



THE BILL OF EXEMPTING AND SELF-LICENSING: THE EXTINCTION OF ENVIRONMENTAL LICENSING IN BRAZIL

During the most serious moment of the greatest humanitarian tragedy in the country due to the Covid-19 pandemic, when the population focuses its attention on overcoming the economic crisis and grieving, Bolsonaro government and the rural caucus approved in House of Representatives a bill (PL nº 3,729/2004) that, in practice, extinguishes environmental licensing in Brazil.

The bill now moves to be analyzed by the Senate. If approved as it is, will result in (i) the proliferation of tragedies such as those that occurred in Mariana and Brumadinho (MG); (ii) in total lack of control of all forms of pollution with serious damage to health and quality of life in society; (iii) in a water resources collapse; (iv) and the destruction of the Amazon and other biomes. If signed into law, we will see lawsuits questioning the constitutionality of the law, and increased judicialization of licenses (or lack of licenses) across the country. On the international level, it is reasonable to expect more markets to close for Brazilian products, such as the European Union, and the entry to OECD is likely to be compromised.

It is a setback of four decades, considering that the environmental licensing procedure is the main and most consolidated instrument of the 1981 Brazilian National Environment Policy for the prior control of pollution and other forms of environmental degradation resulting from human activities. The bill in question is being called the "Law of exempting and self-licensing" and it is considered the worst bill ever presented in 17 years of debate over changed environmental licensing procedures.

The proposal voted on the Lower House was never made available for debate with society. It was built behind closed doors, ignoring the results of debates held in recent years, violating transparency, information, and participatory rights. The Legislative Power, which in the first two years of the Bolsonaro government had resisted the pressure for setbacks in environmental legislation, now appears to be allying itself with the government.

The bill approved on May 14 by the Lower House provides for an extensive list of 14 activities with relevant potential impacts that will be exempt from





licensing, something that the Federal Supreme Court already declared unconstitutional. It also creates the so-called self-declaration license, which is issued automatically without any technical study by the entrepreneur or prior analysis by the environmental agency. According to the bill, the self-declaration license becomes the rule for licensing in the country. The proposal states that any projects not qualified as having a potentially significant impact - which triggers the need for an Environmental Impact Statement (EIS) and represents the minority of cases in Brazil - can be licensed through this modality. Many types of impactful projects, including tailings dams such as those that broke up in Mariana and Brumadinho (MG), or paving of unlicensed roads in the Amazon, such as BR139, will be self-declared license cases with no prior control. According to the Instituto Democracia e Sustentabilidade, of the 2,000 projects under environmental licensing at Brazil's capital, 1,990 will become self-licensed as of the first day of the new law

There are many other unacceptable setbacks, with serious consequences for protected areas, the rights of impacted communities, and the environment, such as:

- Broad definitions to be filled by state and municipal authorities, resulting in uneven licensing procedures between states and municipalities, decisions made on a case-by-case analysis, undermining legal certainty and opening the door to corruption and political bargaining;
- States and municipalities are allowed to exempt potential harmful activities of licensing procedures, generating a race to the bottom, where places with more flexible environmental norms can attract more investments;
- Disregard of the impact analysis and the adoption of damage prevention measures in the Indigenous and Quilombola Lands in process of demarcation;
- Exclusion from the analysis of indirect impacts on Conservation Units, paving the way for their destruction and making environmental protection unfeasible, with harmful impacts on biodiversity;
- Exclusion from the analysis of the impact of the project on human health; and complete disregard of the climate change theme.





- Eliminates the Social and Environmental Responsibility of the financial institutions, downgrading their role to a mere consultation on the validity of licenses;

Bolsonaro's anti-environmental policy does not stop at the extinction of environmental licensing in Brazil; it includes new attempts to legalize land grabbing in both houses. Last month the Senate tried to vote PL 510/21, but was forced to withdraw the bill momentarily after a public opinion pushback (it can be added to the agenda at any moment). It is argued that the bill is unnecessary because the current legislation already solves the vast majority of land regularization cases, all it needs is implementation, on the other hand, the proposal would set a new deadline so that invasions of public lands would be legalized without the need for inspection, what is seen as the major incentive for land grabbing and deforestation. Other concerns with the government steamroller for the environmental agenda are the attempts to: allow mining in indigenous land – the ordinary bill proposed (PL 191/2020) does not follow the constitution requirement a special type of legislation that demands a higher quorum for approval and it is in a clear disagreement with the OIT 169 regarding consultation rights - that if approved, will add even more deforestation and conflicts with the forest defenders; legalize more pesticides – the “poison bill” (PL 6299/02) that seeks to ease the approval of new pesticides and finds loopholes to release products that are currently banned; and constant attempts to roll back the Forest Code.

OBSERVATÓRIO DO CLIMA

SOS MATA ATLÂNTICA

INSTITUTO SOCIOAMBIENTAL (ISA)

GREENPEACE BRASIL

INSTITUTO DEMOCRACIA E SUSTENTABILIDADE (IDS)

INSTITUTO DE ESTUDOS SOCIOECONÔMICOS (Inesc)

INSTITUTO SOCIEDADE, POPULAÇÃO E NATUREZA (ISPN)

WWF BRASIL

