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BR-319 OBSERVATORY POSITIONING NOTE ON THE PRELIMINARY ENVIRONMENTAL PERMIT OF THE MIDDLE STRETCH OF HIGHWAY BR-319

On July 28, 2022, the Brazilian Institute of the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis* – IBAMA) issued Brazil's National Department of Transport Infrastructure (*Departamento Nacional de Infraestrutura de Transportes* – DNIT) the Preliminary Environmental Permit for construction on the middle stretch of Highway BR-319, which runs from km 250 to km 655.7. The issuance of the permit, evidently electoral and clearly politically motivated, ignores essential stages of the licensing process, violating forest peoples' rights and compromising significant pillars of democracy.

Given the importance of the topic, the BR-319 Observatory considers it necessary to emphasize some fundamental points so that the continuity of the licensing process follows the applicable laws, ensuring transparency, broad participation, and room for the interested parties to express themselves:

1. The Preliminary Environmental Permit cannot be issued yet because free, prior, and informed consultations, per [Convention No. 169](#) of the International Labor Organization (ILO), [were never held](#) with the indigenous peoples and traditional communities who will be directly impacted by an infrastructure project of this magnitude. Brazil ratified this Convention through [Legislative Decree No. 143 of June 20, 2002, entered into force in July 2003](#), and enacted by Decree No. 5041 of April 19, 2004. Upon being ratified and promulgated, Convention No. 169 of the ILO enters the Brazilian legal system as a supra-legal norm. It is also worth mentioning the understanding that even defends the overruling of its supra-legal nature due to its materially constitutional content, as added by former Justice Celso de Mello of the Federal Supreme Court in the judgment of the [Direct Action for the Declaration of Unconstitutionality \(Ação Direta de Inconstitucionalidade – ADI\) No. 3239](#), which makes the need for its strict observation even more relevant in critical environmental licensing processes, as is the case of the Highway BR-319 project. It must be noted that, even if the Convention mentioned above



had not been incorporated into the domestic legal system, there is still a constitutional need to respect and observe the social organization of indigenous peoples and the right to territory enshrined in the terms of [Article 231 of Brazil's Federal Constitution of 1988](#), which represent these peoples' rights to have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, and from which all other rights derive, including the right to prior, free, and informed consultation. Finally, it should be stressed that the need for prior consultation is not even limited to the environmental licensing procedure. Under the terms of Article 6 of ILO Convention No. 169, consultation is necessary in the face of any administrative action (as is the case of the environmental licensing process) or legislation that may impact the peoples concerned.

2. Moreover, it must be made clear that the DNIT and the National Indian Foundation (*Fundação Nacional do Índio – FUNAI*) only made presentations on the Indigenous Component of the Environmental Impact Assessment (*Componente Indígena do Estudo de Impacto Ambiental – CI-EIA*) for communities in the Apurinã, Mura, and Parintintin territories. Those presentations done at meetings should not be considered a consultation, as they only fulfilled an informational procedure inherent to the procedures of the Indigenous Component Assessment. These spaces for dialogue are not public hearings either and cannot be confused with free, prior, and informed consultation, the regulations of which are even given by different norms and have different purposes. While the EIA presentations aim only to protect the rights to participation and information, a prior, free, and informed consultation is related to the right to self-determination itself, with its own procedure, the direct participation of interested indigenous peoples, and in line with the consultation model proposed by the communities. The participation of the interested body in the result of the consultation, in itself, already tarnishes the procedure's "free" character since it holds a position of interest in a specific result.
3. Concerning public hearings, in the first place, the communities had no prior access to the relevant documents, nor were they in an accessible language. Secondly, the format of the hearings did not allow, and even complicated, the participation of residents from all communities involved in the process. Third, how the results of the hearings were incorporated into the Environmental Impact Assessment and Environmental Impact Report (*Estudo de Impacto Ambiental e Relatório de Impacto Ambiental – EIA/RIMA*) was not disclosed, much less into the Indigenous Component.



4. Still on the environmental licensing process, were the EIA/RIMA and CI-EIA accepted? If yes, is that on the IBAMA website? Those documents should only be submitted to public hearings and presentations after acceptance. The lack of transparency on the part of the federal government is obscene, both concerning the availability of documents for alleged “consultations” and the administrative progress of the process in its entirety. All information and documents about the process must be made available in an accessible, transparent, and clear manner so that all interested parties (without restrictions), including those who do not speak Portuguese and cannot read them, can understand what is being said and how they will be affected by the repaving of the road.
5. Ignoring the right of forest peoples to consult, in addition to being a serious violation, weakens, debilitates, and mischaracterizes the democratic process, which should be the foundation of any decision on Highway BR-319. It is important to point out that in the 13 municipalities along the highway monitored by OBR-319 alone, there are more than 18 indigenous peoples and thousands of traditional, extractive, and riverside communities, some of whom do not even know in what stage the licensing process of the construction is.
6. It is also essential to point out that the procedural changes carried out over the last 15 years in the scope of the CI-EIA for paving Highway BR-319 were always aimed at reducing, by an administrative act, the number of indigenous lands (ILs) considered as direct impact areas from the construction. The 47 lands initially considered as part of the project’s direct area of influence have now been reduced to five indigenous lands, among which two were the object of studies to collect secondary data only, the Apurinã do Igarapé Tauamirim and Apurinã do Igarapé São João. Field studies were only conducted in the Ararimba – Lago Capanã (Mura people) – Nove de Janeiro and Ipixuna (Parintintin people) indigenous lands. This situation arises from the automatic application of [Interministerial Ordinance No. 60/2015](#), which considers the location of the project and its distance from the indigenous lands as the only criterion to define the project’s possible impact on the territories. This ordinance disregards other factors crucial to assessing a project’s socioeconomic, cultural, and territorial impacts on indigenous lands. Through this merely bureaucratic artifice and without any relation to the factual reality of the regional communities, the impact assessments on the vast majority of indigenous lands directly affected by the road paving project were suppressed. This also limited indigenous participation in the Highway BR-319 licensing process.



7. Additionally, low governance is the strongest feature in the highway's area of influence. Not all 42 Conservation Units (CUs) monitored by the BR-319 Observatory have an adequate budget to guarantee their complete management and implementation. Per reports from CU leaders, some of these areas are managed by people alien to the territories' realities, resulting in conflicts and actions that do not meet the local residents' needs. In the case of state CUs, the situation is no secret to anyone: the Amazonas State Department of the Environment (*Secretaria de Estado de Meio Ambiente do Amazonas – SEMA-AM*) itself admits that it needs to work with reduced management staff, who alternate between the CUs due to the [reduced availability of resources](#). The situation has been the subject of a [series of complaints](#) to the State of Amazonas Public Prosecution Accounting Office (*Ministério Público de Contas – MPC-AM*) and of audits and decisions of the State of Amazonas Accounting Court (*Tribunal de Contas do Estado do Amazonas – TCE-AM*), which, through Judgments No. [743/2021](#) and No. [993/2022](#) – *en banc*, recognized the precariousness of the management of the conservation units and determined the necessary measures because of the incidents of the announcement of the repaving of Highway BR-319.
8. The lack of designation of [public lands is another serious problem in the area of influence of Highway BR-319 that would need to be fixed before any work could be carried out](#). Undesignated lands are one of the biggest incentives for the advancement of forest destruction, which threatens the way of life of indigenous peoples and traditional populations in the highway's area of influence, especially those outside the Protected Areas, because, yes, there are peoples of the forest outside Protected Areas, and they are the most vulnerable in this process. The lack of designation hands over large portions of public lands to land-grabbing squatters, usurping the territorial rights of traditional and indigenous peoples and communities, given the ease of access to large plots of the forest without a designated use, therefore, without a land-planning system of any kind. [Last year alone, there were more than 4,200 km² of deforested areas in those areas, 33% of the total area deforested](#). The various public, state, or federal agencies have nowhere they can express their interest in proposing the planning of these territories.
9. Today, there are no sufficient inspection actions to curb land grabbing, invasions, deforestation, land speculation, and all kinds of pressures that have increased exponentially in Highway BR-319's area of influence. Deforestation data does not lie, and Brazil's neglect of the anti-environmental policy in force is reflected in the Highway BR-319 project. [The year 2021 was the worst environmental year in the highway's area of](#)



[influence, with records of hotspots and, mainly, deforestation](#). The state of Amazonas, where the majority of the highway is, stands out as a consolidated frontier of deforestation, second in deforestation rates, and presented the highest increase in deforestation in the Legal Amazon compared to 2020. Not even the Protected Areas escape the escalation of destruction. [The Karipuna Indigenous Lnad appears among the most deforested in the Legal Amazon since 2018 practically every month](#). In Tapauá, in Calha do Rio Purus, [the Tapauá State Forest \(FES\) is the flagship of deforestation in the municipality](#), which, before 2020, had never appeared in the [deforestation ranking](#). In 2021, the municipality had a 192% increase in deforestation data. Furthermore, between 2016 and 2021, the branch network in Tapauá had an annual growth rate of 450%. In June, the MPC-AM made a [specific recommendation for inspection operationsto tackle illegal deforestation](#) at the CU.

10. An aggravating factor, CUs and ILs that should be protected are also under constant and growing threat, whether due to poor management, lack of budget, or legislative and administrative measures that weaken them. Five of the 42 CUs monitored by OBR-319 appeared among the ten most deforested in the Legal Amazon throughout 2021: the Jaci-Paraná Extractive Reserve (*Reserva Extrativista* – RESEX), the Bom Futuro National Forest (*Floresta Nacional* – FLONA), the Mapinguari National Park (Parque Nacional – PARNA), and the Tapauá and Flona de Balata-Tufari FESs. Thirty-four (34) of the 69 monitored ILs showed deforestation in 2021, [Karipuna IL leading the ranking](#), followed by Tenharim Marmelos – Gleba B.
11. With the [dismantling of FUNAI](#), indigenous peoples are at the mercy of their own fate. Those who have well-structured grassroots organizations can still be heard, but there are several communities, especially those farthest from the municipal headquarters, and peoples in voluntary isolation, with records from one end of the road to the other, extremely neglected and ignored by the licensing process. A clear example is the [Jacareúba-Katawixi IL, which has been unprotected for more than seven months as a result of the expiration of its Use Restriction Ordinance](#) without FUNAI even around to speak about the territory, which is close to the shoulders of the highway and superimposed on CUs near the Santo Antônio and Jirau power plants, and on the route to the Porto Velho's urban expansion, the capital of Rondônia. [Legal Recommendation No. 5/2022](#) of the 5th Office of the Federal Prosecution Office (*Ministério Público Federal* – MPF) for the immediate restitution of the restriction was disobeyed. The Use Restriction



Ordinance is an administrative document guided by the Legal Recommendation and seeks to protect the territory and the peoples who occupy it while the indigenous lands are being demarcated. Jacareúba-Katawixi's demarcation process has been ongoing since 2007 with no conclusive position to date, demonstrating FUNAI's disregard for protecting indigenous peoples in voluntary isolation. Another defect is the absence of FUNAI'S remands concerning the recently isolated indigenous group identified in the region of Mamoriá Grande in the municipality of Lábrea. FUNAI's upper management in Brasília was [warned in September 2021](#) by local teams from the Madeira-Purus Ethnoenvironmental Protection Front (*Frente de Proteção Etnoambiental Madeira-Purus*) of the urgency of installing protection bases and publishing a Use Restriction Ordinance and has yet to take any action.

12. Scientists have repeatedly warned about the [environmental importance of the Purus-Madeira](#) for the world's climate balance. One of the most insistent voices is the Nobel Peace Prize winner and one of the most cited Brazilian researchers abroad, [Philip Fearnside](#), who considers the Preliminary Environmental Permit a serious mistake because it goes against the interests of Brazil and the [existing connecting roads and those being planned to connect to Highway BR-319](#) (i.e., Highway AM-366) would expose a vast area of [Amazon rainforest to pressure from the Deforestation Arc](#). Philip warns again and insistently over the years that the area of forest at risk is vital for [the largest city in Brazil's water supply: São Paulo](#). It reiterates that the Preliminary Environmental Permit is illegal because none of the indigenous peoples impacted by the highway were consulted per ILO Convention No. 169 and the corresponding Brazilian legislation.

13. The Purus-Madeira interfluvial region is one of the most intact in the Amazon, poorly studied, and fragile. Climate collapse, a consequence of human actions, including rampant deforestation, is already visible on every continent. According to the Intergovernmental Panel on Climate Change (IPCC), the whole world needs to come together to achieve climate goals that guarantee a future for generations on what is our only planet, our only home, and the [Amazon plays a vital role in these efforts](#). Traditional and indigenous populations, who have lived in the region for centuries and millennia, have shaped this landscape and help to preserve it with their ways of life that depend on gathering, fishing, and family farming, therefore, on a balanced environment. Instead of seeing them as an obstacle to a supposed development model that has nothing to do



with the local economic vocation, the government should [see them as strong allies in developing activities aimed at the bioeconomy](#). If these people, who have a way of life intrinsically linked to their territories, are expelled or leave them for any reason, we will have, in addition to the loss of forest guardians, the worsening of social problems and several Altamiras in the Western Amazon, such as what happened in Pará due to the construction of the Belo Monte Hydroelectric Power Plant. [The Amazon, which concentrates the escalation of violence in Brazil and the increasing dominance of drug trafficking, which now infiltrates realm of environmental crimes](#), will be fertile ground for increasing all types of violence and illegalities.

14. Lastly, we understand that the above points constitute serious problems in managing the construction's Preliminary Environmental Permit process. And it is precisely the poor management of such process that explains why Highway BR-319 has not been paved until today. In recent years, countless warnings have been sent to the institutions that make up the construction's public management so that they fully comply with all established legal civil procedures. These recommendations were made to support the legality of the repaving of Highway BR-319 in a context that demands great responsibility from all involved. By systematically ignoring all warnings and recommendations, we understand that the responsible institutions have chosen the hardest and most costly path for the public administration and the region's population. When conducting the licensing process irresponsibly, wrongly, and omitting steps to meet electoral interests, the public management itself will compromise the good progress of the repaving works, even causing more delays in its completion. And creating false expectations at a time of fragility of public management could further intensify social conflicts, violations of rights, and environmental degradation in the Purus-Madeira interfluvium region. We understand that it is the public administration's obligation to avoid all these problems, not exacerbate them.