



THE NEW PATHS OF ENVIRONMENTAL MANAGEMENT IN BRAZIL: REFLECTIONS ON PARTICIPATORY GOVERNANCE IN THE ENVIRONMENTAL PERMIT PROCESS

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ABSTRACT

Objective: The objective of this study is to investigate environmental management in Brazil, with the aim of recovering the trajectory of the legal landmarks that anchor it and highlight the regulatory proposals for licensing currently under discussion in the National Congress, which point in the direction of a greater flexibility of the process and greater rigor in the observance of deadlines, alongside the weakening of the role of public hearings.

Theoretical Reference: In this topic, the main concepts and theories that underpin the research are presented. Above all, the discussion on environmental governance is highlighted, which provides a solid basis for understanding the context of research.

Method: The methodology adopted for this research comprises a literature review on participatory governance and analysis of primary and secondary data. The data collection was carried out by means of documentary analysis.

Results and Discussion: The results obtained revealed the setback that is insinuated with the deconstruction of legal conquests that were supposed to be consolidated, which denotes a clear trend of reformulation of Brazilian environmental policy informed by the primacy of economic interests over the sustainable, and democratic, management of the environment. In the discussion section, these results are contextualized in the light of the theoretical benchmark, highlighting the implications and relationships identified. Possible discrepancies and limitations of the study are also considered in this section.

Research Implications: The practical and theoretical implications of this research are discussed, providing insights into how the results can be applied or influence practices in the field of environmental management in the country. These implications can cover the areas of sustainability, participatory management, socio-environmental justice, among others.

Originality/Value: This study contributes to the literature by critically addressing proposals for restructuring environmental licensing in the country. The relevance and value of this research is evidenced by helping to understand the trajectory of environmental legal milestones and the impacts that the proposed changes suggest.

Keywords: Environmental Licensing, Participatory Environmental Management, Environmental Management.

OS NOVOS CAMINHOS DA GESTÃO AMBIENTAL NO BRASIL: REFLEXÕES SOBRE GOVERNANÇA PARTICIPATIVA NO PROCESSO DE LICENCIAMENTO AMBIENTAL

RESUMO

Objetivo: O objetivo deste estudo é investigar a gestão ambiental no Brasil, com o intuito de recuperar a trajetória dos marcos legais que a ancoram e destacar as propostas regulatórias para o licenciamento atualmente em discussão

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no Congresso Nacional, que apontam na direção de uma maior flexibilização do processo e maior rigor na observância de prazos, ao lado do enfraquecimento do papel das audiências públicas.

Referencial Teórico: Neste tópico, são apresentados os principais conceitos e teorias que fundamentam a pesquisa. Destaca-se, sobretudo, a discussão sobre governança ambiental, que fornece uma base sólida para a compreensão do contexto da investigação.

Método: A metodologia adotada para esta pesquisa compreende revisão de literatura sobre governança participativa e análise de dados primários e secundários. A coleta de dados foi realizada por meio de análise documental.

Resultados e Discussão: Os resultados obtidos revelaram o retrocesso que se insinua com a desconstrução de conquistas jurídicas que se supunham já consolidadas, que denota uma clara tendência de reformulação da política ambiental brasileira informada pela primazia de interesses econômicos sobre a gestão sustentável, e democrática, do meio ambiente. Na seção de discussão, esses resultados são contextualizados à luz do referencial teórico, destacando-se as implicações e relações identificadas. Possíveis discrepâncias e limitações do estudo também são consideradas nesta seção.

Implicações da Pesquisa: As implicações práticas e teóricas desta pesquisa são discutidas, fornecendo insights sobre como os resultados podem ser aplicados ou influenciar práticas no campo de gestão ambiental no país. Essas implicações podem abranger as áreas de sustentabilidade, gestão participativa, justiça socioambiental, dentre outras.

Originalidade/Valor: Este estudo contribui para a literatura ao abordar criticamente as propostas para reestruturação do licenciamento ambiental no país. A relevância e o valor desta pesquisa são evidenciados por ajudar a compreender a trajetória dos marcos legais ambientais e os impactos que as mudanças propostas sugerem.

Palavras-chave: Licenciamento Ambiental, Gestão Ambiental Participativa, Gestão Ambiental.

LOS NUEVOS CAMINOS DE LA GESTIÓN AMBIENTAL EN BRASIL: REFLEXIONES SOBRE LA GOBERNANZA PARTICIPATIVA EN EL PROCESO DE PERMISOS AMBIENTALES

RESUMEN

Objetivo: El objetivo de este estudio es investigar la gestión ambiental en Brasil, con el objetivo de recuperar la trayectoria de los hitos legales que la anclan y resaltar las propuestas regulatorias para la concesión de licencias actualmente en discusión en el Congreso Nacional, que apuntan en la dirección de una mayor flexibilidad del proceso y mayor rigor en el cumplimiento de los plazos, junto con el debilitamiento del papel de las audiencias públicas.

Referencia Teórica: En este tema se presentan los principales conceptos y teorías que sustentan la investigación. Sobre todo, se destaca el debate sobre la gobernanza ambiental, que proporciona una base sólida para comprender el contexto de la investigación.

Método: La metodología adoptada para esta investigación comprende una revisión bibliográfica sobre gobernanza participativa y análisis de datos primarios y secundarios. La recolección de datos se realizó mediante análisis documental.

Resultados y Discusión: Los resultados obtenidos revelaron el retroceso que se insinúa con la desconstrucción de conquistas jurídicas que se suponía se consolidarían, lo que denota una clara tendencia de reformulación de la política ambiental brasileña informada por la primacía de los intereses económicos sobre la gestión sostenible, y democrática, del medio ambiente. En la sección de discusión, estos resultados se contextualizan a la luz del referente teórico, destacando las implicaciones y relaciones identificadas. En esta sección también se consideran posibles discrepancias y limitaciones del estudio.

Implicaciones de la investigación: Se discuten las implicaciones prácticas y teóricas de esta investigación, aportando información sobre cómo los resultados pueden ser aplicados o influir en las prácticas en el campo de la gestión ambiental en el país. Estas implicaciones pueden abarcar las áreas de sustentabilidad, gestión participativa, justicia socio-ambiental, entre otras.



Originalidad/Valor: Este estudio contribuye a la literatura al abordar críticamente las propuestas de reestructuración de licencias ambientales en el país. La relevancia y el valor de esta investigación se evidencia al ayudar a comprender la trayectoria de los hitos legales ambientales y los impactos que los cambios propuestos sugieren.

Palabras clave: Licencias Ambientales, Gestión Ambiental Participativa, Gestión Ambiental.

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1 INTRODUCTION

Environmental issues have significantly increased their importance in political discussions, because of the vulnerability of natural resources to threats of degradation from urban and industrial growth. In Brazil, environmental policy has been structured in a more preponderant way over the last four decades, concomitant with the process of the re-democratization of the State, which has guaranteed legal protection for the participation of civil society in the decision-making processes concerning environmental management. This participatory bias can be illustrated by the creation of the National Council for the Environment (Conama) and the requirement to hold public hearings in the procedural system of environmental licensing, through Law No. 6.938 of 1981, establishing the National Environment Policy (PNMA). This institutional framework, improved in the following decades, instrumentalizes an environmental management that has the State as the mediator of the conflicts and interests of society relating to the environment, reconciling economic conveniences with environmental preservation, on the one hand, and guaranteeing the supremacy of the collective interest over the private interest, on the other.

Foreseen in the PNMA, rooted in other infringing resolutions and legitimized by the Federal Constitution of 1998 (CF-88), environmental licensing is part of the first generation of environmental policies aimed at marking the relationship between the environment and economic production, being in the list of basic instruments of Brazilian public environmental management. The construction, installation, extension and operation of establishments and activities with a potential risk of environmental degradation depend on the permit (CONAMA, 1981). In the licensing process, it is up to the public audiences to have a space for dialog between civil society, the State and the entrepreneur regarding the specificities of the works and enterprises with relevant potential for impact on the environment.



Over the last ten years, environmental licensing has been the subject of discussion, with proposals being debated in a polarized way in the National Congress, especially among ruralists and environmentalists, bringing to the surface important issues of the licensing process, such as excess of bureaucracy, lack of structure of the licensing bodies, low quality and inefficiency of Environmental Impact Studies (EIAs), among others (HOFMANN, 2015). The bias of the changes that are emerging in this political dispute implies a series of dilemmas, either because of the risks arising from a legislative relaxation that masks the lack of structure of the environmental bodies and the institutional inoperability of the State, or because of the fears that they represent in terms of the efficiency of licensing as to its objective, as an instrument that makes it possible to analyze the environmental risks arising from activities and enterprises that are potentially impactant to the environment and to establish mitigating measures to these risks, as well as the constraints and routine monitoring. In relation to participatory democracy, the main controversy refers to the fact that, for enterprises where the law establishes the simplified license, social participation is deeply weakened, by the suppression of stages of the process in which public hearings take place. Similarly, it is argued that the proposed deadlines for speeding up the process, as well as the failure to take account of the structure of environmental bodies, jeopardize or render impossible discussions with society.

This work is the fruit of research under development, and it intends a reflection about the trajectory of environmental management in the country, leading to the recent public agenda, with discussions that suggest a relaxation of environmental licensing. The setback that is insinuated with the deconstruction of democratic conquests that were supposed to be already consolidated, shows a clear influence of the recent Brazilian political reformulation also on the environmental theme.

2 THEORETICAL REFLECTIONS

2.1 ENVIRONMENTAL GOVERNANCE

Governance involves how individuals continually manage themselves and the environment in which they live, dealing with diverse and sometimes conflicting interests from cooperative actions (*Commission on Global Governance*). In summary, the main elements of governance are considered to be the way in which power is exercised in the management of economic, social and natural resources; besides the set of laws and practices that define the



exercise of power and guide the formulation and implementation of public policies. Environmental governance also presupposes the way environmental issues are incorporated into the discussions of political actors regarding the management of natural resources, focusing especially on the decision-making processes that lead to the sustainable development model of a given society (House, 2011; Jacobi, 2005).

Câmara (2011) highlights that the essential conditions of environmental management are institutional capacity, transparency, participation, institutional sustainability, shared management and accountability, among others, and that clear convergence of meaning between environmental management and governance can be observed. This reinforces the idea that so-called sustainable environmental management must be guided by the principles of governance. Moreover, since the environmentally balanced environment is a universal⁴ human right, and natural resources are considered to be a global public good, the environmental issue is of great importance in the context of global governance. This is because, in spite of the different concepts chosen for the term, there is a general consensus about the right of citizens to participate in discussions that influence their lives.

The composition of the actors in society who usually participate in environmental discussions is diverse, including public bodies, entrepreneurs, politicians, environmentalists, academics and civil entities. From the democratic point of view, organized civil society and its civil entities can be considered the main actors in this context, for they play the role of fostering discussion, expressing through ideas and actions - such as social movements, for example - the demands on governments. In this sense, the importance of strengthening the formal mechanisms provided for social participation in environmental management is reinforced, with a view to coordinating ideas and exchanging information that guide the decision-making process on environmental issues, i.e. that guarantee governance (Jacobi, 2003, Lorenzetti and Carrion, 2012).

Jacobi (2003) explains the difficulty of the Latin American countries in consolidating public spaces that guarantee social participation. In Brazil, the experiences of participatory deliberation, since the period of re-democratization in the 1980s, have been associated with social movements. Reinforced from the constitutional text of 1988, participatory practices are institutionalized through several Participatory Institutions (IPs) from the 1990s onwards, becoming the benchmark for democratic expansion (Jacobi, 2003; Avritzer and Navarro, 2003). In the environmental sphere, even before the promulgation of the CF-88, the aforementioned

⁴ Universal Declaration of Human Rights, 1948.



Law No. 6938 of 1981 established the guidelines for the PNMA and created the Conama as an advisory and deliberative body acting in the proposition and implementation of environmental policy. In this context, despite the discussion about the efficiency of IPs, we see an expansion of the spaces for participation in environmental management, with the emergence and strengthening of numerous councils and the legal forecasting of public audiences for the discussions around the appropriation and use of natural resources.

2.2 PUBLIC HEARINGS AS A TOOL FOR DEMOCRATIC ENVIRONMENTAL MANAGEMENT: CONTEXT AND CHALLENGES

Public audiences represent the main channel for dialog between the different actors involved in environmental licensing in the country. Established by Resolution No. Conama's 009/1997, with an advisory nature, makes it possible for the population to participate in the decision-making process about enterprises that cause significant impacts on the environment. As set out in Article 1, it aims to expose the results of the Environmental Impact Report (Rima) to interested parties, clarifying doubts and gathering criticisms and suggestions. As an integral part of the licensing process, they ensure access to information on the environmental impacts of a given enterprise and the opportunity for the communities affected by it to be heard.

However, there is a recurrent criticism of how public environmental hearings have been taking place in Brazil, leaving doubts about their effectiveness in incorporating the perception of civil society in the decisions of environmental bodies regarding the issuance of environmental permits, and the establishment of the constraints. This is because, in spite of the possibility that the non-occurrence of the public hearing invalidates the whole process of environmental licensing, there is no obligation to attend to what was demanded by civil society during its realization. The submissions of the participants should serve as a subsidy for the decision-making of the licensing body in defining the best location, size, limits of the works and activities, as well as the compensation of the entrepreneur for the affected communities. However, opinions contrary to what is proposed in the projects are not always taken into account in the decisions of the environmental body.

When entrusted with acting in the name of the collective interest, the Public Power also encounters many difficulties, since the discussions about a given enterprise cover diffuse interests, both between society and the entrepreneur and within society itself. Extreme differences of interests and opinions lead the environmental body to have, in technical studies,



a basis of analysis that ends up guiding action in a more preponderant way. In this sense, it is important to note that difficulties would not necessarily be simplified in deliberative hearings. This is because there are, as I have already said, very different perceptions and interests in civil society, also the target of immediate economic pressure from interest groups that, faced with the manipulation of information and the lack of ecological awareness of the population, could contribute to environmental degradation.

A good alternative would be to rethink the functioning of the hearings in a new format based on intermediate criteria between the public consultation, with discretionary consideration on the part of the environmental body, and the full deliberation on the part of the population consulted. In this way, the cultural perception of the environmental risk of civil society, would integrate in a more balanced way, together with the technical and scientific arguments, the parameters that guide the decisions of the environmental bodies (Silva e Silveira, 2014).

2.3 NATIONAL ENVIRONMENTAL POLICY AND ENVIRONMENTAL LICENSING

The environmentalist theme emerges in a prominent way in the post-war environment, involved in the intense economic growth of the world, bringing to light the complexity and seriousness of environmental problems (Viola e Leis, 1991; Carneiro, 2015). It is in this context that the environment and the management of natural resources start to integrate in a consistent manner the guidelines of social movements and to contribute towards the formulation of public policies, from the mid-1960s onwards. As a benchmark for this scenario, the *National Environmental Policy Act (NEPA) edition*, which introduced the Environmental Impact Assessment (EIA) in the 1970s, is highlighted as one of the main instruments of North American environmental policy, disseminated worldwide in the following years; and the United Nations Conference on the Environment - Stockholm Conference, held in June 1972, considered the great international landmark of world ecopolitics (Dias, 2001; Cunha e Coelho, 2003). Furthermore, in this transitional period of perception about the management of natural resources, the report entitled *Limits of Growth (1972)* is published by the Club of Rome⁵ and the Massachusetts Institute of Technology (MIT). The document analyzes the variables of economic growth, population explosion, pollution and depletion of natural resources,

⁵ The Club of Rome, now a non-governmental organization (NGO), emerged as a meeting of professionals, entrepreneurs and diplomats in 1968 who met in Rome to discuss issues related to the indiscriminate use of natural resources in the world.



presenting models relating these variables with the objective of glimpsing the limits of the planet and the challenges that could unleash in an environmental crisis.

In the Brazilian context, Magrini (2005) establishes a division that relates important international landmarks with the treatment of the national environmental question, from the second half of the twentieth century onwards. The first phase, predominant in the 1970s, is marked by the creation of NEPA, with a corrective focus, especially on pollution control. The second phase, from a more preventive perspective, was motivated by the Stockholm Conference, which took place in 1972, and promoted an institutionalization of the EIA as an intervention action of the State in favor of the control of the use of natural resources. The third and final phase proposed by the author takes place from the 1990s onwards, under a more integrative vision, based on the precepts of sustainable development, providing support for the main Brazilian environmental policies.

Generally speaking, the promulgation of the country's main environmental laws has taken place over the last 40 years, accompanying the process of the re-democratization of the state. In the 1980s, Law No. 6,938 of 1981 structures the National Environment Policy (PNMA); the National Environment System (Sisnama); and creates the National Environment Council (Conama), as the advisory and deliberative body of Sisnama. Within this legal framework, environmental licensing is one of the instruments of PNMA. In its Article 10, it is established that the enterprises and activities that use natural resources and/or potentially polluting, will depend on prior environmental licensing (BRAZIL, 1981), anchored in the preparation of an Environmental Impact Study. PNMA also prescribes the compilation of EIA results in its RIMA report. In addition, it divides the licensing into three stages, the Prior License - LP, the Installation License - LI - and the Operating License - LO, establishing what became known as the Triple License (Brazil, 1981).

In 1986, Resolution No. Conama's 001 establishes definitions, responsibility and general guidelines for the implementation of AIA in Brazil. The environmental permit is then strengthened as a legal obligation, prior to the installation of any development that presents a potential risk of degradation. The resolution also addresses the question of participation and publicity to be given to environmental studies, indicating the holding of public hearings for the presentation of the project and its impacts on society, and the discussion of RIMA with society. A year later, Conama, through Resolution No. 009/1.987, reviews procedures, clarifies concepts and strengthens environmental licensing as an instrument for the control of activities with potential risk of degradation. The resolution also refers to the obligation of public hearings



during the licensing process, where appropriate, for consultation with civil society, and establishes the indispensability of deliberative environmental councils, reinforcing the importance of the participation of the population in licensing.

Subsequently, the new constitutional text promulgated in 1988 inserts a paragraph that establishes, as an institutional principle, environmental preservation as a duty of the public authorities and of civil society and defines the obligation of prior environmental impact assessment for the installation of works or activities that are potentially degrading to the environment. The insertion of this rule as a stone clause legitimizes the obligation of technical evaluation prior to any intervention that presents environmental risks in the national territory, raising the EIA in Brazil to a new and higher level.

In the 1990s, despite little progress in terms of the technical and financial structure to operate, there was an expansion of the environmental bodies, in line with a trend towards decentralization and delegation by the Union of greater responsibilities over the planning and execution of public environmental policies to sub-national entities - states and municipalities. In the legislative context, Resolution No 1049/2001 should be noted. 237/97 of Conama, which disciplines procedures and clarifies concepts on Environmental Licensing. This resolution aims to ensure sustainability in the use of natural resources and also puts an end to doctrinal divergences, bringing the definition of key technical terms that should be considered in the licensing process (Conama, 1997). In the same vein, we have the creation of the Environmental Crimes Law - Law No. 9605 of 1998, which establishes penalties for the conduct of natural and legal persons who breach environmental standards and/or cause environmental damage from interventions in the environment and exploitation of natural resources.

As a rule, when the main environmental norms and laws in the country are analyzed, they all make reference to popular participation, demonstrating the importance of the inclusion of civil society in the decision-making, with the objective of guaranteeing the consideration of the collective interest. It can be argued that the Brazilian legislation, in spite of the opportunities for improvement that are presented, is in line with the international guidelines, both as far as the triple licensing and the AIA are concerned. The licensing system adopted makes it easier, in theory, for the responsible environmental bodies to identify, assess and monitor the impact of investment projects on the environment.

However, for this to materialize, the licensing process cannot be seen as a rite to be performed for its own purpose, nor as an obstacle to the realization of the investments. As far as the public hearing is concerned, the fact that it is advisory, and not deliberative, in a way



reinforces the argument that there is a mismatch between the experience experienced in the last thirty years by Brazilian society in relation to social participation in other themes and the management of natural resources, in which the decision-making power remains concentrated in the state bodies.

3 SEARCH METHODS

The scientific method adopted in a paper refers to the set of procedures used in a regular manner, with a view to reaching a given objective, being, in other words, the way by which a given result is reached (Matias-Pereira 2007; Lakatos e Marconi, 2001). The analysis presented here derives from the review of the literature on participatory governance, particularly applied to the environmental context, emphasizing the involvement of society in the decisions and actions of government regarding environmental management, from the licensing. As to the results pursued, the research in question was exploratory and descriptive. Based on a bibliographical review and a documentary survey, the aim was to recover the trajectory of the PNMA, highlighting environmental licensing, encompassing the proposals related to the said instrument that are being discussed in Congress in the recent context.

4 DATA ANALYSIS AND DISCUSSION

4.1 RECENT PUBLIC AGENDA: THE NEW REGULATORY PROPOSALS FOR ENVIRONMENTAL PERMITTING:

In the recent context, environmental licensing has often been singled out as one of the obstacles to the country's full economic development. This conception of the licensing process sustains to a large extent the interests in favor of institutional changes, justified as a solution for efficiency, reducing constraints and creating, according to those who defend them, more favorable conditions of action for the environmental bodies.

In this scenario, proposals for a new environmental regulation gained force in the National Congress that, in spite of making efforts as to the relevant need to speed up licensing, apparently disregards important issues, such as the improvement of the structure of the organs to meet in an efficient manner the new deadlines suggested, and especially, questions relating to participation in the decision-making processes. The proposals under discussion are aimed at



reviewing the regulation of environmental licensing for large enterprises, especially those considered to be of national interest.

Table 1

Regulatory Proposals for Environmental Licensing in Congressional Proceedings

Regulatory Proposal	House of Procedure :	Description:	Key Points:
Bill 3729 of 2004, "General Law on Licensing" - PL 3729 of 2004	Federal Chamber.	It establishes the General Law of Environmental Licensing, provides for strategic environmental assessment and provides other measures; it regulates Section IV of Paragraph 1 of Article 225 of the Federal Constitution.	<ul style="list-style-type: none"> - It introduces a requirement for at least one public hearing for cases where EIA is required. - For simplified procedures without an EIA requirement, there is no obligation for a public hearing. - Public hearings remain in advisory status, and the recommendations made in plenary are not required to be linked to the decision of the licensing body. - This includes the possibility of public participation via the Internet, in the event of a demonstration by fifty or more citizens or if the licensing authority deems it necessary.
Proposal of Emend to Constitution No. 65, 2012 - PEC65/2012.	Federal Senate.	It adds Paragraph 7 to Article 225 of the Federal Constitution to ensure the continuity of public works after the granting of the environmental permit; it provides that the submission of the prior environmental impact study must be authorized for the execution of the work, which may not be suspended or canceled for the same reasons except in the event of an occurrence.	<ul style="list-style-type: none"> - By establishing that the submission and approval of the EIA is subject to authorization for the execution of the work, it does not provide for public hearings or any other form of civil participation prior to the start of the works.
Senate Bill 654 of 2015 - PLS654/2015.	Federal Senate	It provides for the special environmental permit procedure for infrastructure undertakings considered strategic and of national interest.	<ul style="list-style-type: none"> - It does not provide for public hearings or any other form of participation of civil society for the licensing processes of the undertakings to which it applies.
Senate Bill 602 of 2015 - PLS 602/2015.	Federal Senate.	It provides for the creation of the Environmental Licensing One Stop Shop, a collegiate body, of an advisory nature, linked to the federal environmental licensing body, which will act in the federal environmental licensing of the enterprises considered strategic and priority for the State.	<ul style="list-style-type: none"> - Maintains the occurrence of consultative public hearings for enterprises of potential environmental impact.
Senate Bill 603, 2015.	Federal Senate	It disciplines the environmental licensing of the use of hydropower potentials	<ul style="list-style-type: none"> - It does not provide for public hearings or any other form of participation of civil



		considered strategic and structuring, creates mechanisms to optimize the planning of the use of Brazil's hydraulic energy potentials.	society for the licensing processes of the undertakings to which it applies.
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Source: Prepared by the authors (2017)

The proposed model was named, during its discussion, *"fast-track"*, for having, as its main objective, to speed up the issuance of environmental permits, bringing closer the time for analyzing the risks and impacts of the country's large enterprises with the time of capital and the time of politics, when considering the four-year warrants of the governors. The main points that converge in the proposals suggested changes: 1) in the criteria of deadlines during the licensing process, with the fixing of shorter deadlines than those observed at the moment for the analyzes of the licensing body, especially of the EIA; 2) in the institutional structure of the process, opening precedents for the replacement of the triple licensing for a simplified one rite, where the stages in which public hearings take place are even subtracted.

In all the proposals developmentalist arguments are observed that justify the suggested changes in favor of the need for a faster environmental licensing process. There is no doubt about the need to make the licensing process more efficient, and this, in a literal way, considers the quality of the objectives achieved and the time and resources needed for this. However, as pointed out by the president of the Brazilian Association of Members of the Public Prosecutor's Office for the Environment - Abrampa, Luís Fernando Cabral Barreto Junior, although environmental licensing is being considered a charitable thing, it "is a mechanism of damage prevention, which makes it possible to know the risks of a given enterprise and how to minimize some impacts, avoid those that can be avoided and compensate those inevitable" (Carta Capital, 2016).

As the result of a long path of discussions and revisions, the Senate analyzes the proposal of the General Law on Environmental Licensing (PL 2159/2021) that brings as simplified licensing procedures, the Accession and Commitment License (LAC), which attests the viability of a venture considered to be of low impact, through a declaration of adherence and commitment of the entrepreneur, or even for regularization of Corrective Operation Licenses (LOC). It also includes the Biphasic Licensing, which brings together two stages of licensing, by definition of the licensing authority; and the Single Environmental License (LAU), a single stage procedure that attests to the viability of the installation, extension and operation for enterprises.



5 FINAL CONSIDERATIONS

It is undeniable that the administrative procedure needs adjustments and improvements, especially in relation to the time of issue of licenses, as well as the technical quality of the analyzes and the monitoring by the government of compliance with the constraints. However, to orientate reforms that only pay attention to the speed of the process without taking into consideration the improvement of the results reflected in environmental conservation is contradictory to the idea of improvement and empties licensing as an instrument of the PNMA.

The efficiency of licensing as an administrative process by which the environmental body issues permits to undertakings and activities presenting potential environmental risks should be measured from the extent to which the process minimizes unavoidable socio-environmental impacts, as well as contributing to the potentialization of the social and economic impacts arising from the licensed activities. With regard to the objectives, it is important to bear in mind that it is up to environmental licensing to ensure that the exploitation of natural resources for the proper economic and social purposes is compatible with the principles of sustainability, while protecting the environment from being vilified.

With regard to the speed of the process, the main justification for the different proposals, there is no denying the difficulty of the environmental bodies in carrying out the analyzes and issuing the opinions as necessary. However, if the inadequate capacity of the State to enforce the established standards and ensure the effectiveness of environmental policy is to be considered, what should be done is the technical and operational strengthening of environmental bodies and not the regulatory flexibility that the changes under consideration in Congress are intended to bring about. In spite of the different consequences that the setting of deadlines can bring, from the point of view of participative governance it is worth pointing out that it makes it difficult to disclose information and to convene public hearings, considering the current structural support of the organs, which have few resources, especially of analysts able to give rapid continuation to the process. Furthermore, in the one-man rite proposed by the simplified licensing, initially, no public hearings prior to the license are foreseen, as current legislation opportunizes with audiences being foreseen at the stage of the pre-licensing.

Another point to consider is the fact that the proposal that makes licensing more flexible for enterprises considered to be of low impact and/or strategic for the country, leaves unclear information about the possibilities of direct participation by civil society, in an advisory or deliberative manner. Likewise, the justifications of the undertakings, within the established



typologies, are not forceful of what would be considered strategic and why. In short, the conjectured changes in Congress for environmental licensing point to an even greater tendency to concentrate decision-making power in the hands of the State, represented by the environmental bodies. Generally speaking, the question of participation is not regarded as a social right other than political representation. The proposed regulatory premises do not strengthen consultative participation, nor do they include a deliberative participatory dimension in the licensing process.

From the legal point of view, there is undeniable the need for federal laws that govern licensing, currently dealt with in infringing resolutions, opening up the possibility for the creation of jurisprudence, bringing more stability to the agreements. Likewise, it is understood that a more integrated planning of social, economic and environmental issues and a better structuring of the environmental organs for the timely processing of demands, the establishment of conditioners and supervision during and after the licensing process, together with the improvement of the channels of popular participation in the decision-making, seem to be a favorable path to what the PNMA proposes.

The new proposal is based on the assumption that relaxing the rules, opening up the possibility of simplified procedures, will provide such efficiency only by ensuring that the administrative licensing procedure gains greater agility. However, it does not focus on the need for technical and operational reinforcement of environmental bodies to overcome state inefficiency, nor does it even consider the question of budgets for that purpose. The actions reinforce the vision of environmental management as an obstacle to economic growth and of environmental licensing as an obstacle to investments in the country, by defining that, for the enterprises considered strategic for the nation, precedents are opened that put at risk the sustainable management of natural resources.

From the perspective of socio-environmental justice, it is worth highlighting that the participation of society can and should contribute to greater adaptations of the laws in favor of the majority and not of favoring some, creating social practices and paradigms by changing attitudes and behaviors that translate the established in the laws. From the participatory point of view, they are unilateral proposals that represent a step backwards in what is consolidated in legal terms as an instrument for controlling the use of natural resources. The new rules are being defined with little or no discussion with society that opens the door to a democratic construction of new paradigms capable of filling in the gaps that currently exist in the environmental licensing process.



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