

# Pressures for change in Brazil's EIA system

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## Abstract

In the past few years, a number of associations put forward documents lobbying for significant changes in Brazil's Environmental Licensing and Impact Assessment system. So far, there is no publicly available information about any government initiative towards scrutinizing the merits and drawbacks of those proposals. This study attempted to fill this gap by critically analyzing the overlaps, contradictions and potential effects of the many actions proposed in those documents. The analysis triangulated content analysis, focus group and online survey data. The focus group included ten seasoned Brazilian EIA specialists; the survey, based on Likert-scale and open-ended questions, resulted in 322 valid responses. Results show that the proposals generally agree that the current EIA system, while playing a key role in mitigating impacts and enhancing project design, needs many changes, such as streamlining procedures, strengthening institutions and improving and integrating planning tools. Nonetheless, the proposals neither offered solutions to overcome political, technical and budget barriers, nor established a sense of priority of the most urgent and relevant areas in need of improvement. Findings from the focus group and the survey signaled that a number of proposed actions, particularly those pushing for streamlining, might face public outcry. They also revealed that those changes that do not depend on legislative action (e.g. enhancing transparency, electronic procedures and planning integration) are likely to be more implementable than others. The study concludes by highlighting the importance of further investigating the means to increase EIA effectiveness in Brazil.

**Keywords:** Environmental Impact Assessment (EIA), Environmental Licensing, Policy Change, Policy Scenario, Brazil.

## Introduction

The Brazilian Environmental Impact Assessment (EIA) and Environmental Licensing (EL) system is under pressure to change. For years, industry associations have been pressuring for streamlining the licensing system. Several Civil Society Organizations (CSOs) have voiced criticisms of the current EIA system, especially when applied to large projects in the Amazon. The Federal Accounts Tribunal has been performing operational audits of the federal licensing process with corresponding recommendations for action. Scholars have increasingly been critical of the system's apparent problems, and calling on policy-makers to enhance the country's growing web of EIA-related regulations, procedures, and institutions.

In 1981, EIA and EL were included among the key mandatory tools of the National Environmental Policy Act. Since then, numerous regulations were issued. Among the most relevant ones are the National Environmental Council (CONAMA) Resolutions 1/1986 and 237/1997 and Complementary Law 140/2011. The system today has three key traits. First, EIA is used to inform government decision on granting an environmental license to private and public projects potentially capable of causing significant environmental harm. However, EIAs are occasionally required for small projects, even when their potential environmental effects and corresponding mitigation are minimal. Moreover, strategic environmental assessments are still a rare, voluntary phenomenon in Brazil. The second key trait is the system's highly precautionary approach to licensing. Proposed projects subject to EL are required, first, to obtain a viability license, known as Previous License, then, an Installation License,

and, finally, an Operation License. The third key trait of the system is its single-jurisdiction coordination of the licensing process. Unlike other large federative countries, such as Canada, where EIA agencies from different jurisdictions may intervene and decide on the approval of a particular project, in Brazil, proposed projects must follow the procedures of a single EIA agency, either at the federal, state or municipal level. The determination of the competent authority depends on legal screening thresholds, such as those specified by Complementary Law 140/2011.

EIA and EL have been playing an important role in mitigating the impacts of proposed projects in Brazil (Sánchez, 2013). But it is also clear that the system has numerous controversial issues, such as: low-quality of EIA reports/statements, excessive bureaucracy, time-consuming procedures, growing litigation, weak public participation, lack of institutional capacity, and inefficient follow-up control (Fearnside, 2002; Glasson and Salvador, 2000; Prado Filho and Souza, 2004).

In recent years, a number of influential associations started to go beyond the realm of criticism to propose specific ways to improve the system. Among the most notable cases are the documented proposals of the Brazilian Association of State-level Environmental Agencies (ABEMA, 2013), of the National Industry Confederation (CNI, 2013), and of the Electricity Sector's Environmental Forum (FMASE, 2013).

Given the credentials and political and economic power of these institutions, it is expected that their proposals may influence the work of policy- and lawmakers. However, so far, there is no publicly available review about the merits and drawbacks of such proposals. This study attempted to fill this gap by critically analyzing the overlaps, contradictions and potential effects of the actions proposed in the three aforementioned documents.

Findings from this study may be useful to stakeholders interested in EIA-policy change, not only in Brazil, but also in other countries. Countries with significant EIA experience, such as Canada and Australia, have also been experiencing pressures for changing their EIA system (Gibson 2012, Bond, Pope et al. 2014). The information generated here can contribute to a growing global debate about the challenges of reforming EIA.

## **Methodology**

This study followed a predominantly qualitative approach, which is particularly useful in the exploration of social problems that have not yet been exhaustively researched (Creswell, 2007; Denzin & Lincoln, 2005). Data were sequentially collected and triangulated among three sources: content analysis, focus group, and online survey.

This study first analyzed the contents of the three aforementioned documented proposals, based on a checklist. Data were also collected through an eight-hour focus group held in Belo Horizonte, on June 2014, with ten Brazilian EIA specialists. Two moderators conducted the debate; one of them is the co-author of this study. The moderated discussion focused on the main proposed changes identified in the content analysis of the proposals. The focus group was audio and video recorded, and then coded and analyzed. For the purpose of confidentiality, the statements cited here use the code "FG" followed by the participant's identification number.

Finally, an online survey was conducted to capture a better sense of the relative priority and challenges among some of the main proposed changes previously identified in the content analysis. The survey questionnaire was active on the web-based Survey Monkey platform between September 1<sup>st</sup> and 22<sup>nd</sup>, 2014. The survey link was sent to 1431 email contacts of experts in environmental management, licensing and impact assessment, particularly in the Brazilian southeastern region. The survey link was

also publicized in a national LinkedIn group. The survey, which included Likert-scale and open-ended questions (10 in total), resulted in 322 valid responses. Descriptive statistics of the survey results were managed in Microsoft Excel.

**Results and Discussion**

The three proposals were published in the same year (2013) by different associations representing state-level EIA agencies and industry constituencies. The ABEMA and CNI proposals are significantly more comprehensive than FMASE’s, which reads more like a short, sector-specific “appendix” of the CNI proposal. While the ABEMA proposal reflects the views of state-level government agencies, it is sharply aligned with the industry-oriented CNI proposal. Overall, the content analyses (see synthesis of main findings in Table 1) revealed there are more similarities, rather than discrepancies in the three proposals.

**Table 1 – Key Aspects of ABEMA'S, CNI's and FMASE's Proposals**

Author (Publication Year). Document Title (Pages).	ABEMA (2013). New Proposals to Environmental Licensing in Brazil (92 pages).	CNI (2013). Industry Proposal for the Enhancement of Environmental Licensing (88 pages).	FMASE (2013). Proposals of Institutional Directives to the new Legal Framework of the Electricity Sector's Environmental Licensing (9 pages).
Emphasis on conceptual changes	Low	Medium	Low
Emphasis on procedural changes	High	High	High
Emphasis on institutional changes	High	High	High
Emphasis on legal/regulatory changes	High	Medium	Medium

Source: Summary of the complete results (yet to be published)

The driving problems identified in the proposals is a general perception of ineffectiveness in Brazil’s EIA/EL system. The means to address this problem, in all three documents, include many procedural, institutional, and legal changes, however the concepts underlying EIA/LA are not explored in detail. One could argue that the three proposals are actually calling for a “reform” in Brazil’s EIA system, given the depth and potential implications of the many proposed changes. Even the FMASE proposal, while focusing on specific problems of the federal-level electricity sector, calls for significant changes in the system that would affect legal and institutional frameworks at all levels.

The three proposals agree on the need to: better integrate EIA and EL with other planning tools, streamline procedures, strengthen environmental agencies, improve public hearings, harmonize state-level environmental offset criteria, improve screening lists and Terms of Reference, create a single office to coordinate filing and requests of EIA-related documents, among others. Content analysis also revealed some proposal-specific calls for change. For example, CNI’s is the only proposal calling for self-declaratory licensing schemes and automatic license renewal. ABEMA emphasized the need to rethink the role of CONAMA, a multistakeholder body in charge of regulating environmental matters. FMASE called for regulatory changes in the Environmental Crimes Act, in order to limit criminal responsibility of government agents. Overall, the proposals emphasized procedural, legal and institutional changes. Calls for conceptual changes were mainly related to improving the definition of “significant environmental impact”. This is a major issue, as projects deemed to have the potential to cause significant environmental harm triggers the mandatory filing of an environmental impact study. The ABEMA proposal was the most detailed and instructive document in terms of regulatory and legal changes. Its final chapter signaled many specific ways to change existing legislation.

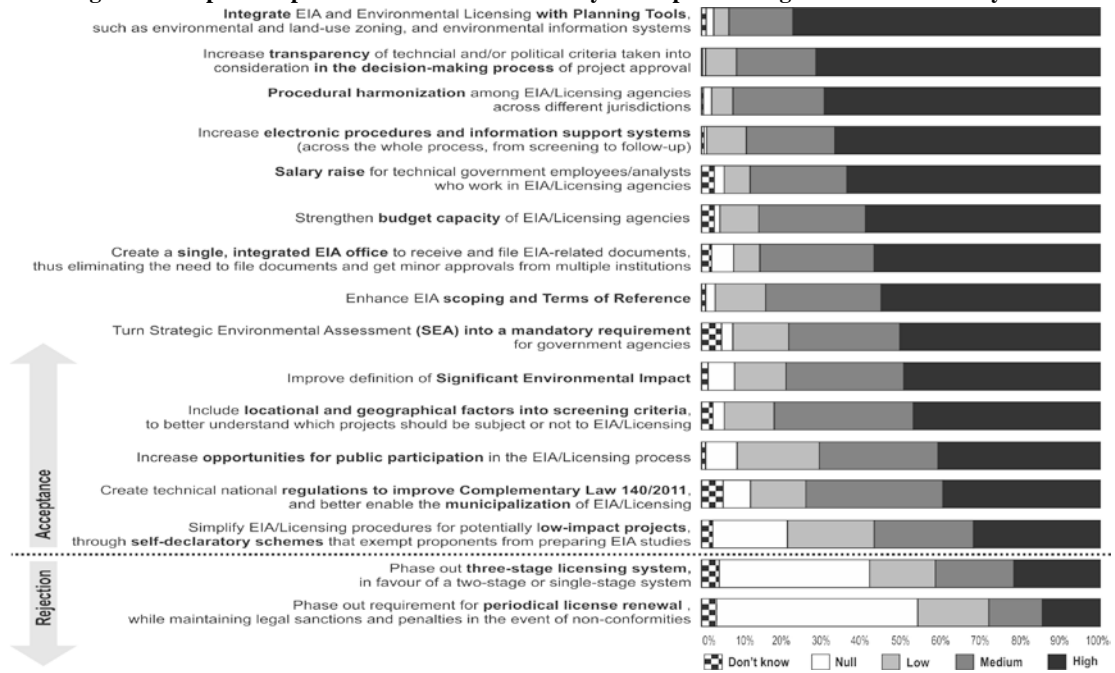
The statements collected in the focus group corroborate the perception that Brazil’s EIA system has many opportunities for improvement. For example, participants seem to agree on the need to create

and enhance electronic procedures. As one of them put it: “Our excellent online federal tax system shows us that we have the technology needed to enhance our electronic licensing procedures” (FG-2). The weak institutional capacity of a number of federal and state-level EIA/EL agencies was also pointed out by several participants. One of them, however, recognized that, despite all problems, there are many reasons to celebrate the current situation, since, only a few decades ago, Brazil did not even have environmental institutions (FG-1). Focus group discussions revealed a potential tension as to the best means to overcome the systems’ apparent problems. While two participants were convinced that profound regulatory changes are needed (FG-5 and FG-6), others were of the opinion that changing existing regulations (such as CONAMA Resolutions 1/1986 and 237/1997) would be a “risky” endeavor, as the resulting text may weaken current requirements (FG-4 and FG-7). Overall, the focus group discussions suggested that the implementation of the many actions proposed by ABEMA, CNI, FMASE and other associations might be more difficult than they anticipate, given their controversial nature and the lack of political will among government leaders. In this context, policy-makers will need to prioritize and compromise.

However, content analysis revealed that none of the three documented proposals provided information about how to overcome the many technical, political, and budget barriers likely to emerge in the implementation of proposed changes. Moreover, the proposals did not indicate the most pressing issues. Their recommendations were simply listed and justified.

The relative value and priority of the many proposed changes depend on one’s ideological and professional viewpoint. The 322 responses from the online survey, despite its limitation in terms of representativeness, was helpful in illustrating the fact that, while the overall majority (97%) of respondents agreed that the Brazilian EIA/EL system needs improvement, there was not a homogeneous sense of urgency among the many ways to improve the system. The survey revealed that those changes that do not depend on legislative action (e.g. enhancing transparency, electronic procedures and planning integration) are likely to be more acceptable, and thus implementable, than others. When asked about what level of priority should be given to sixteen of the changes proposed by the ABEMA, CNI and FMASE documents, respondents gave different responses. As Figure 1 shows, the perception of priority varies significantly among proposed changes. Some of the proposed changes (e.g. phasing out three-stage licensing and automatic license renewal) received very low or null priority rates, suggesting their implementation may be seen, by many EIA specialists, as undesirable.

**Figure 1 – Experts’ Opinion on the Relative Priority of Propose Changes to Brazil’s EIA System**



## Conclusion

Overall, the analysis revealed that the proposed changes, in all three documents, should be seen more as a list of “potential” rather than “factual” solutions to increase EIA/EL effectiveness in Brazil, as their barriers and likely effects are still unclear. As previously mentioned, recent international experiences indicate that EIA reform may have unintended negative consequences. In continually improving Brazil’s EIA system, law and policy-makers should carefully consider the many available options.

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