAD and FEAM. How recommendations from the SEA will subsequently be considered in public policies to influence future decision-making in the Iron Ore subsector and the SMP remains still unclear. With regular Environmental Impact Assessments and their approval process, COPAM has a role to play that involves, to a certain extent, stakeholders. Given that there is no legal basis for the SEA, involvement of any stakeholders structures in the decision making process is not yet foreseen. It should be noted that not including stakeholders in the wider process of preparation and decision making is not in line with best practices and internationally accepted standards.

The figure below presents a graphic representation of the way stakeholders would be involved in the SEA process as currently foreseen in the ToR.

² In moral and political philosophy, the social contract is a model that concerns the legitimacy of the authority of the state over the individual. Social contract arguments typically posit that individuals have consented, either explicitly or tacitly, to surrender some of their freedoms and submit to the authority in exchange for protection of their remaining rights or maintenance of the social order

CURRENT GOVERNANCE ARRANGEMENTS SEA/SMP PROCESS:



In the light of the above NCEA recommends:

- To review the ToRs for the SEA (and SMP) on the aspect of stakeholder participation and strengthen the role of stakeholders earlier in the work processes of the consultants.
- To involve stakeholders in the decision-making process before, during and after the elaboration of the SEA (and SMP)

2.3 Alternative governance arrangements

In the video call of 15 May, the representative of the Public Ministry of Minas Gerais State observed that involvement of stakeholders in the preparation stage of a plan or document, without also involvement in the decision-making process thereof, is generally considered a weak form of stakeholder participation.

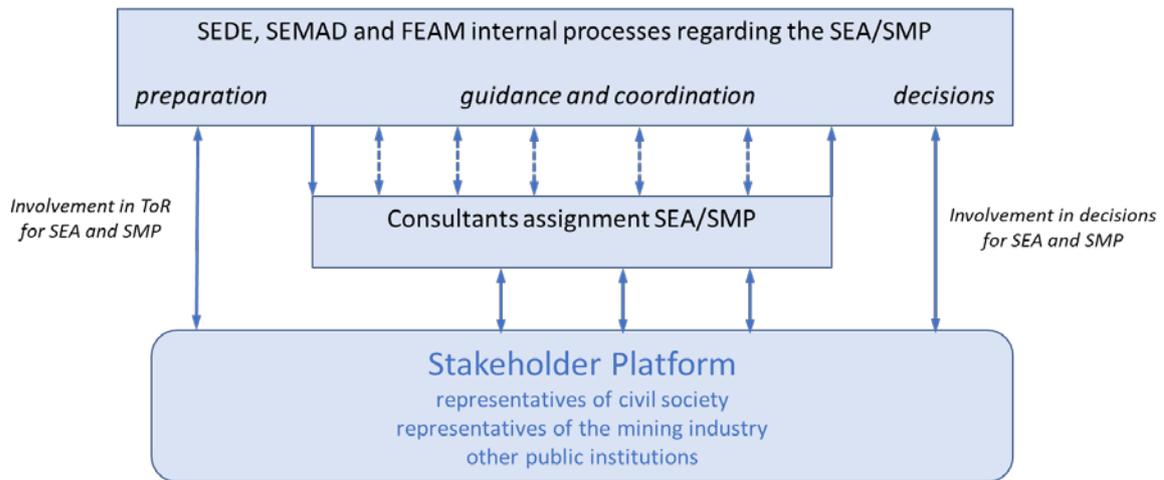
We would like to argue that in any SEA, the substantial participation of a broad array of stakeholders is a cornerstone of the success of the SEA process.

In the light of the above, NCEA recommends to adopt governance arrangements that give expression to the involvement of stakeholders (public sector institutions, the mining industry, civil society, and possibly others) in the preparation (including ToR³), implementation of the SEA study, and decision making on the results of the SEA study and process.

In the absence of a legal framework for stakeholder involvement in all three phases, ad hoc arrangements can be created for this SEA. The graphic below shows how stakeholders can be organized in a platform and be involved at all stages.

³ To enhance the success of the SEA, the ToR for the SEA should in fact be agreed/approved by all stakeholders who may be involved in the proposed SEA governance arrangements. This enhances common understanding/expectations on how this SEA will be implemented, what goals it aims at and what kind of results it should deliver.

ALTERNATIVE GOVERNANCE ARRANGEMENTS SEA/SMP PROCESS:



Important characteristics of a Stakeholder Platform, that should be taken into consideration during the definition and creation of the platform, include: representativeness, authority, transparency (and these are interconnected):

- Representativeness may be achieved by a judicious process of selection of stakeholders for the platform. The platform can have a fixed and numerically limited membership while also having the role to mobilize broader stakeholder groups, for instance for public consultation purposes during the consultants' SEA study.
- Authority may be strengthened in various ways. By the 'owning' institutions giving a clear mandate to the platform, for instance. And also by having the chairmanship role taken up by a person of high authority and credibility in the view of society: Examples are: a respected elder statesman, or a retired high court judge, or a well-known academic professor with a relevant thematic background (e.g. conflict prevention, integrity of governance).
- Transparency may be achieved by clear working procedures that are supported by a formal Terms of Reference and/or internal process regulations.

It should be noted that the organization of the Stakeholder Platform requires an adequate budget for its functioning, and a secretariat. SEDE, SEMAD and FEAM are responsible⁴ to create the conditions for the proper functioning of the Stakeholder Platform.

There are several alternative models possible to achieve the involvement of stakeholders.

- 1) Making use of existing structures. For instance: COPAM has a role in the governance process of Environmental Licensing, as we have understood. Possibly COPAM could play a role in the SEA governance? NCEA is not sufficiently aware of the legal limitations of COPAM's role. The aspect of representativeness and authority of COPAM would have to be looked at carefully, we think. Possibly there are other existing structures that can take on the role of the Stakeholder Platform, that NCEA is currently not aware of.

⁴ The independence of the Platform should be safeguarded with impartial and adequate funding from the public institutions that own the SEA process.

In case the decision would be to create a tailor made platform for this (and possibly future) SEA, there are still two principally different alternatives: the Stakeholder Platform has an advisory role towards the decision-making institutions SEDE, SEMAD and FEAM. Or, alternatively, the Stakeholder Platform is given a vote in the decision making process of the SEA, together with SEDE, SEMAD and FEAM.

- 2) The Stakeholder Platform has an advisory role. In this model the Platform should formulate its advice to the governing institutions SEDE, SEMAD and FEAM. The decision-makers will then need to decide to either follow the advice of the Platform (e.g. in the case of the ToR and the final SEA study), or not with proper justification. The strength of this model is that formal governance roles of owning institutions SEDE, SEMAD and FEAM are not compromised, and also that of the Platform and its members are not. In this model the challenge will be for the Platform to arrive at consensual conclusions and recommendations towards the governing institutions. In case of such consensus in the Platform, the moral appeal to follow the advice will be strong. If such advice would be publicly available and accessible, the role of the Platform would be strengthened.
- 3) The Platform has a vote in the decision making process. In this model the governing institutions would allow for the chair of the Platform to take part in the voting on the decision concerning the SEA. We are not sufficiently aware of the legal framework for governance in Brazil to know if this is feasible or not. This would have to be investigated in case that this model would be deemed the most desirable.

In the light of the above, NCEA recommends to discuss the above options thoroughly and carefully, and to take a stepwise approach in the possible development of the Stakeholder Platform, while making sure that key stakeholders are adequately involved in the creation of the Platform itself.

Following a formal decision by SEDE, SEMAD and FEAM, possibly involving other public institutions such as the Public Ministry, next steps can be taken, e.g. in drawing up Terms of Reference for the Stakeholder Platform. NCEA is available to provide support, if required.

3. Main observations on the ToR SEA and ToR State Mining Plan

Main observations are summarized below in random order. Each observation comes with a recommendation or issue to discuss. Detailed observations on both documents are made in track change mode in both documents. MG state comments and observations in response to NCEAs detailed remarks are included in the same documents. The NCEA will keep these on file to use when reviewing the proposed approach as suggested by the selected consultant at a later stage.

These observations and comments were discussed in the video meeting on April 1, 2020. As there was little time available for the Minas Gerais representatives to read through all comments made, the video meeting discussion focused on the main observations only.

3.1 Justification for making the SMP and SEA

From both ToRs, it is noted that the rationale for making the Plan and SEA is based on the recommendations from the Auditoria Operacional nº 951.431 do Tribunal de Contas do Estado de Minas Gerais. However, from the DRR missions and workshops in October and November 2019, it was concluded that the environmental and social problems connected with the mining industry in general, and the Mariana – Brumadinho disasters in particular, have damaged the trust of society in not only the mining industry, but also in the government as a regulator and guardian of society as a whole. Thus the social contract⁵ between society and government has been damaged. This could therefore also be an additional justification for having the SMP and SEA in place.

Discuss whether the justification/rationale for making the Plan and SEA should be further clarified/explained in the ToR

Comments received:

A FEAM está trabalhando na revisão da justificativa com o objetivo de melhor apresentar o cenário recente da mineração de ferro em MG, inclusive os sérios problemas sócio-ambientais e a necessidade de resposta a eles. A FEAM também fará outras propostas de alterações no TR a partir das observações do NCEA.

3.2 SEA for Iron Ore only?

What is the ambition in terms of environment/sustainability of the State Mining Plan as a whole, as an SEA is only planned for the Iron Ore part of it? The logic for limiting the SEA to Iron ore is not well explained in the ToRs.

Could it be a possibility to apply the SEA to the State Mining Plan as a whole? As Iron ore is the biggest sub-sector, this may not be a lot of extra work?

Comments received:

A avaliação dos técnicos da SEDE é que a atividade mineral é muito diversa em suas técnicas de exploração, distribuição espacial e impactos sócio-ambientais. O esforço do minério de ferro é o mais premente no momento, por isso foi priorizado. Tratar de outros minerais significaria grande esforço porque levaria a maior abrangência territorial, diferentes atores envolvidos, diferentes fatores críticos de decisão, etc. Não vemos viabilidade de expandir o escopo nesse momento.

3.3 Link between the two ToRs and consultancy teams

What is the relation between the two ToRs? Will these be executed by one team? Or by two teams working closely together? And consequently, how will both processes be linked? It is a

⁵ In moral and political philosophy, the social contract is a model that concerns the legitimacy of the authority of the state over the individual. Social contract arguments typically posit that individuals have consented, either explicitly or tacitly, to surrender some of their freedoms and submit to the authority in exchange for protection of their remaining rights or maintenance of the social order.

real risk that the two consultants teams (for the SEA and the SMP) will not interact sufficiently. To strengthen the connection between the SMP and the SEA it could be envisaged to have both implemented by one consortium of consultants. However, this solution also poses risks, for example that the SEA part will receive less attention.

In case of two consultancy teams/assignments, strong guidance has to be provided, including how to act in case of delays or other directives, to keep the sync intact.

Discuss pros and cons of one or two consultancy teams

Comments received:

Serão dois times de consultores, ambos sob gestão da mesma equipe da SEDE com apoio da FEAM e SEMAD; O PEM terá uma abordagem mais técnica-econômica da mineração e trará um visão mais abrangente do setor e seu potencial. A AAE será mais detalhada nos aspectos do minério de ferro e seus impactos. Assim, vesmo graus de complexidade e tipos de atividades e conhecimentos necessários bem diferentes nos dois trabalhos. O desafio de fazer os instrumentos conversarem é grande e caberá em grande medida à equipe de técnicos e gestores do Estado, bem como das instâncias de governança a serem traçadas

3.4 Managing the SMP and SEA

For both ToRs: how will the processes be managed? Steering committee, Executive Committee, roles of SEDE, NGA (FEAM/SEMAD), others? It is recommended to broaden the support and commitment to the SEA and include, next to the representation of government, representatives of civil society and of the mining sector (possibly also of the universities) to form a high level steering committee that oversees the whole SEA process. If the law does not provide a legal basis for such sharing of responsibility, it can still be emulated (i.e. being not legally binding, but functionally followed and its outcomes respected by government).

In order to prevent that both processes will become a mere consultancy job, it is important to discuss the institutional set-up of the SMP and SEA. Various modalities are possible. It could be helpful to develop clear ToR for the steering committee (or other guidance structure), e.g. defining composition, mandate, tasks, meeting frequency, who guides/approves what and when etc.

Comments received:

Concordamos. A SEDE desenhará a proposta de governança e compartilhará. Esperamos contar com o apoio técnico do NCEA

3.5 SEA approach

From the ToR it transpires that the SEA has been conceived as a rather traditional study, with reports as the deliverables. It is recommended to conceive and understand the SEA more as a process – a bargaining/negotiation process even – to which content (e.g. environmental and social studies) is supplied as input and where the communication and decision making process is central. In general we recommend to apply SEA not as an academic exercise or scientific/complex study, but aimed at complementing planning with solid information on problems/objectives and alternatives, with a sound government and public debate/dialogue

and assuring a mechanism to take into account the information and results of the debate into strategic decision making.

This implies that three different processes have to be carefully managed: 1) the link between the SEA and the Plan, 2) stakeholder engagement and 3) meaningful information, see also below. This conception of the SEA process – and its subsequent structuring – could be described in the ToR in chapter 4. In particular, the benefits of the SEA could be described more clearly, forcefully and convincingly. Terms like ‘added value’, ‘alternative visions’ and ‘public debate’ could be clarified and made more concrete.

Comments received:

O cronograma físico compartilhado encarna melhor a visão de processo da AAE, embora entendemos que essa é uma discussão a ser aprofundada com a consultoria na fase de preparação do trabalho. É importante dizer que partimos de um ponto em que não há uma clareza da sociedade ou do estado de qual o futuro que desejamos para a mineração de ferro e como abordar o tema. Não existe política ou planejamento da mineração de ferro ou da mineração como um todo em Minas Gerais. Haja vista que a AAE será feita paralelamente ao PEM. Por isso, é natural que ainda seja difícil tornar concretos os objetivos e resultados esperados. Isso será uma construção do processo seja da AAE, seja do PEM.

3.5.1 Alignment SMP and SEA

How will Mining plan and SEA Iron Ore be aligned?

Think of preparing a table with both processes and showing how the Etapas of both processes are linked and feed into each other.

Comments received:

A SEDE desenhará a proposta de alinhamento que também deverá ter a contribuição de stakeholders e parceiros envolvidos no processo da AAE

3.5.2 Stakeholder engagement

Stakeholder engagement comes in rather late in the process (e.g. SEA Etapa 6). It is strongly recommended to already paying attention to this earlier in the process (e.g. also SEA Etapa 4). Currently, the proposed SEA has been conceived as a traditional government planning process, in terms of full control of a government body (or bodies) over the process. Stakeholders are only allowed to give input at certain moments and on certain issues. It is unlikely that civil society will perceive the SEA process, as it has now been defined, as something that will be able to restore the confidence in good governance.

Stakeholder engagement is one of the three main pillars of any SEA: this requires explicit attention (including budgeting for it). Consider also opening a web-site where (interim) products can be uploaded, to enhance transparency and facilitate stakeholder involvement.

Comments received:

Acreditamos que o cronograma físico ajude a entender a previsão de que a participação do stakeholders ocorrerá desde a contextualização até a finalização da AAE. Estamos discutindo a melhor forma de desenvolver o site

3.5.3 Good information/scope of assessment

Chapter 5 of the SEA on Objectives: this is a crucial paragraph as it determines the scope of information that the SEA should generate to meet the objectives/strategic decisions to be taken. At this stage it is very important that all stakeholders reach agreement on the scope.

Some examples: What are currently environmental (e.g. biodiversity, climate change, forests, water) and social policies (e.g. poverty reduction, gender) in place in Minas Gerais State? From these environmental and social objectives and ambitions could be derived to guide the entire process. Regarding Scenario development: currently 3 (pessimist, business as usual, optimist) scenarios have been proposed in the SMP. but this can also be approached in a different way. For example different scenarios aiming to mainly focus on economic growth, on livelihood improvement, on nature conservation, on maintaining the status quo etc.

Comments received:

A política ambiental brasileira e mineira é bem complexa. Há também diversos estudos e planos na área ambiental que deverão ser considerados pela AAE. A SEMAD e FEAM apoiará na identificação e consideração desses estudos, planos e políticas. As políticas sociais devem ser levantadas, mas em geral, se dirigem a redução de pobreza e comunidades tradicionais, como indígenas, quilombolas, etc, sendo que conflitos sociais com a mineração devem ser tratados no PEM. Em relação aos 3 cenários, alteramos para um BAU e dois alternativos para que sejam delineado nas discussões com consultores e stakeholders

3.6 Expert profiles

SEA experts should possess various competences and skills: not just technical specialists, but also people with process management capacities and stakeholder involvement capabilities. Strategic thinking is also a requirement. The SEA, according to the ToR, will be managed by one coordinator. The stakeholder process has been delegated in the team to a relatively junior team of an environmental conflict specialist and a communications expert.

Discuss the best way of establishing the team (or teams), and their capabilities. Again different modalities are possible. Consider also whether or not to include international SEA expertise (e.g. the coordinator?) Can sufficient expertise be found in Brazil to successfully conduct this SEA? If not, would tendering internationally be required?

Comments received:

Temos restrições no formato de seleção dos consultores pelo modelo licitatório brasileiro, que orienta evitar critérios muito restritivos que impeçam a concorrência. No entanto, entendemos que a proposta de equipe está bem redigida, cobrindo perfis profissionais multidisciplinares e altamente qualificados. Deve-se entender que a proposta requer um nível

de experiência mínimo, mas pontua melhor na classificação profissionais com mais de 10 anos de experiência na área, com mais de 3 projetos similares realizados e com elevada qualificação acadêmica. Acreditamos que há especialistas no Brasil capazes de realizar o trabalho, mas não excluiremos a possibilidade de participar do processo consultores estrangeiros. Ademais, a SEDE trabalhará durante o processo de contratação para mobilizar os melhores profissionais para que participem da licitação.

3.7 Clarity regarding the 'Etapas'

The logic of the Etapas is not always clear: e.g. Etapa 9 Transversal should not only come at the end. In addition: the SEA ToR envisage two training moments: Etapa 1 and 10, but it is not entirely clear by whom and for whom?

Comments received:

Espera-se que o Cronograma de execução enviado esclareça melhor o encadeamento das etapas

Annex 1: Correspondence



GOVERNO DO ESTADO DE MINAS GERAIS
SECRETARIA DE ESTADO DE DESENVOLVIMENTO ECONÔMICO
Subsecretaria de Promoção de Investimentos e Cadeias Produtivas

Belo Horizonte, 31 de janeiro de 2020

Excelentíssimo Senhor
Cornelis Van Rij
Embaixador
Embaixada do Reino dos Países Baixos

Senhor Embaixador,

Com meus cordiais cumprimentos, em nome do Governo do Estado de Minas Gerais, muito agradeço o apoio do governo holandês após o desastre de Brumadinho, em particular pelas missões do DDR (Dutch Risk Reduction), bem como pelo relatório disponibilizado pela equipe.

Informo Vossa Excelência que em 23 de Janeiro de 2020 realizou-se videoconferência na qual a Comissão Holandesa de Avaliação Ambiental (NCEA) apresentou pertinentes recomendações contidas no relatório da DRR, e contou com os seguintes participantes:

- Germano Vieira – Secretário de Estado de Meio Ambiente
- Andressa Lanchotti – Promotora e Coordenadora do Centro de Apoio Operacional das Promotorias de Justiça de Defesa do Meio Ambiente
- Juliano Alves – Subsecretário de Promoção de Investimento e Cadeias Produtivas da Secretaria de Estado de Desenvolvimento Econômico de Minas Gerais
- Diogo Soares – Subsecretário de Tecnologia, Administração e Finanças da SEMAD
- Renato Brandão – Presidente da Fundação Estadual do Meio Ambiente (FEAM)
- Flávio Godinho, Ten Cel – Coordenador-adjunto da Coordenadoria Estadual de Defesa Civil
- Michelle Abreu – Presidente do Instituto Estadual do Patrimônio Histórico e Artístico de Minas Gerais (IEPHA)
- Arend Kolhoff – Secretário Técnico Sênior Comissão Holandesa de Avaliação Ambiental (NCEA)
- Ineke Steinhauer – Secretário Técnico Sênior da Comissão de Avaliação Ambiental da América Latina (NCEA)
- Ben Lamoree – Líder de equipe DRR1 e DRR2 de Redução de risco em instalações de armazenamento de rejeitos
- Willem Moraal – Representante Chefe NBSO Belo Horizonte



GOVERNO DO ESTADO DE MINAS GERAIS
SECRETARIA DE ESTADO DE DESENVOLVIMENTO ECONÔMICO
Subsecretaria de Promoção de Investimentos e Cadeias Produtivas

Ao agradecer a Comissão Holandesa de Avaliação Ambiental (NCEA) pelo valoroso apoio a Minas Gerais, gostaria de salientar que nosso estado não apenas adotará as recomendações do relatório do DRR (Dutch Risk Reduction), mas também estará empenhado em levantar fundos para a rápida elaboração de uma Avaliação Ambiental Estratégica (AAE/SEA), condizente com as contribuições do DRR.

Vislumbro, por conseguinte, o início de uma consistente parceria junto à NCEA, com vistas à assinatura de um acordo de cooperação, em sintonia com o Plano Estadual de Mineração de Minas Gerais.

Permito-me sugerir a realização de uma primeira missão da NCEA, preferencialmente a curto prazo, para que possam ser discutidas questões concretas acerca da Avaliação Ambiental Estratégica (AAE/SEA) e simultânea avaliação da aplicabilidade das recomendações da Comissão Holandesa. Como resultado dessa primeira ação, um plano para implementação do projeto em Minas Gerais poderia ser elaborado. Ressalto, ainda, que o estado de MG, por meio da Secretaria de Desenvolvimento Econômico e Secretaria de Meio Ambiente, coloca-se à disposição como ponto focal para as demandas em conjunto com a NCEA.

Consulto, nesse sentido, sobre a possibilidade de o Governo da Holanda contribuir nessa importante ação junto à Comissão Holandesa de Avaliação Ambiental (NCEA), com vistas à construção de uma exitosa proposta de trabalho com o Governo do Estado de Minas Gerais.

Ao agradecer novamente o fundamental apoio do Governo dos Países Baixos às ações internacionais promovidas pelo estado de Minas Gerais, renovo meus protestos de mais elevada estima e consideração.

Respeitosamente,

Juliano Alves Pinto

Diplomata

Subsecretário de Promoção de Investimentos e Cadeias Produtivas
Secretaria de Estado de Desenvolvimento Econômico de Minas Gerais
Governo do Estado de Minas Gerais



Netherlands Commission for
Environmental Assessment

Governo do Estado de Minas Gerais
Secretaria de Estado de Desenvolvimento Económico
Belo Horizonte, Brazil

our reference
7330-01
enquiries to
Ineke Steinhauer
direct phone no.
+31 30 234 76 54

Date: 24 February 2020
Subject: SEA Mining Plan Minas Gerais

Dear Mr Alves Pinto,

We received a copy of your letter of 31 January 2020 to the Dutch Ambassador, in which you indicate you wish to give follow up to the recommendations in the DRR report regarding Strategic Environmental Assessment (SEA), making use of the expertise of the NCEA.

In particular, you intend to apply SEA to the Minas Gerais State Mining Plan. In the DRR report a number of suggestions has been presented for the scope and potential added value of such an SEA.

In your letter you suggest to organize an NCEA visit, preferably at short term, to further discuss specific questions about the start-up of the SEA process, and the best way in which NCEA's expertise can be used for this. The outcome of such a first visit could be a roadmap/plan for the set-up and design of the SEA for the State mining plan, the potential role of NCEA therein, and a proposal for a cooperation agreement.

The Dutch Ambassador and the Dutch Ministry of Foreign Affairs are both positive about the possible NCEA support. As the NCEA is 100% subsidized by the Ministry, a check had to be made whether any NCEA activities outside the Ministries focus countries for Dutch Development Cooperation (Brazil is not such a focus country) would not go at the expense of other countries/priorities where NCEA is currently working. I am happy to let you know that the Ministry has agreed to the following:

- 1) We start (first half of 2020) with a visit of about a week by a technical secretary (TS) from the Netherlands Commission for Environmental Assessment – NCEA (myself), with support from Ben Lamoree as a resource person (aimed at continuity with the earlier DRR mission). The purpose of the mission is to:



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- show examples/benefits of SEA and discuss the most valuable SEA application in Minas Gerais;
- get information on relevant stakeholders;
- gain more insight into the institutional and legal framework in Minas Gerais, state of affairs of the SEA and how the SEA can be organized in terms of budget/timing etc.;
- make agreements about possible involvement of the NCEA with the SEA.

At the end of the first visit we then have a jointly agreed plan/roadmap on how the SEA can be undertaken. Then we decide whether or not to continue with the next steps being:

2) Scoping advice:

- follow-up visit (mid 2020) with a working group of 3–5 experts and NCEA chairperson and TS to prepare an independent Scoping advice/ ToR for the SEA for Minas Gerais State Mining Plan.

3) Review advice:

- when the SEA is ready (2021?), the NCEA can provide an independent review advice about the quality of the SEA. A working group visit is no longer needed; however, there is a possibility at this stage that the NCEA TS/chair and/or 1 expert will explain the advice in Brazil.

In the Annex to this letter, the NCEA proposes the following outline and contents of the program for a first visit. The tentative week for this visit could be either the week starting 16th of March or the week starting 30th of March.

If you would agree to this approach, please send a formal request for NCEA involvement to our director, Mr. Rob Verheem, confirming that you would like to go ahead with the cooperation.

We would like to emphasize that, on the part of the Minas Gerais State, proper preparation/collaboration is also needed in terms of presentations that we would ask you to prepare (e.g. on environmental institutional and legal framework), people that should be brought together during the visit, information that we would like to have sent in advance (e.g. the current State mining plan etc.). This will enable a smooth start and agreement at the end of the first visit of a most useful initial scope of the SEA. Could you therefore please let us know who would be the person to contact for the technical preparation of the visit?

With kind regards,

Yours sincerely,
Ineke Steinhauer
Technical Secretary International Cooperation



Annex: Issues to discuss/get more clarity on during first visit

I: Get more information on the State Mining Plan, for instance:

- In which stage is the Plan? Recently developed? Will it be updated?
- What are the key issues that are/need to be addressed by the plan? Environment, social, institutional, economic?
- Who is/are the responsible agency(ies) ('the owner/developer of the planning process')?
- What are the decisions (to be) taken in the planning process and when will/have these be made?
- Spatial and time horizon; is the plan geographically defined (if yes, how?) and for how long will it be/has it been made (10, 20, 30 years?)
- What was/is the budget and time required for making the plan. This determines how much time and money is available for the SEA.

This information on what the plan is all about, is important to determine the need and goal of the SEA. But also how the SEA can be integrated in the plan process: when do results have to be available in order to influence the planning and decision making? Should the SEA assess the current State Mining Plan and develop mitigating and compensatory measures for social and environmental impacts of the plan (e.g. in the form of a strategic action plan, advisory notes)? Or is there scope for pro-actively identifying right from the beginning environmental and social objectives to be achieved by for instance an update of the State Mining Plan (through e.g. providing and including better alternatives)?

II: Get more information on relevant stakeholders, for instance:

- Who is affected by the plan (who are the potential winners and losers amongst government, civil society, private sector)?
- Who has a role in deciding on plan priorities?
- Who should provide input to the SEA?
- Who is crucial to successful plan implementation (Who pays for plan implementation? Who implements? Who are the enforcers and watchdogs?)

This information gives insight in who the formal stakeholders are related to the SEA/plan process (institutional actors, Ministries) and who the informal stakeholders are (social context, general public)? Then the SEA can further elaborate on instances, subjects and methods of participation/consultation.

III: Get more information on possible SEA management, for instance:

- How to establish an SEA team?
- SEA process management
- Organising quality review
- Financial aspects
- Reporting and decision making formalities



There are different options when it comes to the structure of the SEA team and SEA management: three basic models can be considered for taking the SEA forward, such as the Consultancy way of undertaking the SEA, Internal Government Study Team undertaking the SEA or a combination of both. But other arrangements are also possible. In addition, it is important to get more information on funding issues.

Proposed program arrangements for first visit

We could organize this in the form of, for example, a 2–3 day workshop in which we try to get an answer to these questions together with the parties involved. This can be done through a combination of presentations/examples from the NCEA about each of these topics, and (group) assignments/discussions afterwards. It is helpful that relevant stakeholders go through this process together, so that everyone has the same expectations of the scope/continuation of the SEA by the end of the week.

Stakeholders are initially the same ones who attended the DRR Belo Horizonte workshop, namely government parties and the mining industry. But perhaps it is good to also invite (representatives of) affected communities/NGOs involved.

In addition, we could make separate arrangements with, for example, relevant universities or consultants who have written project ESIA's for individual mining projects. This is to gain more substantive insight into available information and environmental / social issues.





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SECRETARIA DE ESTADO DE DESENVOLVIMENTO ECONÔMICO
Subsecretaria de Promoção de Investimentos e Cadeias Produtivas

Belo Horizonte, February 27, 2020

Rob Verheem
Director
Netherlands Commission for Environmental Assessment

Mr. Director,

With my cordial greetings, on behalf of the Government of the State of Minas Gerais, I thank the opportunity granted by the Netherlands Commission for Environmental Assessment (NCEA) with the purpose of building a successful partnership and signing a cooperation agreement in line with the Minas Gerais State Mining Plan, to be put into action soon.

To this end, I confirm our interest in continuing the necessary actions to adopt the recommendations of the report of the DRR (Dutch Risk Reduction) in the preparation of a Strategic Environmental Assessment (AAE / SEA).

For a first visit by the NCEA, I would like to suggest the week of March 30, 2020. I also express in accordance with the proposed scope and dealings presented.

Find below contact of the person responsible for technical preparations:

Hércules Kuster dos Reis
Chief Advisor for International Cooperation
Tel. (55) (31) 3915-4948
Cel. (55) (31) 97139-5326
E-mail: hercules.reis@desenvolvimento.mg.gov.br

I thank you, in advance, for the fundamental support of the NCEA and Government of the Kingdom of the Netherlands, renewing my protests of the highest esteem and consideration.

With kind regards,

Juliano Alves Pinto
Diplomat
Under-Secretary for Investment and Value Chain Promotion
State Secretariat of Economic Development
Government of the State of Minas Gerais



Netherlands Commission for
Environmental Assessment

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Date: 5 March 2020
Subject: SEA Mining Plan Minas Gerais

Dear Mr Juliano Alves Pinto,

Thank you for your letter of February 27th 2020. Also from my side I am looking forward to a successful cooperation aimed at supporting you in your endeavour to prepare a successful Strategic Environmental Assessment for the State Mining plan for Minas Gerais. Looking at your suggestion for a first visit of the NCEA in the week of March 30 2020 I am happy to confirm that my colleague Ineke Steinhauer is able to follow up on this suggestion. She will get in touch with Mr. Hércules Kuster dos Reis for the further preparation of this visit.

Please accept the assurance of my highest consideration,

Rob Verheem
Director International



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