

# THE INEFFECTIVENESS OF INSTRUMENTS TO CONTROL THE USE AND OCCUPATION OF LAND AND SPACE

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## ABSTRACT

It is essential that the urban order is carried out and is able to contribute to the construction of more sustainable cities (and metropolises), in which the right to the city becomes a reality. This is the reason why this research aimed to identify the degree of social effectiveness of the instruments of previous studies of neighborhood impact and environmental impact (EIV and EIA) by the municipalities that make up the Metropolitan Region of Belém (RMB). Therefore, as a methodological choice, a qualitative and quantitative empirical research was developed, starting from a bibliographic research that aimed to contextualize the researched object, but which also used semi-structured interviews with municipal public agents, as well as closed questionnaires with to collect data and information necessary for the analysis of the theme and the construction of the problem response. As a consequence, the survey showed that more than half of the municipalities that are members of the RMB apply (always together) the two instruments surveyed, despite the application by the municipalities showing a lack of uniformity and a lack of legal regulation.

**Keywords:** effectiveness; environmental impact; metropolitan region of Belém; neighborhood impact, social effectiveness.

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## RESUMO

*É fundamental que a ordem urbana seja efetivada e consiga contribuir na construção de cidades (e metrópoles) mais sustentáveis, nas quais o direito à cidade torne-se uma realidade. Esta é a razão pela qual esta pesquisa visou identificar o grau de eficácia social (efetividade) dos instrumentos de estudos prévios de impacto de vizinhança e de impacto ambiental (EIV e EIA) pelos municípios que compõem a Região Metropolitana de Belém (RMB). Para tanto, como escolha metodológica, foi desenvolvida uma pesquisa empírica qualiquantitativa, partindo-se de uma pesquisa bibliográfica que visou contextualizar o objeto pesquisado, mas que também utilizou das técnicas de entrevistas semiestruturadas com agentes públicos municipais, bem como, de questionários fechados no intuito de coletar dados e informações necessários à análise da temática e à construção da resposta do problema. Por consequência, a pesquisa demonstrou que mais da metade dos municípios integrantes da RMB aplicam (sempre em conjunto) os dois instrumentos pesquisados, apesar da aplicação pelas municipalidades demonstrar falta de uniformidade e carência de regulamentação jurídica.*

**Palavras-chave:** *eficácia social; efetividade; impacto ambiental; impacto de vizinhança; região metropolitana de Belém.*

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## INTRODUCTION

The task of controlling the use and occupation of land and space of Brazilian towns and cities should be considered a kind of *urgent* collective task, and inspired by Sustainable Development Goal N. 11, it should be considered a commandment to be followed by all Brazilian municipalities in the pursuit of urban and peri-urban development policy, under penalty of allowing cities to become more unequal, more chaotic and more unsustainable.

To help effect this important task of urban policy, municipalities can (in the sense of duty) use several instruments of and urban-environmental nature, in particular the Neighborhood Impact Study (EIV) and the Environmental Impact Study (EIA), which comprise the “toolbox” of the City Statute (Brazil, 2001).

In this way, assuming that the urban-environmental legal provisions, more than existing as provisions, must applied to concrete cases so that the goals sought by lawmakers can be achieved, this study proposes to assess the degree of (in)efficacy of the EIV and the EIA in the towns comprising the Belém Metropolitan Area (RMB). To that end, the guiding question of the study is: Which cities comprising the Belém Metropolitan Area use the Neighborhood Impact Study (EIV) and the Environmental Impact Study (EIA) instruments?

In addition to the answer to the problem that guides the development of this study, the objective is: I – to discuss the economic and socio-environmental importance of the Belém Metropolitan Area; II – to analyze the effectiveness of urban-environmental legal provisions; and III – to identify the similarities in how the towns are using the studied instruments, as well as the situations in which they are unique, (inconsistencies); and IV – to list the reasons for which they studied towns do not apply the studied instruments.

Regarding the methodology, this is an empirical study in Law, but with strong interdisciplinary appeal, which started as a bibliographic survey aiming to highlight the research object, but used the techniques of semi-structured interviews and questionnaires (sent by official letter) as a means of obtaining the information necessary for the development and to answer the guiding problem. It should be noted we chose not to visit the city halls since the research was conducted in the midst of the COVID-19 pandemic.

Therefore, the first section of the research addressed the theme inherent to the RMB and to inter-federal sustainability, since the instruments of urban-environmental command and control, despite being applied within the scope of municipal autonomy, if analyzed as a whole can greatly interfere in the quality of life of all those who live in the metropolitan area.

Next, the second section of the research addressed the question of the ineffectiveness of the legal provisions related to the two instruments under discussion (EIV and EIA) based on the lesson on legal and social effectiveness.

The last section, in turn, demonstrated and analyzed the empirical data collected about the EIV and EIA instruments.

The research thus allowed a diagnosis of the application of the instruments of command and control researched, showing that more than 50% of the cities comprising the RMB use them in the task related to the licensing of activities and enterprises in their territories.

## **1 THE BELÉM METROPOLITAN AREA AND INTER-FEDERAL SUSTAINABILITY**

Due to its geographical location, the *site* in which the city of Belém was built had enormous strategic importance for the consolidation of the Portuguese territorial domain in the Amazon region, because in the early seventeenth century the dispute for the colonization of the Americas by the two major powers of the time (Portugal and Spain) was already a geopolitical clash.

On January 12, 1616, Francisco Caldeira Castelo Branco officially founded the town of Belém, laying its foundations in a site now called the Forte do Castelo, which had been known previously as Forte do Presépio, a fort located strategically south of the estuary of the Amazon River and protected from the ocean. This defense structure of the Portuguese dominion played a crucial role in the expansion of Portuguese activities in the north of Brazil.

Feliz Lusitânia was the first baptismal name of the city, which was then named Santa Maria do Grão Pará, and later Santa Maria de Belém do Grão Pará. Today, the city of Belém do Pará, as it is better known, has an estimated population of 1,499,641 people (IBGE, 2020), making it a “millionaire” city, as it has more than one million inhabitants.

Still regarding the occupation of the Amazon region and, therefore,

Belém do Pará, Becker (2009, p. 24-25) lists the elements that gained prominence in the long period of development of the region, such as: a) a late occupation driven by the temporary surge in demand for natural resources aimed at the international market; b) the geopolitical importance of the region, ultimately aimed at controlling the territory to secure economic interests with the construction of administrative offices connected to the central government; and c) the clash between different territory occupation systems. However, it was the first element that represented the region as a geographical space for the supply of natural resources, *e.g.*, the rubber “boom”.

Ratifying the first of the elements mentioned by Becker (2009), in particular with regard to the supply of natural resources aimed at the international market (a time when latex extracted in the Amazon was highly valued and coveted internationally), the following passage reports:

In 1872, only three Brazilian capitals cities had more than 100,000 inhabitants: Rio de Janeiro (274,972), Salvador (129,109) and Recife (116,671). Only Belém (61,997) had more than 50,000 inhabitants. São Paulo then had a population of 31,385 people (SANTOS, 2009, p. 23).

Therefore, during “rubber boom”, when the Amazon was (and to some extent still is) one of the largest “warehouses” on the planet, exporting raw materials to Europe, we note that the demographic index of the city of Belém was very high. To reach that conclusion, we just have to compare it with the same index in the city of São Paulo in the same period (1872).

Therefore, the four-century-old city<sup>2</sup> has long been very important in the dynamics of social and spatial development in the Amazon. However, despite its wealth and importance for the country, given its natural vocation for leadership in the northern region resulting from its geographical position, its major economic, historical and cultural relevance in the Amazon, it is said that Belém is rich, possibly a “millionaire”, in urban-environmental problems resulting from corporate urbanization, strongly connected to the interests of large companies, especially real estate agencies.

Following the criticism of the “corporate urbanization” model (SANTOS, 2009), according to Harvey (2015) the relationship between capital and the production of the urban space should be analyzed with a view to creating a new paradigm of development policy of cities (and why not of metropolises?) that effectively guarantees the right to the city to all who inhabit it.

<sup>2</sup> Belém was founded on January 12, 1616.

Thus, a city that was once almost totally connected to rivers and other watercourses, the city that Eidorfe Moreira (1989) called “ribeirinha” (riverside city) due to its intimate relationship with the waterways; the construction of roads (highways) in the Amazon inaugurated a new moment in the dynamics of the region’s economy, because it redefined “not only of the regional space as a whole, but, and especially, the urban spaces of the Amazon. In the case of Belém, this dynamic also marks its process of metropolization” (TRINDADE Jr., 2016, p. 22).

However, those who dedicate themselves to studying the phenomenon of inter-federative governance in Brazil must pay attention to the year 1973, because the first Brazilian metropolitan area were created in that year by complementary Law No. 14 (Brazil, 1973), initially institutionalizing nine metropolitan areas, including Belém among them. In this historical and political context (the high point of the military dictatorship), the primary intention was to integrate the Brazilian territory in order to encourage the interrelationship between the different political and administrative areas, a time in which there was a perception that society strongly tended toward the concentration of people in large urban centers.

Having shown the importance of the city of Belém, its geographical mutation (from city to metropolis) and the federal regulation regard metropolization, it should be noted that in the State of Pará – based on paragraph 3 of art. 23 of the Federal Consitution (Brazil, 1988) and par. 2 of art. 50 of the Pará State Constitution (PARÁ, 1989), the Belém Metropolitan Area (RMB) was only institutionalized in 1995 through Complementary Law No. 027 (PARÁ, 1995) initially consisting of the municipalities of Belém, Ananindeua, Marituba, Benevides and Santa Bárbara (Pará, 1995). However, Complementary Law No. 072 (PARÁ, 2010), incorporated the municipality of Santa Isabel do Pará into the RMB and, in the following year, complementary Law No. 076 (PARÁ, 2011) added the municipality of Castanhal to the RMB.

After the Metropolis of Belém was formally created by the normative force of the aforementioned laws, it is necessary to remember that the phenomenon of metropolization extrapolates the eminently legal scope, occurring mostly as a result of the “incorporation of cities, towns and vilages close to Belém into one single, though fragmented, urban sprawl” TRINDADE Jr., 2016, p. 22).

In this fragmented, scattered, unjust, and segregating metropolis, sustainability becomes visible in the difficulty to access the urban mobility

network, also in the considerable lack in a fundamental right of every human being, that is, the right to clean water, as well as the failure of the State to guarantee the right to housing for all, and other items (the social role of the city), which may be regarded as essential to the sustainability and guarantee of well-being of the inhabitants, as stated in Art. 182 of the Federal Constitution (BRASIL, 1988).

About metropolization and its characters, it is important to transcribe the following fragment:

The metropolization phase was characterized by ambiguities. On the one hand, we have, more than ever, the consolidation of an extremely modern, sophisticated and artificial way of life. On the other hand, we have the growth of the informal sector, the housing deficit, growing slums, insufficient urban services and equipment etc. (TRINDADE JR., 2016, p. 23).

Given that, the contradictory aspects resulting from the current paradigm of metropolization need to be analyzed, but, more importantly, faced by the public authorities and society from the moment of conception, execution and management of an urban and metropolitan development policy that should be different from everything that has been done up to this moment of history.

Unfortunately, we notice a pattern of metropolitan urbanization that is unsustainable because there are two strong characteristics associated with the prevailing paradigm of configuration of the cities that comprise the metropolis, which are the following: a) they exhibit elements of “unsustainability” during the processes of expansion and transformation of the urban area and the modernization of intra-urban spaces; B) they provide low quality of urban life to significant portions of the population (GROSTEIN, 2001, p. 14).

Contrary to the existing reality in the metropolis of Belém, federal legislators understand that sustainable cities are the ones that guarantee “the right to the urban land, housing, environmental sanitation, urban infrastructure (*sic*) to transport and public services, to work and leisure, for present and future generations” (Brazil, 2001). Therefore, if in the metropolis of Belém such attributes inherent to sustainable cities are not guaranteed to all who inhabit and use it, it can be concluded that it is a metropolis in which socio-spatial injustice is present, but, above all, it can be concluded that it is an unsustainable metropolis, according to the definition in City Statute (Brazil, 2001).

Thus, the RMB is a reality materialized by means of Complementary

Law No. 027 (PARÁ, 1995) and other laws that changed it, but also because it is a continuous geographical space where the ebb and flow of people, goods and services is intense. However, it should be noted that the metropolitan space does not always coincide with the surface of the metropolis formally constituted by the rules of the law.

However, regarding the town of Castanhal, there are questions about the adequacy of its inclusion in the list of towns that make up the RMB, because its “formation and growth did not result from the dispersion of settlement spaces of the metropolis, therefore, the city was not constituted as a periphery of the RMB” (RIBEIRO, 2016, p. 118). In addition, Castanhal has a striking feature in the fact that it is a kind of junction of federal and state roads connecting towards Belém, the Atlantic coast (northeastern Pará State), southeastern Pará and the states of Tocantins and Maranhão. Therefore, as a medium-sized city located at the center of a juncture of roadways, it plays a prominent and distinct role that generates disquiet about its inclusion in the RMB.

About the composition of the RMB according to Complementary Law N. 027 (PARÁ, 1995) and subsequent amendments, below are some characteristics and indicators of the cities that comprise the RMB.

It can be seen that, although the cities are components of a metropolitan area, many of their indicators (although the data concern mostly the year 2010) show serious problems regarding access and the guarantee of urban services fundamental to the well-being of their inhabitants and the concept of full development and sustainable cities, both enshrined in the urban-environmental legal system<sup>3</sup> in force. This is so because a city that cannot guarantee continuous access (to all who live in it) to the services comprising what we can call the “minimum for existing in the city”, must undoubtedly be considered an unjust and unsustainable city, in which the right to the city is still a utopia. Therefore, the gathering of unsustainable cities, resulting from the provisions of Complementary Law No. 027 (PARÁ, 1995), generates an unsustainable metropolis.

Finally, in a metropolitan area that, until the present date, does not have an Integrated Urban Development Plan (PDUI)<sup>4</sup> and has the poor indicators

<sup>3</sup> The urban-environmental order materializes in the consolidated normative framework comprised of: 1) the chapter on urban policy in the Federal Constitution (Brazil, 1988); 2) the City Statute (Brazil, 2001); 3) the Metropolis Statute (Brazil, 2015); 4) the National Environmental Policy Law (Brazil, 1981); 5) the resolutions of the Council of Cities (ConCidades); and 6) the thousands of state and city laws of urban and environmental nature.

<sup>4</sup> It should be noted that Law No. 13.683 (Brazil, 2018) revoked the legal device from the Metropolis Statute (Brazil, 2015) that considered a crime of administrative impropriety when the governor or



Table 1 – Characteristics and indicators of RMB cities

	Estimated population (2020)	Water/sewage/garbage collection in RMB	Proper sanitary sewers (2010)	Tree planting on public roads (2010)	Urbanization of public roads (2010)	HDI-M <sup>1</sup> (2010)
<b>Belém</b>	1.499.641	69.16/94.53/93.55	67.9%	22.3%	36.1 %	0.746
<b>Ananindeua</b>	535.547	69.16/94.53/93.55	55.1%	10.5%	24%	0.718
<b>Marituba</b>	108.246	69.16/94.53/93.55	18.8%	18.5%	0.4 %	0.676
<b>Benevides</b>	63.768	69.16/94.53/93.55	17.4%	38%	0.9 %	0.665
<b>Santa Barbara do Pará</b>	21.449	69.16/94.53/93.55	10.6%	11.8%	17.4 %	0.627
<b>Santa Izabel do Pará</b>	71.837	69.16/94.53/93.55	10.7%	19.9%	6.3 %	0.659
<b>Castanhal</b>	203.251	69.16/94.53/93.55	36.1%	16.9%	13.9 %	0.673

Source: adapted from IBGE (2020) and FAPESPA (2018).

<sup>1</sup> About the City Human Development Index, it should be noted that this varies from 0 to 1. The closer the result of 1, the better the Human Development Index of the city, the closer to 0, the worse it will be.

of access to urban services registered above, the information collected by different scientific studies gains prominence and social relevance because it can be useful for administrators when making decisions and allocating resources.

## 2 THE (IN)EFFECTIVENESS OF THE LEGAL PROVISIONS CONCERNING THE NEIGHBOURHOOD IMPACT STUDY (EIV) AND THE ENVIRONMENTAL IMPACT STUDY (EIA)

The constitutional norms concerning environmental protection and, more specifically, the provisions that make up the urban-environmental legal system cannot be subject to any type of rhetoric or fallacious narrative that claims to agree with the importance of the agenda of urban and metropolitan development, but in truth does not want such a legal framework to go from legal abstraction to the dimension of fact (concreteness/reality). Put another way, the type of rhetoric that should be repelled is one that aims to hinder the normative contents concerning the policy of planning the development of cities and metropolises to be put into practice with the goal of guaranteeing the right to the city to all.

There, the problem that guides this research concerns the analysis of the effectiveness or ineffectiveness of two legal instruments of urban-environmental command and control, which is why it is necessary to succinctly refer back to the debate on the effectiveness of legal provisions.

However, it is necessary to retreat and, with the lesson of Silva (1998), reflect on the quality (attribute) of the rule applicable (applicability), that is, on the legal rules that have the ability to produce legal effects, but, above all, we should reflect on effectiveness.

To move forward on this issue, we should point out that there are two types of effectiveness of the rule. The first is the *social effectiveness*, which is when the norm is rule is obeyed and applied in full, that is, it is what is called *effectiveness of the rule*. On the other hand, *legal effectiveness* can be understood as the ability to achieve previously set goals. Hence, legal effectiveness of the rule means the quality of producing legal effects, to a greater or lesser degree, regulating situations, relationships and behaviors in society. Therefore, when the rule is legally effective, it can be understood being applicable, requirable and enforceable (SILVA, 1998).

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public agent acting in the inter-federal governance structure fails to elaborate and approve, in 3 (three) years' time, the Integrated Urban Development Plan (PDUI) of the metropolitan areas or the urban agglomerations.

In short, having achieved the goals set by the legal rule means understanding that the rule was applied (legal effectiveness) and, therefore, the rule was effective (social effectiveness). Therefore, these are aspects of the same phenomenon, viewed through different prisms, as Silva (1998) teaches.

To illustrate the lesson above, we cite the following fragment:

Legal effectiveness consists in the ability of the rule to produce legal effects when its application is invoked to the pertinent authority. In turn, social effectiveness refers to the spontaneity of individuals to act according to the provisions of the rule. Therefore, we can assert that every legal rule is legally effective, although it may not be socially effective (LEITE, 2020, p. 23).

Thus, considering that we can assert that there is a consolidated urban-environmental legal framework, it becomes feasible to connect it with the theory of legal and social effectiveness of legal rules with the above-mentioned theory. Thus, we understand that the legal framework concerning the full and sustainable construction of cities is legally effective because it is capable of producing effects when it is put into effect with the goal of being used by public administrators in the decision-making process regarding urban and metropolitan policy actions. *Conversely*, if the provisions that make up the urban legal framework, even if they are fit to be applied, are ignored, not to be applied by the competent authority and also by the social agents who build and rebuild the urban space (CORRÊA, 2004, p. 12), we can infer that such rules are not socially effective and, consequently, such a legal framework is ineffective.

We can assert that there are city legal rules that require the preparation of the EIV and the EIA prior to licensing. Therefore, they are legally effective rules and it can be said that once applied by the city, they will become effective legal rules (social effective). However, concerning ineffectiveness, there are two possible hypotheses: 1) when there are no regulatory city rules allowing the application of the EIV and the EIA, it can be concluded that there will be no legal effectiveness, let alone social effectiveness (effectiveness); and 2) when, even if there are rules that enable legal effectiveness (applicability), such rules are not used (applied) by the city government, there will be no social effectiveness (ineffectiveness).

Therefore, based on the understanding of the law explained above and the meaning of the word effectiveness as a characteristic “of a legal proceeding that produces the desired effect because it was fully complied with

or executed” (EFFECTIVENESS, 2020), we can argue that the urban-environmental legal framework, in the two hypotheses as above (the rule does not exist or is not applied on the EIV and the EIA) is ineffective: it assaults the legal framework founded on the principle of sustainable urban development.

### 3 THE EIV AND EIA INSTRUMENTS IN THE CONTEXT OF THE BELÉM METROPOLIS

This section will discuss the two instruments of urban-environmental command and control, which are the objects of this research; both are extremely relevant in the control and design of the production process of urban and metropolitan space.

The Environmental Impact Study (EIA) is provided for IN Federal Constitution (Brazil, 1988), in the chapter addressing Environment (Art. 225, Par. 1, Par. 4). The Neighborhood Impact Study (EIV) is founded on Art. 182 of the Federal Constitution (Brazil, 1988), providing that municipalities must implement an urban development policy aimed at organizing the full development of the social functions of the city and ensuring the well-being of its inhabitants.

About the EIV, it is necessary to transcribe the following fragment:

The Neighborhood Impact Study aims to analyze and inform the municipal the city government about the repercussions of enterprises and activities, private or public, with an impact in urban areas prior to their implementation so as to preserve the harmony between private interests and the interest of the community with a view to:

- A) avoiding imbalance in the growth of cities;
- (b) ensuring minimum urban quality conditions; and
- C) ensuring urban order and a socially just and environmentally balanced use of urban spaces (SCHVASRBERG *et al.*, 2016, p. 13).

It becomes clear that, because it is a preventive instrument, the EIV aims to avoid the possible impacts arising from the implementation of public or private enterprises, as well as economic activities that may damage the soil of the town or city. It is an instrument that allows the city government to analyze and decide whether to grant (without conditions or under conditions) or refuse licensing of an enterprise, balancing the interests at stake, but mostly favoring the collective interest in case there is a clash between private and community interests, a standard procedure of the printed teleology in the Brazilian urban-environmental framework.

Thus, the urban environmental legal system materialized mostly in

the provisions of the City Statute (BRAZIL, 2001), which sets the general guidelines for the urban development policy; the law that provides the foundation for the definition of the normal use of urban property aimed at an organized and controlled use of land and space, restraining misuse and unsustainable use of the city's real estate (whether in relation to the improper/incompatible use, division of land into lots, excess or improper construction in relation to corresponding urban infrastructure, and the weakening of the listed areas). Thus, from this reasoning, the application of the EIV is fully justifiable, including constituting a form of power-duty of the municipality to use it in order to order the use and occupation of the land and urban space in an appropriate way, in accordance with the rules of urban policy.

However, it should be noted that the city government is not allowed to use the EIV to hinder, prevent or set conditions on the free exercise of economic activity based on private interests, since these must be resolved in another court. "In addition, the exercise of the right of ownership is only legitimate and defensible if the rules of normality are observed as assessed according to local and common standards of use of the property" (OLIVEIRA; ARAUJO JUNIOR, 2007, p. 1417).

Regarding the application of the EIV, it is necessary to assert that the concepts of: 1) impact; and 2) neighborhood are crucial.

Thus, the concept of impact clarifies that every activity produces an impact (in different degrees) and that such impact can be of different kinds: environmental, social, urbanistic, economic etc. Those are the so-called negative externalities arising from the implementation of enterprises, e.g. noise and/or environmental pollution, increased traffic of vehicles and people, mischaracterization of preserved areas, increased market value of real estate (real estate speculation), decrease in vegetation cover etc.

On the other hand, for the purposes of using the EIV, the concept of neighborhood must be understood as the group of people, activities and buildings included in the same patch of the urban fabric that can be reached or benefited by the effects of enterprises. However, the idea of neighborhood needs to be understood flexibly, because if the subject is a property, the neighborhood should consider the surrounding neighbors, but if the subject is urban transport, the idea of neighborhood will reach a greater radius and will be comprise the communities and areas through which this transport will travel. However, if the subject is water supply, the neighborhood may be the entire river basin territorially served (SCHVASRBERG *et al.*, 2016, p. 14).

Therefore, the two concepts (impact and neighborhood) are simultaneously implicated, complement each other and, finally, allow the definition of the territorial base of the EIV, based on the size and type of enterprise under analysis, the types and potential impacts and the urban, socioeconomic and socio-spatial characteristics of the fragment of the urban spot in which the activity and/or enterprise may be implemented.

Regarding the second instrument of urban-environmental command and control analyzed in this research (Environmental Impact Study), it should be noted preliminarily that an analogy of the EIV with the EIA is appropriate since both have the same concern with assessing changes in the urban environment as a function of enterprises and activities being implemented. Therefore, this understanding proved to be true throughout the research, because as the information about the EIV necessary for empirical research was collected, the information about the EIA emerged naturally, showing the city administration to be almost uniform logic as the aforementioned instruments are used jointly.

Concerning the EIA, the main legal rule of the environmental licensing process – based on Art. 225 of the Federal Constitution (BRASIL, 1988), is Law No. 6.938 (BRASIL, 1981); and Resolution CONAMA No. 001 (BRASIL, 1986), which set the guidelines for how to elaborate the EIA and its respective Environmental Impact Report (RIMA) as part of the environmental licensing process, as well as the Resolution No. 237 (BRASIL, 1997), which set out the procedures and criteria and reaffirmed the principles of decentralization present in the National Environmental Policy<sup>5</sup> (Brazil, 1981).

On the idea of environmental licensing in Brazil, it is relevant to assert that it:

[...] predates the Federal Constitution of 1988 itself – it was instituted by Law 6.938/81, which created the National Environmental Policy. However, the Federal Constitution accepted this law, and innovated by establishing the common environmental jurisdiction of states and raised it to the status of constitutional precept and protection of the environment, as well as the requirement of an Environmental Impact Study prior to the installation of construction or activity with a potential to cause significant degradation of the environment (Brazil, 2009, p. 21).

Furthermore, the National Environmental Policy (Brazil, 2001) created the CONAMA, which, in Art. of Resolution No. 01 (Brazil, 1986) defined environmental impact as any change to the physical, chemical and biological properties of the environment caused by any form of matter or

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<sup>5</sup> National Environmental Policy (PNMA)

**Table 1** – Table of municipal legal rules analyzed

City	Legal rule on Neighborhood Impact Study (EIV)	Legal rule on Environmental Impact Study (EIA)
<b>Belém</b>	Law No 8.655/08.	Law No 8.655/08.
<b>Ananindeua</b>	Law No 2.237/06	Law No 2.237/06,
<b>Marituba</b>	- Law No. 170/07 - Law No. 306/14	Law No. 170/07 Law No. 306/14
<b>Benevides</b>	Law No. 1.031/06	Law No. 1.031/06
<b>Santa Bárbara</b>	Law No. 091/2006, Art. 12, pars. 1 and 2, amended by Law No. 179/14	Law No. 091/06, Art. 12, pars. 1 and 2, amended by Law No. 179/14
<b>Saint Izabel</b>	Law No. 71/06	Law No. 71/06
<b>Castanhal</b>	Complementary Law No. 01/19	Complementary Law No. 01/19

Source: prepared by the author

energy resulting from human activities that affect directly or indirectly: I – the health, safety and well-being of the population; II – social and economic activities; III – biota; IV – aesthetic and sanitary conditions of the environment; V – the quality of environmental resources.

From this point, we will show tables with the data concerning the aforementioned instruments of urban-environmental command and control by the cities that comprise RMB.

Thus, for a first approach, we aim to answer the following question: which cities in the Metropolitan Aegion apply the instruments Neighborhood Impact Study and the Environmental Impact Study? It is necessary to demonstrate the *corpus* of the research, that is, the full list of legal rules on the researched object.

Therefore, the research was developed out of this set of rules, plus semi-structured interviews (by telephone) with agents working in the licensing and environmental control department of the surveyed municipalities. In addition, another data collection technique was the submission of a questionnaire asking basically: 1) Besides the Master Plan, which legal provisions (laws, decrees, etc.) regulate the application of the two instruments researched?; and 2) What are the most important obstacles preventing the application of the EIV and the EIA by the municipality?

Next, the tables show what was found in each city.

The tables above summarize the research that tries to show where and in what ways the application of the instruments is similar, but also situations that are unique and that may point a path to be followed or a way to process licensing that should be avoided by the cities, as below:

- a) All the laws of the master plans of the municipalities comprising the Belém Metropolitan Area, provide the use of the EIV and the EIA instruments;
- b) Normative provisions always bring them together, as if they were instruments that could not be used separately. Therefore, apparently municipal legislators understand that such instruments of command and control of land use and occupation are relevant to urban-environmental sustainability;
- c) Of the seven municipalities surveyed, according to their respective master plans, five need to pass a specific law regulating the EIV, which shows that despite the apparent recognition of the EIV, legislators do not strive to see its application with all the potential that the aforementioned instrument has;



Table 2 – Belém

Instrument	Rationale Normative	Effectiveness	Considerations about the instrument researched
EIV	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Waives specific law for EIV</li> <li>3. Resolution CONSEMA No. 05/2012</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. According to the Master Plan of Belém, the EIV is an instrument of the municipal environmental policy and the urban development planning policy.</li> <li>2. The EIV was instituted by the Master Plan itself as can be seen in Art. 185, not requiring subsequent regulation by means of another law.</li> <li>3. According to the Master Plan, the approval of the impact enterprises does not exclude the preparation and approval of the Environmental Impact Study and its respective report (EIA/RIMA), for enterprises and activities listed in Annex I, of Resolution No. 237, of December 19, 1997, of the National Council for the Environment (CONAMA).</li> <li>4. It was concluded that there is a legal basis for the application of the two instruments (EIV and EIA) by the municipality of Belém.</li> <li>5. Two interviews were conducted with City Hall technicians who are experts on the subject of the EIV and the EIA, with one of them having worked for the last few years in environmental and urban planning licensing.</li> <li>6. The first interviewee said that the initial concept was for the existence of an independent licensing body made up of representatives from the Urban Planning Department (SEURB), Municipal Environment Department (SEMMA), Superintendence of Urban Mobility (SEMOM), Belém Metropolitan Area Development and Administration Company (CODEM), Municipal Sanitation Department (SESAN) and the Municipal Housing Department (SEHAB), whose role would be to analyze projects with a potential to produce urban-environmental impact. However, he said that the Project Analysis Center (CAP) was eventually set up in SEURB, which made its operation difficult.</li> <li>7. He also said that the Municipal Environment Department (SEMMA) was reviewing some devices of the Terms of Reference pertaining the application of the EIV, but was unaware that such changes had been analyzed by the Municipal Environment Council (CONSEMA).</li> <li>8. The interviewed technician also said that the EIV has been used, but very precariously due to the lack of training of the technicians involved in the analysis team, and that the proof of the lack of training was that projects were approved without the necessary mitigating/compensatory measures being required.</li> <li>9. The second interviewee provided more robust information, as he worked in the CAP. First, he said that there is no regulation for the EIV (no decrees or regulatory acts), but the Public Prosecutor's Office believes that such regulation is unnecessary since the master plan has already instituted the EIV. (Incidentally, the researcher shares the same opinion as the Prosecutor's Office).</li> <li>10. He also said that SEMMA, through Resolution/CONSEMA n. 005, of October 18, 2012, began to demand the EIV.</li> <li>11. He reported that EIV analysis, in practice, for the purpose of licensing, is not done jointly by CAP.</li> <li>12. However, he stated that CAP technicians use their own discretion when performing their duties related to licensing, drawing up specific terms of reference for each case and delivering them to the applicant of the enterprise. Showing that there is not a model or a general rule to guide the execution of the works.</li> <li>13. He also said that there is not a public hearing to guide the application of the EIV, but the CAP is preparing a draft decree that regulates the EIV, also to regulate public hearings (information that partially coincides with what the other interviewee reported about the elaboration of a regulatory instrument for the application of the EIV).</li> <li>14. Another statement confirms the lack of a standard procedure (of a specific regulatory norm) in the application of the EIV, because according to the interviewee, the EIV is applied when the Prosecutor's Office or senior administrators ask and that, in such cases, the responsibility always lies with SEMMA.</li> <li>15. On urban compensation (mitigating measures), as in the first interview, the technician states that in the licensing process and the application of the EIV there is no requirement to urban compensation measures to be taken.</li> </ol>
EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. PNMA and CONAMA resolutions</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. Regarding the application of the EIA, the second interviewee states that since there are no regulations, the municipal legislation refers only to the EIA/RIMA, which in Belém is called the Prior Environmental Study (EAP) and that the city agents working in the CAP notify the applicant and issue specific terms of reference for the object of the application, ratifying another statement by the same interviewee that there is a considerable margin of discretion when conducting the licensing process.</li> </ol>

Source: prepared by the author.

**Table 3 – Ananindeua**

Instrument	Regulatory basis	Effectiveness	Considerations about the instrument researched
EIV	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Requires specific law for the EIV</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. According to the Master Plan, the EIV can only be applied after the approval of specific municipal law.</li> <li>2. In an interview with a city agent responsible for the urban-environmental licensing department, we obtained the information that the legal rule that guides the licensing actions is Law No. 2.480/2011 (Construction Code)</li> <li>3. And according to Art. 222 of the Construction Code, the process of approval and licensing of projects and construction intended for retail trade must be instructed by the EIV.</li> <li>4. However, some important questions remained that, despite the effort of the research, were not successfully answered, such as:                         <ol style="list-style-type: none"> <li>a) Is there a specific municipal law that provides that defines private or public enterprises and activities in urban areas that will depend on the preparation of a previous Neighborhood Impact Study (EIV)?</li> <li>b) If there is no specific law as determined by Art. 142 of the Master Plan, does the municipality of Ananindeua use only the Construction Code (Law No. 2.480) when issuing licenses?</li> </ol> </li> </ol>
EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. PNMA and CONAMA resolutions</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. In an interview with the Secretary for the Environment, it was clear that the EIA that is not required of all enterprises, that is, it is required only when the activity/enterprise has a higher potential for degradation. In other cases, in which the impact is lower, other studies are required, such as: prior environmental study, noise report, air pollution report, solid waste management plan, health management plan, fauna and flora displacement plan and flora survey study. However, he made it clear that each case requires a separate analysis and that each technician analyzes it differently; there is a minimum standard of documents to be submitted (<i>check list</i>).</li> <li>2. Regarding the EIA, the Master Plan makes it clear that its application may occur, and must observe federal legislation and CONAMA resolutions.</li> </ol>

Source: prepared by the author.

Table 4 – Marituba

Instrument	Regulatory basis	Effectiveness	Considerations about the instrument researched
EIV	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Requires specific law for the EIV</li> <li>3. Requires a specific department</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. According to the Master Plan, a specific department will license projects through the Preliminary Environmental Control Plan, EIA, EIV that will be made;</li> <li>2. When there is an environmental impact (due to changes in the urban features of the surrounding area), the enterprises and activities specified in municipal law will be subject to assessment of the EIV.</li> <li>3. In response to the official letter sent to the City Environment Department, the Chief of Staff of SEMMA states that the municipality applies the two instruments researched, but it is more common to use the Environmental Control Plan, considering that the activities installed in that city are small to medium-sized. Differently, almost all of the activities and enterprises with the biggest potential for environmental degradation are licensed by the State Department of Environment and Sustainability (SEMAS).</li> <li>4. The law which, according to the city administration, regulates licensing (EIV and EIA), Law No. 306/2014, does not specify the potential for environmental impact of the enterprises and activities.</li> <li>5. Despite the effort to obtain all the information for the development of the research, some important questions were left without the necessary answers, such as: <ol style="list-style-type: none"> <li>a) Is there a specific department in charge of meeting the demands of planning and control of the environment?</li> <li>b) Is there a law specifying the potential for environmental impact of projects and activities (Art. 89 of the Master Plan)?</li> </ol> </li> </ol>
EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Law No. 306/2014</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. According to the Chief of Staff of SEMMA (in response to the official letter sent), the municipality applies the EIA in accordance with the provisions of Law No.306/2014.</li> <li>2. However, the aforementioned legal rule mentions in passing, without details about which activities or enterprises are required to elaborate the EIA and other aspects.</li> </ol>

**Table 5 – Benevides**

Instrument	Regulatory basis	Effectiveness	Considerations about the instrument researched
EIV	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Requires specific law for the EIV</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. According to the municipal Master Plan of Benevides, enterprises causing major urban and environmental impact, as specified in the same master plan (art. 105), will have their approval conditioned to the submission and approval of a prior Neighborhood Impact Study.</li> <li>2. The feasibility consultation of all economic activities to be installed in the city of Benevides, shall be guided by the zoning of land use and occupation, and must comply with the regulations and guidelines regarding the activities with an impact on the neighborhood and the Master Plan of the city.</li> <li>3. There is a need for a specific law that will define which enterprises and activities will be required to submit an EIV.</li> <li>4. Through SIMP Civil Inquiry No. 000506-03612016, the Public Prosecutor's Office of Pará State in the city of Benevides requested that Mayor Romie Rufino da Silva and the City Department of Environment and Tourism (SEMIMAT) sign a consent decree (TAC) with the goal of implementing of the National Solid Waste Policy by the City of Benevides, in which the preparation of a Neighborhood Impact Study (EIV) is mandatory.</li> <li>5. It can, therefore, be seen that although the researcher did not succeed in the interview and in the questionnaire, it can be concluded that the municipality of Benevides applies the EIV since there are norms that apparently provide legal support to the application of the instrument. There is also factual evidence, in the aforementioned TAC, that the city is using the EIV. However, it is still not clear whether the EIV is always required whenever the activities listed in Art. 105 of the Master Plan require licensing or whether the EIV is required in specific cases, as was the case with the object of the consent decree mentioned above. This question was not resolved due to the lack of a response from the agents of that municipality.</li> </ol>
EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. PNMA and CONAMA resolutions</li> </ol>	YES	<ol style="list-style-type: none"> <li>1. As for the EIA, the master plan makes it clear that the aforementioned instrument will be mandatory when implementing the program of production of housing of social interest. In addition, Art. 134 provides that the preparation of the EIV does not replace the environmental licensing required under environmental legislation, assuming as pertinent the PNMA legislation and CONAMA resolutions.</li> <li>2. Therefore, despite the little information extracted from the city agents consulted, we can conclude that the EIA is applied by the city of Benevides.</li> </ol>

Source: prepared by the author.

Table 6 – Santa Barbara do Pará

Instrument	Regulatory basis	Effectiveness	Considerations about the instrument researched
EIV and EIA	Provision in the Master Plan	Not enough information	<ol style="list-style-type: none"> <li>1. The researcher tried to contact the city hall and the municipal Department of Environment more than a dozen times, but unfortunately the attempts were not successful.</li> <li>2. In addition, he sent an email to the Office of Internal Affairs of that city, but has not obtained any response to date.</li> </ol>

Source: prepared by the author.

**Table 7** – Santa Izabel do Pará

<b>Instrument</b>	<b>Regulatory basis</b>	<b>Effectiveness</b>	<b>Considerations about the instrument researched</b>
EIV and EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Requires specific law for the EIV</li> </ol>	Not enough information	<ol style="list-style-type: none"> <li>1. The researcher tried a few times to obtain the necessary data and information by phone. However, it was suggested that such questions were formally submitted.</li> <li>2. For this reason, two official letters were sent, both addressed to the Municipal Secretary of Finance, Mr. Jorge Antônio Santos Bittencourt. The letters were not answered.</li> </ol>

Source: prepared by the author.

Table 8 – Castanhal

Instrument	Regulatory basis	Effectiveness	Considerations about the instrument researched
EIV and EIA	<ol style="list-style-type: none"> <li>1. Provision in the Master Plan</li> <li>2. Requires specific law for the EIV</li> </ol>	NO	<ol style="list-style-type: none"> <li>1. In his first attempt to contact the Municipal Planning Department of Castanhal by phone, the researcher was told that that city does not apply the two instruments researched.</li> <li>2. Asking about the reasons, the researcher was told that the city does not yet have the technical structure to apply the instruments. But it is a goal to start applying them as soon as possible.</li> </ol>

Source: prepared by the author.

- d) Only the master plan of Belém dispenses with a regulatory rule for the application of the EIV. Therefore, it can be said that in Belém the aforementioned instrument is self-applicable. However, according to the report of one of the interviewed technicians, the lack of legal rules specifying the application allow discretion in licensing, since specific terms of reference are drawn up for each specific case;
- e) In a unique way in the research, according to the master plan of the municipality of Marituba, in addition to the need for a specific law, there shall be a specific department to license activities and enterprises through Preliminary Environmental Control Plan, EIA or EIV;
- f) Of the four municipalities found to apply the EIV, three (Ananindeua, Marituba and Benevides) require the submission of the EIV based only on the general rule that is contained in the cities' master plans, resulting, in the researcher's view, in a very high margin of discretion, since without specific regulatory rules, the subjectivity of the public agent is the only criterion when licensing activities and enterprises;
- g) Among the municipalities surveyed, it was surprising to note that Castanhal, despite its economic importance (as previously said), does apply the EIV and EIA instruments, in particular, with the justification that that city does not have the necessary structure; and
- h) As for the EIA, it was found that the four municipalities that apply it, use the PNMA law and the CONAMA resolutions as a basic justification.

## CONCLUSIONS

In a metropolis with serious urban-environmental issues that contribute to unsustainability in its component the cities and hinder the right of their inhabitants and to the city, it is imperative to apply urban order with effectiveness, social effectiveness, so that it can be useful to the regulation of the use and occupation of the land and space of cities.

To assess the effectiveness of the important instruments of urban command and control chosen (EIV and EIA), this research partially achieved its objectives, that is, it discussed the Belém Metropolitan Area and its economic and socio-environmental importance, analyzed the issue concerning the effectiveness (social effectiveness) of legal rules concerning prior licensing, showed which municipalities currently apply the instruments researched and the similarities and inconsistencies in how they are



applied. Finally, it identified some reasons that they instruments are not being applied.

Thus, obtaining all the data and information necessary for the development of the research was not possible because, despite the researcher's insistence, some representatives of the municipalities surveyed completely ignored the requests, among which are the municipalities of Santa Bárbara do Pará and Santa Izabel do Pará. Therefore, regarding the instruments, it was not possible to assess whether or not they are used effectively

However, regarding the other municipalities of the RMB it was possible to collect information and data that allowed the research to partially answer the problem, allowing us to clarify that four of the seven municipalities apply the EIV and the EIA, some in a precarious way, with non-existent legal regulation and a high degree of discretion that may ultimately lead to the failure to reach the urban potential that the instruments promise.

Finally, the conclusions achieved by this research pave the way for other academic initiatives that attempt to identify which activities and enterprises, due to their potential impact to the urban environment, are primarily required to submit the prior studies of neighborhood impact and environmental impact or, also, which are the requirements made by municipalities when analyzing the EIV and the EIA. These questions remained unanswered because they were not part of the previously defined problem and research objectives, but that must be answered by other scientific studies.

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