

Reforming environmental licensing in Brazil: Discourses analysis in the National Environment Council

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Abstract: Controversies about Environmental Licensing have been featured in the public agenda as the National Congress advances a policy reform being debated since 2004. In the National Council for the Environment, given its legal attributions, the Environmental Licensing rules and possible changes have been discussed since the first meetings. Through the analysis of Council meeting documents, the objective was to highlight such speeches and the players who pronounced them. For this purpose, memoirs and minutes of meetings of instances of the Council in the period 1984-2021 were examined. Essentially, discourses were found about the screening stage and environmental impact studies, with the absence of criticisms and proposals regarding the definition of the scope of the studies and the follow-up stage. There was a prevalence of discourses centered on administrative efficiency, without acknowledging the objectives of this environmental policy instrument, or challenges to increase its effectiveness.

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1. Introduction

Public policy councils have been established in Brazil and assigned the role of contributing to the design, monitoring and policy evaluation, expanding social control over government action (CARNEIRO, 2002). The National Council for the Environment (Conama), established in 1981 as an advisory and deliberative body, has the role of advising the federal government on environmental policies. In addition to producing non-statutory regulations, the Council may make recommendations and proposals to the Executive government or to the Federal Senate and House of Representatives committees (IPEA, 2011). Among its attributions, we highlight the establishment of standards and criteria for Environmental Licensing (EL) and Environmental Impact Assessment (EIA). In fulfilling its role, Conama would offer a space where the narratives of communities of practitioners and experts could influence the public agenda.

Bills for amending the EL process under discussion in the National Congress contain several provisions to simplify administrative procedures (FONSECA et al., 2019; ATHAYDE et al., 2022), aiming at streamlining the issuance of environmental licenses and providing stronger legal security to entrepreneurs (SANCHEZ, 2021). Aspirations for simplifying the EL can be identified in the justifications that are part of two proposals: Bill 654 in the Senate (BRAZIL, 2015), which proposes streamlining the EL for infrastructure projects considered as strategic, and the so-called “General Law of Environmental Licensing”, originated in the House of Representatives in 2004 and currently under review in the Senate as Bill 2159/2021 (BRAZIL, 2021).

The bills echo criticism from corporate entities addressed to EL, such as supposedly long timeframes, excessive discretion of public officials, and interruptions of the licensing process due to frequent judicialization (CONFEDERAÇÃO NACIONAL DA INDÚSTRIA, 2013). Data from the World Bank (2008) and other authors (SCABIN; PEDROSO; CRUZ, 2014) indicate, however, that judicialization stems mainly from EIA shortcomings.

In this context, it is particularly relevant to advance the understanding of how the problems of the application of EIA and licensing have been addressed by Conama, which, among its roles, is responsible for fostering debates on environmental policies and recommending ways of improving their application, in addition to exercising its regulatory power through the dispatch of regulations.

This research intended to bring to light the discourses about EL and EIA that have emerged in Conama, either explicitly focused on the criticism of these instruments or related to ways of improving their normative framework.

The discourses were extracted from publicly available documents, mainly constituted by the minutes of the plenary meetings, Conama’s main deliberative body, composed of representatives of the government and various sectors of society, to which the recommendation from working groups and interim committees are submitted. Until 2019, the plenary could be characterized as a forum, an instance in which civil society and government players could express and debate their ideas on public policies (FOUILLEUX, 2000). In that year, however, Federal Decree 9806/2019 reduced the number of voting

counselors from 96 to 23 and changed the power dynamics in an extremely favorable way to the government, which was left with 73% of the votes, mostly from federal entities, while the number of civil society representatives was reduced from 23 to 4. Such changes were suspended in 2021 by a decision of the Federal Supreme Court.

Fouilleux (2000) characterizes forums as spaces in which ideas on public policies can be clearly identified, along with the systems of representation and action in which the ideas are registered. The low representativeness of the social players from outside the Federal government in the main deliberative body of the Council means it did not fit the characterization of a forum in the sense described by Fouilleux (2000) in the period 2018-2022, although its legal roles had been maintained.

However, the 2019 changes do not affect the results of the research, because in 2015 the Ministry of Environment (MMA) announced that proposals for revision of the EL system would no longer remain on the Conama agenda.

2. Distinctive and complementary characteristics of Environmental Impact Assessments and Environmental Licensing as public policy instruments

Both EL and EIA are important public environmental management instruments instituted by Law No. 6938 of August 31, 1981, which establishes the National Environmental Policy (PNMA) (BRAZIL, 1981), and created Conama. The implementation of the policy depends, to a certain extent, on the integrated use of both instruments, in line with their respective functions (VALADÃO et al., 2022).

Complementary Law No. 140/2011, of December 08, 2011 (BRAZIL, 2011, item I of art. 2, translated by the authors), defines EL as an “[...] administrative procedure intended to license activities or enterprises that use environmental resources, are effectively or potentially polluting or capable of, in any way, causing environmental degradation”. Licensing should ensure compliance with legal conditions applicable (FARIAS, 2011) to all stages of the life cycle of a construction work or activity, from the design stage to its decommissioning and closure, for issuing Preliminary Permits, Installation Permits, and Operation Permits, which substantiate the approval by the State (TRENNEPOHL; TRENNEPOHL, 2011).

Unlike licensing, there is no normative definition of EIA in Brazil. Used in various decision-making contexts (SANCHEZ; CROAL, 2012), including the environmental licensing of projects, it is globally (UN ENVIRONMENT, 2018) used as an ex-ante assessment with the purpose of analyzing and communicating, to decision-makers and the public, the environmental implications of a development proposal that may have significant effects (CASHMORE et al., 2004; BOND et al., 2020). In Brazil, the preparation of an Environmental Impact Study (EIS) is required in case of “[...] construction works or activities potentially causing significant degradation of the environment [...]” (BRAZIL, 1988, Art. 225, translated by the authors). For all other cases, of assumed non-significant degrading potential, it is recommended, on the basis of statute, to prepare environmental studies that are simpler than an EIS.

As instruments of public policy, EL and EIA can fit into the definition by Lascoumes and Le Galès (2012) of “[...] a technical device with a generic vocation, carrying a concrete conception of the political/societal relationship and supported by a conception of regulation.” (LASCOUME; LE GALÈS, 2012, p. 22, translated by the authors), emphasizing the historical character of the instruments, which originated in unique contexts, and can be modified or evolve, influenced by changes in society. Thus, public policies are not only characterized by technical rationalities, but they carry value and reflect their bonds with the agents who design them, make them evolve, and make up communities of experts (LASCOUME; LE GALÈS, 2012). These attributes reveal a broad horizon of possibilities to analyze and evaluate their effectiveness.

Cashmore et al. (2004) highlight two dimensions of EIA effectiveness, one related to the efficiency of the practices, which concerns the better application of institutional regulations or guidelines, and the other related to the efficacy, which assesses the outcomes in relation to substantive aspects, that is, EIA’s contribution to achieving environmental protection and/or sustainable development goals. According to UN Environment (UNEP, 2018), there is still much to be strengthened in EIA internationally to make it more effective, a topic that has attracted the attention of researchers in several countries (FISCHER; NOBLE, 2015; MACKINNON; DUINKER; WALKER, 2018) including an important collection of studies in Brazil (SANCHEZ; DUARTE, 2022).

Undeniably, the 40+ years that have passed since the introduction of the EIA and EL in Brazil indicate the need for reflection and revision, which should, however, be supported by an evaluation of their results in relation to the objectives of the PNMA because changes that seek only efficiency can compromise efficacy in achieving the desired environmental quality (SÁNCHEZ, 2021).

3. Methods and methodological procedures

Public documents produced by Conama were analyzed using the technique known as content analysis (KRIPPENDORFF, 2012). This technique has been used in other studies on EIA in Brazil, such as the analysis of EISs (LANDIM; SANCHEZ, 2012) and minutes of public hearings (DUARTE; FERREIRA; SÁNCHEZ, 2016).

Firstly, the documents (available at <http://conama.mma.gov.br/>) were submitted to skimming, by which the type of text was determined, and the documents with content of interest to the research were screened (BARDIN, 2016). Thus, the corpus on which to apply content analysis was formed, namely:

- All minutes from plenary meetings available on the website, from the first, from 1984 to December 2021.
- Minutes of a meeting of the Environmental Policy Integration Committee from 2015, mentioned in the plenary, which deals with the Conama’s draft to review EL. Among other responsibilities, it is up to the Committee to suggest to the plenary the annual agenda of Conama’s work and assess the implementation of the policy.
- Transcript of the 2003 Conama priorities discussion seminar.

- Five meeting memories of the Environmental Licensing Technical Group formed in 2016 to review EL.

The analysis followed the steps described below:

i. Definition of the UA (Unit of Analysis) in a sentence or paragraph containing discourses referring to EIA or EL. Intentionally, because beyond the scope of the research, all the discourses with content related to licensing competencies (i.e., whether a project should be reviewed at federal, state or municipal level) were ignored.

ii. Location of the UAs in the documents using the MAXQDA software (VERBI, 2018) and the following keywords, terms, and acronyms: avaliação; audiência; compensação; estudo; EIA; impacto; licenciamento; licença; mitigação; monitoramento; termo de referência; TR; participação pública; resolução. Once the lexical search was completed, all the excerpts containing the terms were encoded, removed from the source text with the addition of their two immediately preceding and succeeding sentences.

iii. Reading of the UAs in their verbal context to select those of interest to the research, that is, communicative acts with performative character (MACHADO, 1998), suggestive of a critical or modifying intent regarding aspects related to both instruments. Discourses of equal content pronounced at different times of the same event were considered as a single UA, when attributable to the same player. The players are the authors of the communicative acts, identified by the institution of origin, not necessarily as official representatives.

iv. Organization of the UAs into categories, subcategories, and thematic groupings based on the discourses of Conama players.

v. Identification of temporal references, consisting of the dates of events and meetings to which the documents analyzed refer, for the construction of a timeline (Figure 1).

vi. Analysis of discourses and temporal evolution. For this purpose, the following definition was adopted: “Discourses consist of structured ways of representation that, by evoking particular understandings, subsequently enable the consideration of particular types of action. Alongside the words that structure them, the discourses also refer to the actions they engender, depending on the mutually constitutive relationship between them (HUGÉ et al., 2013, p. 188).”

Performing content analysis using software has some limitations regarding the choice of words used for the search of UAs, which may lead to certain omissions in the search results or too much emphasis on other aspects. Thus, we sought to mitigate the problem using a wide range of terms associated with the fundamental stages of the EIA process described in the literature (GLASSON; THERIVEL; CHADWICK, 2005; SANCHEZ, 2020) and with EL. Limitations regarding the interpretation of the contents of the UAs were overcome, partly, by the analysis of the coded segments in the entire context of each speech. The complete reading of the document, however, does not eliminate the subjectivity inherent to the method, mainly when applied to speech transcription, without other sensory elements facilitating the interpretation, such as tone of voice and facial expressions.

3.1 The categorization process

The categorization was conducted by aggregating the UAs based on characteristics in common and mutually exclusive criteria (KRIPPENDORFF, 2012). Two levels of categorization were considered:

1st level - Critical or propositional standings

The separation of UAs was carried out based on the intentionality of the players in the production of the communicative act, manifested through critical discourses, indicating deficiencies in practice or regulations, and propositional discourses, suggesting solutions or improvements. Discourses with other intentions, such as commendable or informative quotations, were discarded because they did not contribute to the research objective. Speeches by the same player revealing both criticism and improvement proposals on the same object were divided into two UAs, for later inclusion in their respective category.

2nd level – Formal or practical aspects

The categories created in the first level were subdivided according to the relationship between the object of the communicative act and the legal system. Thus, we separated speeches on formal objects from those related to practices. A formal object means a legal or a non-statutory requirement, such as laws or Conama resolutions, of mandatory compliance, that admit little or no discretion. They deal mainly with the administrative process of ELs but also include certain mandatory aspects of EIA. Practice objects consist of technically substantiated actions that can be interpreted or judged professionally and admit some discretion in their application. The mutually exclusive character of the subcategories is verified by the clear separation between regulated elements and those that are not. Thus, the classification was defined as follows:

- The category of “Critical standing”: “Practical shortcomings” or “Deficiencies of regulations”.

- The category “Propositional standing”: “Practical improvement” or “Improvement of regulations”.

To clarify the categorization process, we refer to the example of public hearings, which can be the object of the communicative act regarding their efficacy, possibly linked to the practices of those who lead them, or regarding their legal provisions, which can be considered insufficient even when there are good practices to ensure effective public participation. This also applies to proposals, which can range from recommendations to licensing bodies to better conduct hearings to proposals to review existing regulations. In short, inclusion in one category or subcategory depends on the perspective through which the object was perceived and the intentionality of the player when referring to it.

In each subcategory, the UAs were grouped in an analog way, into 31 thematic

groupings, corresponding to the object of the discourses, whose contents are described in summary in Tables 1 and 3. This method of organizing the data aimed to facilitate the identification of the topics most frequently discussed and the possible evolution of criticism into improvement proposals.

4. Critical standings

Table 1 indicates the thematic groupings of each subcategory related to the critical standings, specifying the discourses and the frequency with which they appear in the analyzed documents. The discourses are presented in a synthetic way, according to their content.

Table 1 – “Critical standings”: thematic groupings of discourses and corresponding amounts of Units of analysis

Type	Thematic groupings	Discourses	UAs
Shortcomings of practice	Environmental Impact Study	<i>Technical failures; copies of one another often; do not assess alternatives; insufficient primary data; are biased and favor the proponent.</i>	16
	Screening	<i>Indiscriminate use of EIA even for projects without significant impacts.</i>	14
	Approval of projects	<i>Excessive flexibility; omission of biodiversity issues; projects approval with uncertainty.</i>	13
	Environmental compensation	<i>Compensation relates to infrastructure deficiencies of municipalities and not to impacts.</i>	6
	Post-license	<i>There is no management model for environmental programs; post-approval follow-up hardly occurs.</i>	5
	Application of Resolution 237/97	<i>The problem with Resolution 237/97 stems from lack of investments, technicians, and budget in structuring the environmental agency for its adequate implementation, not its requirements.</i>	5
	Public hearings	<i>Public hearings favor proponents.</i>	4
	Transparency	<i>Dialog and communication between proponents and licensing agencies are wrong; the decision-making process is unclear.</i>	2
	Stakeholders	<i>Lack of attention to perceptions of stakeholders and concerns of affected communities.</i>	2
Infrastructure projects	<i>Infrastructure projects do not incorporate environmental issues.</i>	1	

Deficiencies in regulatory rules	Requirement of licensing	<i>Simple activities should not be licensed.</i>	5
	Resolution 01/86	<i>Conama Resolution 01/86 did not address the possibility of carrying out assessments through less complex studies; it does not contain criteria for assessing EISs; it is an obsolete regulation.</i>	5
	Compliance with deadlines	<i>Disrespecting deadlines established by Conama Resolution 237/97 generates no consequences.</i>	3
	Licensing system	<i>The three-stage model is not suitable for all types of projects.</i>	3
	Intervening bodies	<i>Increasing interference from intervening bodies causes delays in licensing.</i>	2
	Social control	<i>There is no legal provision for methods of social control for environmental assessments carried out without an EIS.</i>	2
	Cost of EIS	<i>The proponent's hiring of the environmental consulting team favors the preparation of biased EIAs.</i>	1

Source: the authors.

There is a predominance of UAs related to the practice of EIA that indicate problems similar to those found in the scientific literature (DUARTE; DIBO; SANCHEZ, 2017). The frequency of discourses with a critical approach reveals that the EIS, addressed in 30 speeches, and screening, are prominently the main topics. Screening is a term used in the EIA literature to describe the procedures and criteria for determining the level of detail of an assessment, including the need to prepare an EIS for a given project (SANCHEZ, 2020). In Brazil, decisions on screening have implications for public participation.

The critical approaches to EIS regard their technical quality, which is considered deficient either in relation to describing the environmental baseline or in the methods for impact assessment. Criticisms were also aimed at the screening of projects that require an EIS, whose use was considered excessive:

“[...] carrying out an EIS for every type of enterprise is to be unaware that today there is an EIA industry, and the cost of a two-hectare enterprise is the cost of the EIS.” (State Government, Minutes 67/10-10-2002, translated by the authors).

The idea that the EIS should be used whenever it is assumed that a project may cause significant impacts was present in the speeches of different players. However, this does not seem to represent a consensus, because this speech was voiced alongside other understandings about the role of the EIS, such as verifying the absence of environmental impacts or assessing all possible impacts, both significant and not significant. Thus, what seems to be at stake in the discussions on screening is not only the question of how to formulate initial hypotheses regarding the significance of the impacts of a project but the very purpose of the EIS.

Criticism aimed at the quality of studies has been recurrent since the early years of Conama. In 1989, a state government already pointed to the bias of EISs, which sup-

posedly would favor entrepreneurs, a topic later approached again by an environmental organization:

“[...] environmental impact studies and environmental impact reports have become an immense pasture for consultants. (Environmental non-governmental organization, Minutes 38/04-07-2002, translated by the authors).

In turn, the federal licensing agency highlights the recurrence of failures over the years, which compromise the quality of the EIS:

“[...] We have systematic quality problems with Environmental Impact Studies that do not quantify, that do not assess, that do not properly diagnose [...]” (Ibama, Minutes 75/10-11-2004, translated by the authors).

The weaknesses of the EISs pointed out by the counselors coincide with several limitations discussed in academic papers, such as poor baselines, methods of identification of impacts, and assessment of their significance (SCABIN; PEDROSO; CUNHA CRUZ, 2014; SCHERER, 2011; FEARNSTIDE, 2016; ALMEIDA; MONTAÑO; RITTER et al. 2017; DIAS; FONSECA; PAGLIA, 2019).

The literature also highlights that the quality of EISs depends on several factors, among which Landim and Sanchez (2012) highlight the approach used by environmental agencies and the scope of existing regulations, while Borioni, Gallardo, and Sanchez (2017) emphasize the quality of terms of reference as determinants of EIS quality.

During screening, authorities first come into contact with the possible significance of potential impacts (WESTON, 2011). In the next stage, scoping, the potential impacts, and relevant issues are identified to guide the preparation of terms of reference. Screening and scoping contribute to reducing the generic character of EISs (SANCHEZ, 2020), which sometimes omit significant impacts (MINISTÉRIO PÚBLICO DA UNIÃO, 2004), thus enabling the EIA to be aimed at the most critical issues for decision-making (WOOD; GLASSON; BECKER, 2006).

The perceived application of lenient criteria in project approval led environmental entities to issue negative judgments about decisions taken by environmental agencies. Pressure from government and business sectors may be the cause of some leniency in approving projects without proper proof of environmental viability;

“[...] these studies are assessed only by the environmental agencies, now weakened by the government's developmentalist perspective, with no guarantee of honoring the needs and desires of the Civil Society.” (Environmental non-governmental organization, Minutes 52/30-10-2008, translated by the authors).

Weston (2000) argues that, although the focus of EIA-informed decisions is often only on the final decision on the issuance of the environmental license, actually crucial decisions

are made at various points of the EIA process. Thus, in addition to external pressures by entrepreneurs and the alleged leniency of environmental agencies in the acceptance of poor-quality studies, issues such as professional experience and rulings on the significance of the effects of the proposal under analysis influence decisions made by public agents, from screening and scoping (WESTON, 2000), with consequences for the assessment of environmental viability.

The formal aspects raised by the players are numerically less expressive than the practical ones. They refer mainly to the requirement for licensing and the aspects of Resolution 01/86 mentioned in Table 2. The mandatory participation of the Fundação Nacional do Índio and Fundação Cultural Palmares, the latter replaced in EL, since 2019, by the Instituto Nacional de Colonização e Reforma Agrária, when there are interventions that can impact, respectively, indigenous and afro-descendant (quilombola) communities, was addressed under formal aspects and seen as an obstacle to the EL flow, according to a representative of the Ministry of Environment (MMA).

” [...] the Licensing faces difficulties with the integration of the grant concessions, the licensing is delayed because of grants, in the Federal Government, we manage, although we are an independent institution, we manage to have converging paths in the federal sphere, but this does not mean that other federal institutions involved in the licensing do not cause difficulties, for example, state agencies and other federal agencies, which is the case of Iphan, Funai, sometimes the Chico Mendes Institute itself [...].” (MMA, Minutes 117/18-03-2015, translated by the authors).

Considering the knowledge of indigenous, traditional, and local communities in the EIA, however, is recommended in Decision VIII/28 of the Conference of the Parties of the Convention on Biological Diversity, to which Brazil has been a signatory since its approval, in 1992.

Technical and financial shortcomings in the structuring of environmental agencies for the operationalization of the EL system, particularly for the implementation of Conama Resolution 237/97, were addressed in a seminar organized by Conama in 2003 to define the work priorities of the Council. However, such shortcomings did not enter the list of priorities due to their budgetary aspects, which escape the powers of Conama, as stated by the mediator of the meeting, a technical assistant of Conama. However, if the limitation regarding the competencies of the Council is a real condition to be observed, there is nothing that impedes the plenary to make recommendations on the need to strengthen the technical and operational aspects of environmental agencies (INSTITUTO DE PESQUISA ECONOMICA APLICADA, 2011).

Regarding the participation of each player in the discussion, environmental agencies stand out in the issues that concern the practice of EIA, with emphasis on the decision-making criteria regarding the environmental viability of the projects, but also on the quality of the EISs and the ineffectiveness of public participation (Table 2). Representatives of the state and federal governments, in turn, addressed mainly the difficulties related to the screening of projects and formal aspects of the licensing system, issues mentioned on a few occasions by

representatives of civil society.

Table 2 – Units of Analysis assigned to actors for each thematic category of “critical attitudes”

Players		Shortcomings of practice										Deficiencies in regulatory rules						
Sector	Institution	Environmental Impact Study	Screening	Project approval	Compensation	Post-license	Application of Resolution 237/97	Public hearings	Transparency	Stakeholders	Infrastructure projects	Licensing requirement	Conama Resolution 01/86	Compliance with deadlines	Licensing system	Intervening bodies	Social control	EIS cost
Federal	Conama staff		1		1	1	1										1	
	Ministry of the Environment		1		1				1		1					1		
	Legal Counsel of the Ministry of Environment		1		1								1					
	Other ministries and secretariats		1											2				
	Federal Public Prosecutor		1															
	Representatives (Members of Parliament)	1																
	Ibama	2			1	1												
	National Water Agency						1											
State-owned Company		1																

plication of other instruments, such as Strategic Environmental Assessment (SEA) and Integrated Environmental Assessment (IEA). Opportunities for public participation exist at all stages of the EIA process, however, their effectiveness depends on agreements regarding the objectives of participation and the way to implement it (GLUCKER et al, 2013). Sánchez and Mitchell (2017) argue that participation may represent a learning opportunity among stakeholders, and Sinclair, Diduck, and Fitzpatrick (2008) emphasize that learning processes in environmental assessments can lead to more favorable behaviors for environmental protection.

In the scope of discussions on the regulation of EIAs for offshore oil and gas exploration projects, we highlight the proposal of screening through a preliminary assessment, based on simplified environmental reports, also used to decide whether or not to carry out an EIS. It should be noted that although the proposal was formulated only for oil and gas enterprises, it would be possible and desirable to adapt it to other situations in which an EIA is carried out (LAWRENCE, 2007). In Brazil, screening is usually carried out based on the list of Conama Resolution 01/1986, on which there is a discussion regarding whether its character is exhaustive (MILARÉ, 2006), or based on parameters that appear in resolutions detailing application for specific enterprises.

Some authors suggested creating manuals and improving technical and operational skills to address challenges in implementing Resolution nº 237/97. However, these proposals did not address the challenges related to EIA and there is no evidence that they were implemented.

The development of Institutional capabilities is a key issue that contributes to increasing the efficacy and efficiency of the system formed by EL and EIA (FONSECA; SANCHEZ; RIBEIRO, 2017; SANCHEZ; DUARTE, 2022). Lima and d'Ascenzi (2017) indicate that in public health, the frontline players, the so-called "street-level bureaucrats", influence the course of policies and their results. Similarly, the results of the EIA depend, to a large extent, on institutional players at the frontline, in this case, the government agents who lead based on their interpretations (HANSEN; WOOD, 2016; ZHANG; KØRNØV; CHRISTENSEN, 2018), which highlights the importance of establishing clear guidelines for practice.

It is noted that there are no discourses regarding the strict application of a mitigation hierarchy (WITT et al., 2019) or address problems related to compensation and adaptive environmental management models for post-license monitoring, which favors an environment for learning based on experience to better address the complexity and uncertainties of socio-ecological systems (MORETTO et al., 2021).

Proposals for the improvement of regulations range from the drafting of more prescriptive resolutions to the general revision of existing ones. Legal definitions were part of the agenda when it came to editing resolutions for the simplified licensing of specific types of enterprises. On these occasions, the goal is to eliminate subjectivity in decisions regarding the screening stage, but not only that. It was suggested, at different times, that definitions of "significant environmental impact", "small impact", and "fragile ecosystem" should be established, and the terms of reference should be standardized, as opposed to

be tailored for each assessment. The data indicate that there is a broad consensus on the subject, since representatives from various social spheres, including environmental and government entities, were in favor of establishing standards to make regulations more prescriptive and less subjective, which is considered a negative factor of EISs:

"So, it would be important to [...] work on a definition for this, so that this problem of subjectivity is not created, causing a judicialization of the licensing processes [...]" (Frente Nacional de Prefeitos - Minutes 54/20-10-2009, translated by the authors).

Government agents would gain technical and legal security had such normative definitions been in place, as mentioned during the discussions for approving the Conama resolutions that deal with the EL for regional railways and airports. Conama Resolution 279/2001, however, in its preamble, recognizes the difficulties in establishing normative definitions for impact significance and refers to the discretion of environmental agencies regarding screening decisions.

The consensus on this matter can be clearly noticed in the first meeting of the Environmental Licensing working group, created in 2016 to draft a resolution to replace existing ones based on the proposal presented by the Associação Brasileira de Entidades Estaduais de Meio Ambiente (Abema).

"It was a consensus that criteria should be established to classify enterprises, with the definition of a matrix. With this, the discretion of the decision-making process is reduced and the technicians have greater security. The modalities and procedures presented should be related to this classification" (Recalling of the Licensing WG, 2016, translated by the authors).

Such matrix, as inferred from Art. 5 of the draft, would contain parameters of size, polluter/degrading potential, and nature and location of the enterprise to establish thresholds and fit them into a particular impact category, which would justify the decision to carry out an EIS or simpler studies.

Contrary to standardization, however, Zhang, Kørnø, and Christensen (2018) argue that environmental assessments present an inevitable element of discretion due to the existence of different levels of decision that permeate the process. Such discretion cannot be eliminated, since there is always the possibility of specific issues arising that were not provided for in the regulations.

Shortening deadlines for application review was mentioned to simplify the EL of enterprises considered to be of lower impact without significantly altering the three-stage model. The revision of the system, in turn, refers to the repeal of Resolutions 01/86 and 237/97 and their replacement by a new single resolution, whose draft began to be created in 2016 by Conama.

Discourses on simplification entered the agenda, effectively, in 2001, commissioned by ministerial representatives in the context of the energy industry crisis:

“[...] I wanted to convey a recommendation that the Minister made [...], that in this area of the energy crisis, the work of the Ministry of the Environment should be based on two premises: the first was to take advantage of the crisis to update and, if possible, increase the efficiency of the licensing process in the federal sphere [...]”. (MMA, Minutes 29/27-06-2001, translated by the authors).

Subsequently, it was resumed to facilitate the processing of projects related to the Programa de Aceleração do Crescimento (PAC), with emphasis on those focused on housing for the low-income population, in 2009, and construction works for the football World Cup in, 2012, but not only that:

“In that period, we granted 60% more licenses than in the same period of the previous year [...] The oil and gas industry has no environmental matters pending in its 102 enterprises, which was the result of the last PAC meeting”. (MMA, Minutes 94/27-05-2009, translated by the authors).

Speeches about revisions, particularly of the three-stage licensing model, considered inadequate for agricultural and small enterprises, have been present since 1989. Later, at least two Technical Groups were created to propose changes in the system: the first, in 1994, chose to maintain the model; the second, formed in 2016 and already mentioned, produced a draft resolution that was not approved by the plenary since the topic was removed from the Conama agenda. This occurred, as informed by the MMA, due to a proposal for a “general law” that was awaiting voting by the House of Representatives at that time.

Table 4 – Units of Analysis assigned to actors for each thematic category “Propositional standings”

Sector	Institution	Improvements in practice										Improvements in regulatory rules				
		Territorial planning instruments	Integration of PP	Scoping	Public participation	Technology	Preliminary assessment	Species	Training	Guides	Registry	Discretion	System revision	Simplification	Permission	
Federal	Conama staff		1		1									2		2
	Ministry of the Environment	1	2	1		1		2	1					2	5	7
	Other ministries and secretariats	1		2											1	
	Federal Prosecutor	1			1											
	IBAMA			1				1	1					1		
State	Brazilian Association of Environmental Entities	1				1								1	2	
	State Public Prosecutor						1						1	7	2	1
	State Environmental Agencies					1									1	1
	State Public Prosecutor													1		
Munic.	National Association of Municipalities and Environment													1		
	National Front of Mayors													1		

Civil society	Infrastructure and industry sector		1			1	1					1		
	Bank consultants								1		1	1		
	Non-governmental organization	2	1	1	3		1		1		2	6		
	São Paulo Climate Change Forum	1												

Source: the authors.

The federal instances focused mainly on normative changes to simplify or revise the licensing system, while among the state instances, the topic of normative definitions for low or significant impact was predominant. Environmental agencies spoke mostly about the revision of the system. Addressed by both government and civil society sectors, the revision of the system seems to be based, however, on different expectations. While environmental agencies see a revision as an opportunity to improve procedures in order to safeguard social and environmental systems and grant credibility and transparency to the EL, other advisers focus on the modification of the licensing model.

In short, gaps are observed regarding several shortcomings discussed by Conama, which indicate limitations to exploring the potential of each stage of the EIA and increasing procedural and substantive efficacy. No proposals were made regarding environmental compensation, post-licensing environmental management models, and criteria for decision-making. It is worthwhile noting the total absence of references to any change possibly needed in relation to scoping procedures, internationally recognized as a key step, along with screening, for EIA effectiveness.

6. Discourses

The deficiencies pointed out constitute issues present in the debates of the epistemic communities of this field of knowledge (POPE; BOND; MORRISON-SAUNDERS; RETIEF, 2013; HOCHSTETLER, 2018). However, the solutions proposed reflect mainly concerns about issues external to the process, which, although may contribute to the effectiveness of the EIA, do not incorporate the advances of research mentioned in sections 4 and 5 regarding the process itself.

Procedural aspects of EIAs are frequently assessed for their effectiveness (LOOMIS; DZIEDZIC, 2018) and are topics of consolidated understanding (CASHMORE, 2004). Such consensus includes the understanding of EIAs as a process that comprises a sequence of steps, each one with specific functions, from screening to post-licensing follow-up (GLASSON; THERIVEL; CHADWICK, 2005; SANCHEZ, 2020). The results of the activities carried out in each step influence the subsequent results and enable, through feedback mechanisms, when an increasing flow of information is delivered (WOOD, 2008), the return to previous steps to review and adjust, if necessary, the implementation

of the process. However, the steps of the EIA process were addressed by Conama players as isolated elements, and observations on environmental studies were predominant. Both in the criticisms and in the proposals, no analytical elements were found that enabled recognizing discourses revealing clear understandings about the process and the objectives that EIA should pursue.

Regarding the proposals for improving regulations, two main discourses were extracted and analyzed in the following paragraphs.

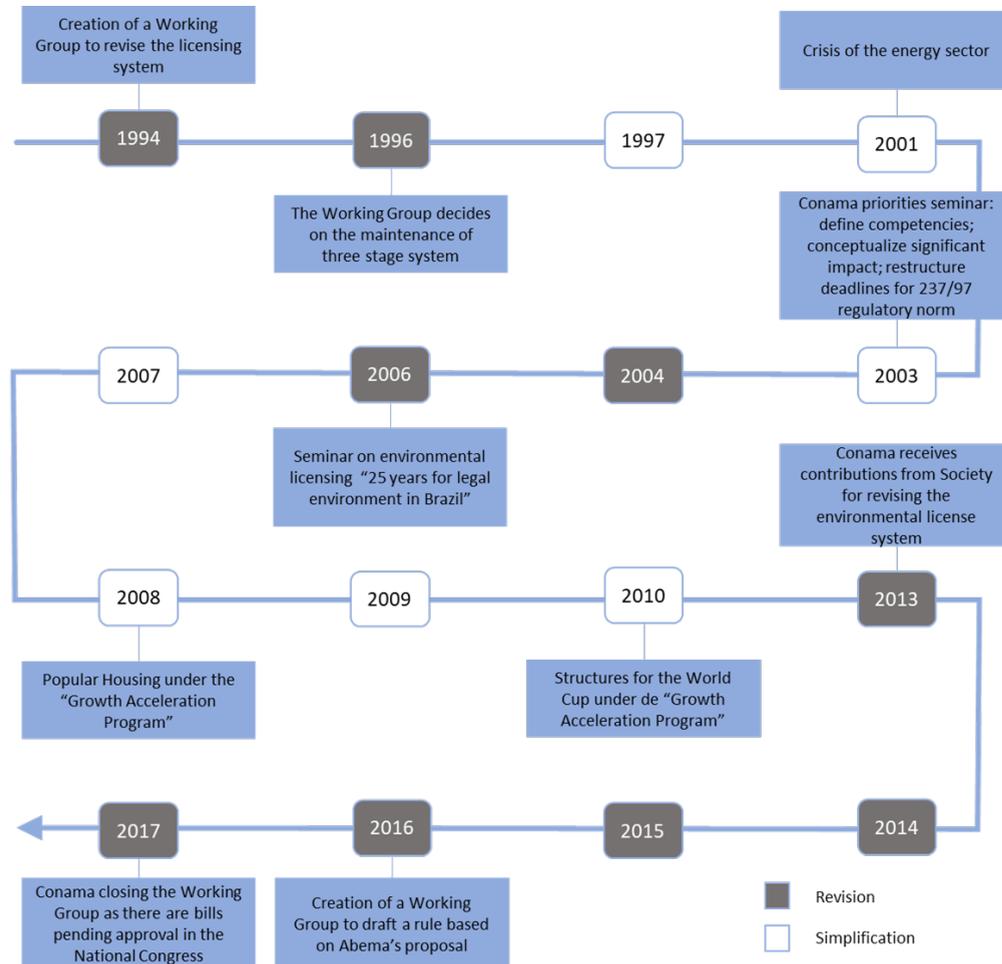
- Simplifying administrative procedures to speed up the licensing process for less complex cases.

The simplification of procedures was proposed by the federal government and is in line with the discourse that attributes delays in the installation of infrastructure works, supposedly of public interest, to the delay in issuing environmental licenses. Driven by government contingencies. As pointed out in the timeline of Figure 1, the discourse could be established due to the players who used it, all representatives of ministries, mainly of the MMA, acting on behalf of the Executive government. The reducing bureaucracy sought by Abema (CARVALHO, 2013) is featured in a similar discourse. The same is true of the CNI (CONFEDERAÇÃO NACIONAL DA INDÚSTRIA, 2013) which further claims a high cost of licenses. These players, according to Massandier (2011), hold key positions in the core of social interactions in the industries or organizations in which they operate, which allows them to indicate the direction in which they want it to be employed. Simplification appeared in parallel to the reduction of discretion, a path evidenced by the discussions about possible normative definitions. This discourse suggests a lack of knowledge of the nature of EIA, in which a certain degree of subjectivity, as well as a comparison between different values, are inevitable (WILKINS, 2013; FONSECA; BRITO; GIBSON, 2020). From the screening to the final stage of the EIA, decisions, with an inevitable degree of subjectivity, have to be made (WILKINS, 2013; COSTANZO; SANCHEZ, 2019). But, although impossible to be eliminated, subjectivity can be adequately addressed, provided that it is acknowledged and not mistaken for arbitrariness (EHRlich; ROSS, 2015).

- Review regulations on environmental licensing

There seems to be a general belief that EL needs to be reformed, but this is supported by different motivations, some vaguely expressed. Massandier (2011) argues that public policies are social constructs, not conceived a priori, in which the rationalities of social players encompass a variety of reasons for action. Thus, environmental agencies justify the revision of regulations to seek better performance of the licensing system to assess, mitigate and compensate for socio-environmental impacts. For the federal and state governmental spheres, the reasons, however, are administrative and aim at more efficient and less bureaucratic management, but move away from the final purpose of EIA.

Figure 1 - Timeline of main events and speeches about the licensing system. The years highlighted in gray refer to those whose minutes contain statements about revising the licensing system. The white color indicates years in which speeches related to simplification stood out.



Source: the authors.

It is possible to notice alternating discourses, which at times emphasize revision and, at others, simplification, the latter on three occasions (2001, 2008, and 2010), which coincide with governmental contingencies. Revision has been a matter present since the first years of Conama operation. With the removal of the revision of the EL rules from the agenda in 2017, there were several manifestations contrary to the legislative projects awaiting approval, however, no reference was found to possible recommendations on the subject to the National Congress. Apparently, the discussion involving the Congress took place only with the Ministry of Environment, without the participation of the Conama

plenary, as indicated by the following speech aimed at elucidating the progress of the legislative projects:

"We have a text that is very much agreed on, on subjects with a small level of dissent, whose basis was the text negotiated by the Ministry of Environment, and there is a series of demands regarding the points of dissent, and these dissents are being worked on both internally in the Executive government and in Congress, directly with the parliamentarians who will be rapporteurs, who are already or will be rapporteurs on the matter." (Ibama, Minutes 125/21-06-2017, translated by the authors).

Efficiency is a principle of public administration. In Brazil, it was formally established with the administrative reform resulting from Constitutional Amendment No. 19, under the influence of a political-ideological reform aimed at incorporating management mechanisms from the private initiative into the State to address the fiscal crisis of the 1990s (RAMOS; SCHABBACH, 2012). Comprehensively understood as a measure of the relationship between available resources for a given action and its outcomes, efficiency acquires meaning, however, if seen not only as a proportion, which alone would not have any value, but linked to the final objectives of the action (RUTGER; VAN DER MEER, 2010). Experiences in other countries suggest that changes to reduce costs and make the EIA processes faster and simpler can not only have negative effects on the desired results but also adversely affect the cost/benefit ratio intended to be improved (BOND et al., 2014).

Changes in public policies benefit from evaluations that measure both their efficiency and efficacy, as well as the possible impacts of change. Changes should also be subject to social control by sharing the results of public action (CENEVIVA; FARAH, 2012). To determine the effectiveness of environmental assessments, Hochstetler (2018) suggests that the results should be analyzed in the context of development strategies undertaken. Demonstrating the efficacy of the EIA and, above all, its actual benefits (TRIBUNAL DE CONTAS DA UNIÃO, 2018) is a strategic challenge to oppose claims that EL unduly delays decisions and imposes unnecessary costs on development.

The creation or reform of public policies based on evidence (HEAD, 2008) is not common in Brazil (KOGA et al, 2020), although its use is increasing in other areas (CRUMPTON et al., 2016). The absence of mention of evaluation mechanisms recorded in the speeches of the Conama plenary suggests that both discourses rely on personal convictions and professional experience, necessarily bound, with limited basis on evidence.

Conclusions

The method used allowed the identification of two main discourses favorable to the introduction of legal changes in the environmental licensing system, although supported by different expectations, given the heterogeneous composition of Conama.

The speeches of governmental players are closer to the prevailing rhetoric in the National Congress, focused on administrative efficiency and legal security. Environmental agencies, on the other hand, advocate changes to grant the EL system more efficacy in its purposes of protecting the environment and the affected communities.

In general, the absence of a systemic concept of environmental impact assessment was evidenced. The speeches denote fragmented views on the process and misalignment of the concepts discussed in the national and international literature on the subject, which can explain the gaps observed in the proposals advanced to reform the licensing system.

The omissions in the proposals occur despite the wide criticism of several practical shortcomings, which, if not addressed, may compromise the efficacy of environmental impact assessment and of environmental licensing regarding the objectives of the National Environmental Policy.

Therefore, It is time for Conama to contribute to the reform under discussion in the National Congress, highlighting the substantive aspects of EIA, in line with the concepts already consolidated in the scientific literature, to face the new socio-environmental challenges posed by the climate crisis and the accelerated depletion of biodiversity, which require revisions of current sustainability practices.

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Reforma do licenciamento ambiental no Brasil: análise dos discursos no Conselho Nacional de Meio Ambiente

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Resumo: O Licenciamento Ambiental tem ocupado a agenda pública com debates acerca de uma ambicionada reforma legal que tramita no Congresso Nacional desde 2004. No Conselho Nacional do Meio Ambiente, dadas suas atribuições legais, discutem-se o regramento do Licenciamento Ambiental e possíveis alterações desde as primeiras reuniões. Por meio da análise de conteúdo de documentos de reuniões do Conselho, objetivou-se evidenciar tais discursos e os atores que os pronunciaram. Foram examinadas memórias e atas de reuniões de instâncias do Conselho no período 1984-2021. Encontraram-se, essencialmente, discursos acerca da etapa de triagem e sobre os estudos de impacto ambiental, estando ausentes críticas e propostas referentes à definição do escopo dos estudos e à fase de acompanhamento. Houve prevalência de discursos centrados na eficiência administrativa, sem reconhecimento dos objetivos desse instrumento da política ambiental nem dos desafios para lhe aumentar a efetividade.

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Reforma de licencias ambientales en Brasil: análisis de discursos en el Consejo Nacional del Medio Ambiente

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Resumen: El Licenciamiento Ambiental ha sido parte de la agenda pública con debates sobre una ambicionada reforma legal, que se tramita en el Congreso Nacional desde 2004. Sin embargo, en el Consejo Nacional del Medio Ambiente, dadas sus atribuciones legales, posibles modificaciones a las normas de Licenciamiento Ambiental permean los discursos con cierta frecuencia. A través del análisis de los documentos de las reuniones del Consejo, se ha buscado evidenciar dichos discursos y a sus ponentes. Para tal efecto, se examinaron memorias y actas de reuniones de instancias del Consejo en el período 1984-2021. Esencialmente, se encontraron discursos sobre la etapa de selección y sobre los estudios de impacto ambiental, con ausencia de críticas y propuestas sobre la definición del alcance de dichos estudios y la fase de seguimiento. Hubo un predominio de discursos centrados en la eficiencia administrativa, sin reconocer los objetivos de este instrumento de política ambiental ni de los desafíos para aumentar su efectividad.

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