

International Bank for Reconstruction and Development

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INSP/R95-2

FROM: Vice President and Secretary

August 18, 1995

INSPECTION PANEL

Request for Inspection

Brazil: Rondonia Natural Resources Management Project (Loan 3444 BR)

Panel Recommendation

Attached is a memorandum from the Executive Secretary of the Inspection Panel dated August 17, 1995, transmitting a memorandum to the Executive Directors from the Acting Chairman of the Inspection Panel entitled "Request for Inspection - Brazil: Rondonia Natural Resources Management Project (Loan 3444 BR) - Panel Recommendation".

In the absence of objections (to be communicated to the Vice President and Secretary or the Deputy Secretary by the close of business on Monday, September 11, 1995), the recommendation contained in paragraph 14 of the Memorandum will be deemed approved and so recorded in the minutes of a subsequent meeting of the Executive Directors.

Distribution:

Executive Directors and Alternates
Office of the President
Senior Management, Bank, IFC and MIGA
Inspection Panel


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THE INSPECTION PANEL

OFFICE MEMORANDUM

DATE: August 17, 1995

TO: Mr. Timothy Thahane, Vice President and Secretary, SECVF

FROM: Eduardo G. Abbott, Executive Secretary, IPN 

EXTENSION: 82617

SUBJECT: **Request for Inspection**

Brazil: Rondonia Natural Resources Management Project (Loan 3444 BR)

Please find attached for distribution to the Executive Directors and Alternates of IBRD a memorandum from the Acting Chairman of the Inspection Panel entitled "Request for Inspection - Brazil: Rondonia Natural Resources Management Project (Loan 3444 BR) - Panel Recommendation" dated August 17, 1995. In accordance with paragraph 19 of IBRD Resolution No. 93-10 "[t]he recommendation of the Panel shall be circulated to the Executive Directors for decision within the normal distribution period."

Attachments

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION**

THE INSPECTION PANEL

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Alvaro Umaña Quesada
Acting Chairman

August 17, 1995

MEMORANDUM TO THE EXECUTIVE DIRECTORS

SUBJECT: Request for Inspection
Brazil: Rondonia Natural Resources Management Project (Loan 3444 BR)
Panel Recommendation

In accordance with paragraph 19 of IBRD Resolution 93-10 establishing the Inspection Panel please find attached the recommendation of the Inspection Panel concerning the above-referenced Request for Inspection.



RECOMMENDATION OF THE INSPECTION PANEL

Request for Inspection

RONDONIA NATURAL RESOURCES MANAGEMENT PROJECT. (Loan No. 3444-BR)

Below is (A) Background information, (B) a Process note, and (C) the Inspection Panel's ("Panel") recommendation on whether or not there should be an investigation ("Recommendation") into allegations made in the above-referenced Request for Inspection ("Request"). Annex 1 contains the Request. Management's reply to the Request is provided in Annex 2.

A. Background

1. On June 16, 1995 the Panel received a Request which alleged violations by Management of policies and procedures of the International Bank for Reconstruction and Development ("Bank") in relation to the Rondonia Natural Resources Management Project ("PLANAFLORO"). Financing of US\$167.0 million equivalent for PLANAFLORO was approved in March 1992. Legal documents for this project were signed in September 1992,¹ declared effective in January 1993, and disbursements began in June 1993.

2. The Request, filed by twenty-four nongovernmental organizations ("NGOs") claiming representation of groups of Rondonia residents, alleges that the Bank has failed to enforce various covenants under the Loan and Project Agreements which has resulted in direct and material adverse effects on intended project beneficiaries and residents of Rondonia. In this regard, the Requesters allege violations of the following Bank policies:

- Indigenous Peoples (OD 4.20)
- Forestry Policy (OP 4.36)
- Investment Lending: Identification to Board Presentation (BP 10.00)
- Accounting, Financial Reporting, and Auditing (OD 10.60)
- Project Monitoring and Evaluation (OD 10.70)
- Procurement (OD 11.00)
- Wildlands Policy (OPN 11.02)
- Use of Consultants (OD 11.10)
- Project supervision (OD 13.05)
- Borrower Compliance with Audit Covenants (OD 13.10)
- Suspension of Disbursements (OD 13.40)
- Involvement of NGOs in Bank-supported Activities (OD 14.70)

B. Process

3. On June 19, 1995 the Panel notified the Executive Directors and Bank President of receipt of the Request (meaning "Registration" under the Panel's *Operating Procedures*).² On July 19, 1995 the Panel received Management's reply to the Request.

¹ Loan Agreement between Federal Republic of Brazil and the Bank, September 19, 1992 (Loan No 3444-BR) and Project Agreement between the Bank and State of Rondonia, September 19, 1992.

² See The Inspection Panel, *Operating Procedures* (August 1994) at paragraph 36.

4. At this stage the Panel must satisfy itself that Management has dealt with the subject matter of the Request (Resolution³ paragraph 13). The subject matter of a Management response is restricted by the Resolution to "evidence that it has complied or intends to comply with the Bank's relevant policies and procedures" (Paragraph 18). The Panel found that Management's "response" did not deal with the subject matter of the Request. As with a previous Request, Management addressed the eligibility criteria of the Request, and set forth its own "judgment" concluding that the Request was not eligible.⁴ However, comments on the subject matter were provided for the Panel's "information" in Annex B.⁵ Avoiding a formalistic approach, the Panel has treated Annex B of Management's reply as the required "Response" and is therefore satisfied that Management has dealt with the subject matter of the Request.

5. The Panel's function *after* receiving a Management response is dictated by Paragraph 19 of the Resolution which mandates that "the Panel shall determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated." Such determination is subject only to a final decision by the Executive

Directors. It is not clear why Management suggests that the "Panel may wish to assess the eligibility of the Request."

6. In the Panel's view, its preliminary conclusion on eligibility and assessment of the adequacy of Management's reply could only be reached through an initial field study. The Panel considered information obtained during Mr. Alvaro Umaña Quesada's review conducted in the project area from August 9-12, 1995.⁶ The Inspector consulted with the Government of Brazil, federal entities involved in PLANAFLORO, Rondonia State authorities and institutions,⁷ and people in the project area and their organizations. In accordance with paragraph 21 of the Resolution the Panel also consulted with the Bank Executive Director representing Brazil.

C. Recommendation

7. The recommendation below is based on the Panel's preliminary assessment of the Request and takes into account the information provided by Federal and State authorities, the executing agencies, the Requesters and intended project beneficiaries, and Management.

³ Resolution establishing the Panel: IBRD Resolution 93-10, dated September 22, 1993 (hereinafter, "Resolution").

⁴ See *Management Response to the Request for Inspection* and its Annex A, both attached as Annex 2 to this recommendation. See also *"Recommendation of the Inspection Panel: Request for Inspection: Tanzania: Power VI Project (Credit No. 2489-TA), August 15, 1995 (INSP/SecM95-6), and the attached Management Response.*

⁵ See Annex 2 to this Recommendation.

⁶ The Panel wishes to thank the Bank Executive Director for Brazil for arranging meetings in Brasilia, and Rondonia State and project authorities, local NGOs and the Bank department responsible for Brazil (LA1) for providing logistical support during the field visit.

⁷ Including, inter alia, at the Federal Level: the Secretary of the Secretariat of International Affairs (the Bank's official contact in Brasilia); the President of INCRA (National Institute for Colonization and Agrarian Reform); the Federal Coordinator of PLANAFLORO; and, officials of FUNAI (National Indian Foundation); and at the State level: the Governor of the State of Rondonia, the Secretary of Planning, the Superintendent of INCRA, Rondonia; the General Coordinator of PLANAFLORO; and, the former Coordinator of PLANAFLORO who is now a UNDP consultant working on the project.

The Requesters

8. During the field visit, the Inspector identified NGOs among the Requesters which represent parties or groups who may be directly and adversely affected by the alleged Bank actions or omissions. In addition, the Inspector interviewed a number of people -- including groups of rubber tappers and indigenous peoples represented by such organizations -- who claim to be directly affected by failures and delays in the execution, and omissions in supervision or monitoring of PLANAFLORO, for which they feel the Bank is responsible due to its failure to follow its own operational policies and procedures.

9. The Panel is satisfied that at least eight local NGOs signing the Request, properly represent members who meet the eligibility criteria set out in paragraph 12 of the Resolution.. As intended beneficiaries of PLANAFLORO, their rights and interests may have been or are likely to be directly and adversely affected in a material way as a result of the alleged serious violations by the Bank of the relevant policies and procedures.

Alleged Violations

10. **Outside Scope.** As stated in the Notice of Registration procurement matters (OD 11.00), including OD 11.10 which regulates the hiring of consultants, are outside the Panel's mandate.

11. The Panel acknowledges Management's effort in providing extensive information and a fair and realistic assessment of most of the project's difficulties and delays. Nevertheless, the Panel has concluded that such information is not adequate to obviate the need for an investigation. Even though Management

has addressed the complaints, the Panel is not convinced that there has been full compliance with the relevant policies and procedures. It is also not convinced, in the instances where Management admits failures, that proposed remedial measures will be adequate for compliance with the relevant policies and procedures. It would be necessary to conduct an investigation in order to determine whether the allegations of serious violations of policy are well founded.

12. Since the Panel's function is limited to investigating the alleged failure of the Bank to follow its own policies and procedures, it cannot comment on actions which are the responsibility of other parties, such as the borrower or project executing entities. In this instance however, the Panel would like to record the fact that it is impressed with the Federal and State authorities' and agencies' renewed commitment to the objectives and execution of PLANAFLORO. This commitment was conveyed to the Inspector during his visit to Brazil and has been demonstrated through a number of recent actions aimed at removing some of the obstacles to the timely execution of PLANAFLORO and the achievement of its objectives.

13. The recommendation for investigation represents the Panel's preliminary conclusion that the Request is eligible for investigation.

14. *Based on the foregoing the Panel recommends that the Executive Directors authorize an investigation into the violations of Bank policies and procedures alleged in the Request, except those noted in paragraph 9 above.*

Attachments

ANNEX 1

**Document Presented to the Inspection Panel of the
World Bank on the Rondônia Natural Resources
Management Project (PLANAFLORO)**

Porto Velho, RO, Brazil
June 13, 1995

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List of Acronyms and Abbreviations

	AI	Indigenous Area
	BASA	Banco da Amazônia, S.A
	CNP	Program Normative Commission
	CNPT	National Center for the Sustained Development of Traditional Populations
	CDPLANAFLORO	PLANAFLORO Deliberative Council
	CNS	National Council of Rubber Tappers
	CONAMA	National Environmental Council
	DER-RO	Department of Highways
	DPU	Department of the Patrimony of the Union
	EIA/RIMA	Environmental Impact Study/Environmental Impact Report
	FEE	State Extractive Forest
	FERS	State Sustained Yield Forest
	FORUM	Forum of NGOs and Social Movements of Rondônia
	FNO	Constitutional Fund of the North
	FUNDAGRO	Agricultural Credit Fund of Rondônia
	FUNAI	National Indian Foundation
	IBAMA	Braslian Institute for the Environment and Renewable Natural Resources
	IEA	Institute for Amazonian and Environmental Studies
	IEC	Independent Evaluation Committee
	INCRA	National Institute for Colonization and Land Reform
<i>It</i>	IPI	Industrialized Product Tax
<i>u</i>	ITERON	Rondônia State Land and Colonization Institute
<i>b.</i>	MIR	Ministry of Regional Integration
<i>u</i>	NGO	Non-Governmental Organization
<i>e:</i>	OSR	Rondônia Rubber Tappers Organization
<i>u</i>	PLANAFLORO	Plano Agropecuário e Florestal de Rondônia / Rondônia Natural Resources Management Project
<i>st</i>		
<i>fi</i>	PMF	Forest Military Police (Forest Platoon)
<i>ai</i>	POLONOROESTE	'Programa de Desenvolvimento Integrado do Noroeste do Brasil' -- Program for the Integrated Development of Northwestern Brasil
<i>sc</i>		
<i>ca</i>	POA	Annual Operating Plan
	PRODEAGRO	'Programa de Desenvolvimento Agroambiental do Estado de Mato Grosso' -- Mato Grosso Natural Resources Management Project
	RESEX	Extractive Reserve
	SEDAM-RO	Rondônia's Secretariat for Environmental Development
	SEPLANAFLORO	Executive Secretariat of PLANAFLORO
	SUDAM	Superintendency for the Development of the Amazon
	SUFRAMA	Superintendency of the Free Zone of Manaus
	UNDP	United Nations Development Programme
	UNI	Union of Indigenous Nations

English Translation

To: The Inspection Panel
World Bank, 1818 "H" Street, N.W.
Washington, D.C. 20433, USA

Dear Sirs:

We, the representatives of non-profit organizations of civil society, including small farmers, rubber-tappers and indigenous communities, together with environmentalists, educators, researchers, supporters of popular movements and defenders of human rights, would like to take this opportunity to solicit inspection by this Panel of the aspects described below of the *Rondônia Agricultural, Livestock and Forestry Project (PLANAFLORO)*¹ In this regard, we present the following preliminary observations:

1. With an initial budget of US\$228.9 million, including a US\$167 million loan from the World Bank (Loan Number 3444-BR), the PLANAFLORO project intends to correct mistakes that occurred during the implementation of its predecessor: the Northwest Brazil Integrated Development Program (POLONOROESTE).
2. Financed by the World Bank during the 1980s through various loans totalling approximately US\$500 million, the POLONOROESTE project had as its principal objective the paving of a 1,500 km stretch of the BR-364 highway, between the capital cities of Cuiabá (Mato Grosso) and Porto Velho (Rondônia). In addition, POLONOROESTE included various provisions for supporting small farmer settlements, protection of the environment and support for indigenous communities.
3. During the 1980s, POLONOROESTE became internationally known as a result of serious problems that accompanied its implementation, including: i) a major increase in the flux of incoming migrants to the state, ii) an alarming rise in deforestation rates and the expansion of cattle pasture as the predominant land use, iii) high rates of abandonment among migrants settled in colonization projects, and iv) invasions of indigenous areas and other conservation units, principally by logging companies and land speculators.
4. The basic objective of the PLANAFLORO project is to promote a new model of "sustainable development" in the State of Rondônia, through a series of initiatives for the protection and management of natural resources, such as: socio-economic and ecological zoning, promotion of agroforestry systems, recovery of degraded lands, environmental protection and enforcement, creation and management of Extractive Reserves and other

¹ At the World Bank, PLANAFLORO received the English name of "Rondonia Natural Resources Management Project".

conservation units, sustained forest management, environmental education, and support to indigenous communities.

5. The main intended beneficiaries of PLANAFLORO include small farmers, rubber-tappers, and indigenous communities. The major organizations representing these populations in Rondônia are signatories of this document and participants in the Forum of Non-Governmental Organizations and Social Movements of Rondônia, headquartered in Porto Velho (capital of Rondônia).² The Forum was created in 1991 with the principal objective of democratizing access to information and ensuring participation of organized civil society in the definition and monitoring of public policies. It also seeks to enhance the cooperation and coordination of its members in joint activities. Since it was created, one of the main activities of the Forum has been to monitor the PLANAFLORO project.

6. The loan agreement for PLANAFLORO was approved by the Executive Directors of the World Bank in March 1992. The contractual agreements (Loan Agreement and Project Agreement) were signed in September 1992 and became effective in January 1993. The World Bank's disbursements of funds for PLANAFLORO were initiated in June 1993.

7. Notwithstanding the importance of PLANAFLORO's general objectives, the actual implementation of the project, since the first disbursements by the Bank in June 1993, has been hindered by a series of impediments. As will be shown, these problems have been largely caused by omissions of the World Bank, associated with failures to enforce the contractual agreements of PLANAFLORO and to implement the following operational policies and procedures of the Bank:

- a) Project Supervision (OD 13.05)
- b) Forestry Policy (OP 4.36)
- c) Wildlands Policy (OP 11.02)
- d) Indigenous Peoples (OD 4.20)
- e) Involvement of NGOs in Bank-Supported Activities (OD 14.70)
- f) Project Monitoring and Evaluation (OD 10.70)
- g) Procurement (OD 11.00)
- h) Use of Consultants (OD 11.10)
- i) Investment Lending: Identification to Board Presentation (BP 10.00)
- j) Suspension of Disbursements (OD 13.40)

8. As described in this document, the problems associated with the Bank's omissions and failures to comply with its own policies and procedures during the preparation and initial execution of PLANAFLORO have had adverse impacts on the principal beneficiaries of the project (small farmers, extractive populations and indigenous communities) as well as

² In this document, the name "Forum" is used to refer to the "Forum of Non-Governmental Organizations and Social Movements of Rondonia".

civil society in general, as a result of environmental damage to ecosystems of inestimable value.³

9. This document has been organized according to the principal themes relevant to the implementation of PLANAFLORO, including the following chapters: i) Public Policy and Institutional Reforms in PLANAFLORO: Initial Considerations, ii) Land Tenure Policy, iii) Zoning and State Conservation Units, iv) Environmental Licensing and Protection, v) Investment Programs/Media Program, vi) Support to Indigenous Communities, vii) Project Administration and viii) Conclusions.

In chapters II through VII, the text includes the following sections:

- Planned Actions in PLANAFLORO, according to official project documents (Staff Appraisal Report,⁴ Project Agreement, Loan Agreement);
- Evidence of Deviations, describing instances of the lack of implementation of PLANAFLORO's contractual agreements and/or the sectoral policies of the World Bank;
- Attempts to Alert the World Bank through initiatives of non-governmental organizations (NGOs) and/or leaders of popular movements, generally through documents sent to the World Bank;
- Omissions of the World Bank, referring to the Bank's failure to undertake corrective measures to resolve the problems described;
- Adverse Impacts on Local Populations, in terms of their rights and/or interests, resulting from the Bank's failure to adopt corrective measures.

³ Regarding the collective interests of society in relation to environmental quality, it is worth noting that Article 225 of Chapter VI (Environment) of the Brazilian Constitution determines:

All have the right to an environment in ecological equilibrium, a common good of the people that is essential to a healthy quality of life; it is incumbent upon the Government and collective society to assume the duty of its defense and protection for present and future generations (emphasis ours).

The same article in the Brazilian Constitution also mentions:

The Brazilian Amazon Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso and the Coastal Zone are a national heritage, and their utilization will take place, in the form of the law, under conditions that assure the preservation of the environment, including in the use of natural resources.

⁴ Staff Appraisal Report, Brazil: Rondonia Natural Resources Management Project, Report No. 8073-BR, February 27, 1992, The World Bank, Agriculture Operations Division, Country Department I, Latin America and Caribbean Region, Washington, D.C.

Attached as annexes are various letters from NGOs and leaders of popular movements that exemplify attempts to inform the World Bank about the problems identified, along with other relevant documents. At various points, reference is made to the first report of the Independent Evaluation Committee (IEC), an official body of PLANAFLORO that included NGO representatives.

10. From this analysis, we conclude that during a long period of preparation and initial implementation of PLANAFLORO, the World Bank was negligent in its fulfillment of the contractual agreements for PLANAFLORO and its own operational directives and procedures. The Bank only assumed a firmer attitude when pressured by public opinion, following receipt of a letter from the Rondônia NGO Forum dated June 15, 1994, addressed to the President and Executive Directors of the Bank (ANNEX 3.D).

11. We believe that the omissions of the World Bank identified in this document should be investigated by this Panel as soon as possible, rather than be left for an "ex-post" evaluation of the project, since the lessons from a study of this nature can serve to both resolve problems that persist in the implementation of PLANAFLORO and prevent similar problems from occurring within other World Bank supported projects.

I. Public Policies and Institutional Reforms in PLANAFLORO: Initial Considerations

According to the World Bank's staff appraisal report, one of the principal objectives of PLANAFLORO is to:

institute a series of changes in policies, regulations and public and private investment programs, in order to create a coherent base of incentives for the sustainable development of Rondônia (IBRD 1992:01).

With this purpose, the contractual agreements of PLANAFLORO anticipate the implementation of an institutional reform program, aimed at ensuring the compatibility of federal and state policies and investment programs with the guidelines of the socio-economic and ecological zoning and the principles of sustainable resource management (Section 3.04, Loan Agreement; Section 2.14, Project Agreement).

According to the staff appraisal report (IBRD 1992:46), the institutional reform program in Rondônia should include among its measures:

- a) the institutionalization of the state zoning plan;
- b) the elimination of deforestation as a criterion for obtaining land title, as well as the adoption of suitable land tenure regularization practices and policies; and the structuring of ITERON to develop and administer state land tenure policy in accordance with the zoning legislation;
- c) the elimination of economic and fiscal incentives which encourage the inefficient use of natural resources, non-sustainable private investment and environmental degradation;
- d) the revision of the investment programs of state and federal agencies; in order to bring land-use capacities and other environmental concerns into consideration, and to make the socio-economic and ecological zoning the basis for all future government investment decisions in the State of Rondônia.

During negotiations for the World Bank's loan for PLANAFLORO, the Federal Government and the State of Rondônia ensured that above reforms would be implemented during the implementation of the program; and that by September 30 of each year, the state would submit any modifications foreseen in the following year's investment programs to the World Bank for analysis and commentary (Section 2.14, Project Agreement; Section 3.04, Loan Agreement).

In recent years, the Government of Rondônia has taken some initiatives to institutionalize the state's socio-economic and ecological zoning, initially through State Decree 3.782 of June

19, 1988 and subsequently through Complementary Law no. 52 of December 20, 1991.⁵

However, as will be demonstrated, the above-described program of institutional reforms was never implemented in the manner stipulated in the contractual agreements of PLANAFORO. This fact is due, in large part, to the Bank's unwillingness to enforce compliance of governmental agencies with the contractual agreements of the program.

⁵ According to State Decree no. 3782 of June 14, 1988, the socio-economic and ecological zoning is designed to be a "basic instrument for regional planning that permits the establishment of balanced development strategies and the definition of coordinated criteria for public and private investments, in order to orient actions that promote the harmonization of human activities and the maintenance of the ecological balance". The main "zones" (relatively homogeneous areas in terms of their environmental and socio-economic characteristics, based on existing knowledge) mentioned in the text are summarized in footnotes below.

II. Land Tenure Policy

2.1 Planned Actions in PLANAFLORO

According to Section 2.12 (a) of the Project Agreement and Section 6.01 (b) of the Loan Agreement, one of the conditions for effectiveness of the World Bank's loan for PLANAFLORO was the signing of an agreement between INCRA (National Institute for Colonization and Land Reform) and the Government of Rondônia that would establish "land tenure regularization policies and practices to be observed in the State, which shall be consistent with the objectives of sound forest protection and management, on terms and conditions satisfactory to the Bank."

In the staff appraisal report for PLANAFLORO, it was asserted that INCRA should suspend plans for the creation of new settlement projects in inappropriate areas, ensure that its agrarian reform program in zone 01 favors land-use patterns appropriate for sustainable agriculture, and support the Government of Rondônia in the establishment of Extractive Reserves and in other critical land-related activities (IBRD 1992: 48-49).⁶

2.2 Evidence of Deviations

As described below, the most significant provisions of PLANAFLORO's contractual agreements related to the land tenure policies and institutional role of INCRA have not yet been implemented. Most disturbing is the fact that to date, the agreement between INCRA and the Government of Rondônia, outlined in the contractual agreements of PLANAFLORO as a condition for loan effectiveness, has not yet been signed.

To date, the only documents signed by INCRA and the Government of Rondônia have been a "Protocol of Intentions" in June 1991 and a "Terms of Agreement" in November 1992, instead of a legally-binding "convênio". Among other deficiencies, the "Terms of Agreement" fails to address the compatibilization of land regularization activities with directives regarding the state zoning plan and the sustainable management of natural resources, as required in the PLANAFLORO loan agreements.

Meanwhile, INCRA's land tenure policies in activities of land expropriation, creation of settlement projects and land tenure regularization have demonstrated major incompatibilities

⁶ According to the state legislation on the socio-economic and ecological zoning, zone 01 covers approximately 6,195,000 hectares in areas of intense occupation, mainly along the BR-364 highway in central Rondônia, where official colonization projects and other forms of settlement are concentrated. In this zone, sustainable agriculture should be promoted in soils of medium to high agricultural potential, based on intercropping of perennial crops and agroforestry systems. In areas of low agricultural potential, new settlements should not be permitted, with special measures in soil management and recovery of degraded lands.

with the state zoning plan and other environmental legislation. A few examples of such problems are described below:

2.2.1 Land Expropriations and Creation of Settlement Projects

In the last several years, the actions of INCRA's regional office in Rondônia associated with land expropriation and creation of settlement projects have demonstrated serious problems of incompatibility with the state's socio-economic and ecological zoning plan. For example, we draw attention to the following facts:

1. In March 1992, INCRA created three Settlement Projects (Projetos de Assentamento - PAs) denominated PA Curupira, PA Rio do Conto and PA Agua Azul, covering a total area of approximately 215,000 hectares. All of these projects were to be located in zone 04, reserved for non-timber forest extraction under the state zoning plan.⁷ After a series of denunciations by the Forum, INCRA announced that these projects would be suspended, and that no new settlements would be carried out in these areas. However, the Regional Superintendency of INCRA is currently granting land titles, including new ownership claims, within the areas of the above-mentioned settlement projects.

2. On December 21, 1993, a presidential decree signed on 12/20/93 was published in the *Diário Oficial da União* (Federal Official Gazette) authorizing expropriation, for purposes of agrarian reform, of a landholding named "Fazenda Roncauto", covering an area of 1,500 hectares in the municipality of Colorado d'Oeste. A resulting settlement project would be located within the Rio Maquens State Forest (Floresta Estadual de Rendimento Sustentado - FERS) created by State Decree no. 4.573 on 3/23/90 in an area designated as zone 05 (sustained forest management) according to the state zoning legislation.⁸ On April 10, 1994, INCRA filed the compensatory action for this expropriation in a federal court in Rondônia.

3. On April 26, 1994, a presidential decree signed on 4/25/94 was published in the *Diário Oficial da União*, authorizing expropriation, for purposes of agrarian reform, of a landholding named "São Sebastião", covering an area of 44,611 hectares in

⁷ According to the state legislation on the socio-economic and ecological zoning of Rondônia, zone 04 covers an area of around 3,500,000 hectares and is characterized by "areas with a predominance of native rubber trees, associated or not with brazil nut trees and other forest species that produce exploitable resins, oils, fruits or roots. These are fragile environments, where the extracted benefits should be taken through sustained forest management of forest resources, without alteration to ecosystems". In zone 04, the creation of Extractive Reserves and/or "State Extractive Forests (FEs)" was foreseen.

⁸ According to the state legislation on the socio-economic and ecological zoning of Rondônia, zone 05 covers approximately 2,435,000 hectares, designated for "forest arrangement of commercially loggable species". In this zone, the creation of "State Sustained Yield Forests (FERS)" was foreseen.

the municipalities of Campo Novo and Porto Velho. This property is also located within zone 04 (non-timber forest extraction) .

4. On July 25, 1994, a presidential decree signed on 7/22/94 was published in the *Diário Oficial da União*, authorizing expropriation, for purposes of agrarian reform, of four adjacent properties named "Rio Branco", "Pedra do Abismo", "Nova Vida" and "Oriente", covering a total area of 66,793 hectares in the municipality of Campo Novo. The settlement projects foreseen for establishment in this area would also be located within zone 04 (non-timber forest extraction) .

5. In addition to its disrespect for state legislation on zoning and conservation units in the creation of settlement projects in Rondônia, INCRA has not abided by federal legislation with regard to environmental impact studies (Estudos de Impacto Ambiental - EIA) and their respective environmental impact reports (Relatórios de Impacto Ambiental - RIMA) (Resolution no. 001 of January 23, 1986 of the National Environmental Council - CONAMA).⁹

6. On July 18, 1994, a federal judge in Rondônia issued a restraining order that requires INCRA to respect the state zoning plan and federal legislation regarding environmental impact assessments in land expropriation actions for the creation of settlement projects . The decision of the judge was based on a Public Civil Action initiated by the *Ministério Público Federal* (Federal Prosecutor's Office) based on denouncements by the Forum of NGOs and Social Movements of Rondônia. The ruling of the federal judge directly affected various land expropriations, including the properties known as Rio Branco, Pedra do Abismo, Oriente and Nova Vida (mentioned above).

Even after the issuance of the federal restraining order, the administrative actions for several land expropriations continued normally within INCRA. On December 16, 1994, INCRA filed compensatory actions in a Rondônia federal court for the expropriations of the Rio Branco, Pedra do Abismo, Oriente, Nova Vida and São Sebastião landholdings.

7. INCRA has ignored warnings from the Presidency of FUNAI (National Indian Foundation) regarding the presence of isolated indigenous groups on various landholdings proposed for expropriation. For example, this clearly occurred in the action involving the expropriation of the Rio Branco, Pedra do Abismo, Nova Vida and Oriente landholdings.

8. On March 25, 1995, a presidential decree was published in the *Diário Oficial da União*, authorizing expropriation, for purposes of agrarian reform, of the landholdings known as "Seringal Salvador", "Cabeceira" and "Seringal Novo Mundo",

⁹ According to article 3, paragraph XVII of Resolution no.001/86/CONAMA, the prior elaboration of EIA/RIMA is required for "agricultural and livestock projects in areas greater than 1,000 hectares, or less when concerning significant areas of ecological importance, including areas of environmental protection".

covering 49,731 hectares in the municipalities of Machadinho d'Oeste and Rio Crespo. These properties are located within the boundaries of the Rio Preto-Jacundá State Extractivist Forest (Floresta Estadual Extrativista - FEE) created by Decree no. 4,245 of 7/17/89.¹⁰

2.2.2 Alienation of Public Lands and Land Tenure Regularization

As described above, in accordance with Section 2.12 (a) of the Project Agreement and Section 6.01 (b) of the Loan Agreement, the agreement between INCRA and the Government of Rondônia was to address:

land tenure regularization policies and practices to be observed in the State, which shall be consistent with the objectives of sound forest protection and management, on terms and conditions satisfactory to the Bank.

Among other measures, the institutional reform program outlined in the contractual agreements of PLANAFLORO should include:

the elimination of forest clearing as a form of obtaining land title, as well as the adoption of adequate land tenure regularization policies and practices (IBRD 1992:46).

In the absence of such an agreement, as originally defined as pre-condition for loan effectiveness in PLANAFLORO, the land regularization policies of INCRA have blatantly disregarded the socio-economic and ecological zoning plan and state conservation units.

It should be noted that, in accordance with Normative Instruction no. 03 of September 8, 1992 (Instrução Normativa no. 03 de 08/09/92) signed by the President of INCRA, this agency continues to recognize forest clearing, associated with the introduction of artificial cattle pasture, as an "improvement" for the purpose of legitimizing land claims on public lands.¹¹

¹⁰ As mentioned below, the maintenance of Rio Preto-Jacundá State Extractive Forest was included in Section 2.10 of the Project Agreement.

In the same region, the Regional Superintendent of INCRA is currently conducting preliminary surveys of the landholding named "Belo Horizonte" and "Urupá" (Process no. 0.820/89), from the property of ex-federal deputy Pascoal Novaes, as part of the preparation of decrees of expropriation.

¹¹ INCRA's Normative Instruction no. 03 of September 8, 1992 revoked previous internal administrative rules (Portarias no. 839, 840, 812 and 813) while defining new procedures for the alienation of federal public lands. From a socio-environmental point of view, this resolution represents a step backwards, as it excludes provisions of article 18 of Portaria no. 839, that excluded from land titling areas subject to periodic flooding, improper for agricultural use, covered by natural grasslands destined for extensive grazing and those used for forest extraction. Currently, INCRA permits the titling of up to 500 hectares per interested party by its Regional Superintendency in Rondonia.

On the basis of such internal regulations, INCRA has issued documents legitimizing land claims by speculators and cattle ranchers within various state conservation units (the establishment of which was included within the loan agreements for PLANAFLORO), as well as in other areas designated for restricted use, according to the state zoning plan. A few examples of such practices are described below:

1. In the Corumbiara State Park, created by Decree no. 4,576 on March 23, 1990, INCRA granted various land titles known as CPCVs (Contratos de Promessa de Compra e Venda) at least until 1992, catering to the interests of land speculators and large cattle ranchers.
2. In the Serras do Parecis State Park, created by Decree 4,570 on March 23, 1990, INCRA has granted land titles (CPCVs) for medium and large landholdings, especially during 1991.
3. In the Rio São Domingos, Rio Mequens and Abunã State Forests (FERS), created by state decrees in March 1990, INCRA has granted land titles (CPCVs) that have served to legitimize the establishment of medium and large properties for cattle ranching.
4. INCRA has utilized the same practice of granting land titles to land speculators, cattle ranchers and logging companies within the area designated in the loan agreements for creation of the Rio Guaporé State Forest (in the southern part of an area previously demarcated along highway BR-429) as well as in areas designated for the creation of the Rio Cautário and Rio São Miguel Extractive Reserves.

In summary, the actions of INCRA in Rondônia, in activities of land expropriations for agrarian reform, creation of settlement projects and land tenure regularization, have entered into direct confrontation with Rondônia's socio-economic and ecological zoning plan, state conservation units and federal environmental legislation. This posture on the part of INCRA has seriously impaired the implementation of PLANAFLORO as a whole, and has rendered practically inviable the establishment of several state conservation units contemplated in PLANAFLORO's contractual agreements.¹²

¹² On several occasions, the Regional Superintendency of INCRA in Rondônia has questioned the validity of the state legislation on zoning and conservation units in areas of federal public lands and private properties. For example, in a correspondence dated March 17, 1994, addressed to the President of INCRA (Ofício INCRA/SR-17/G/No.133/94), the Superintendent of INCRA in Rondônia argued that "the State Government is legislating on federal lands, which is unconstitutional".

In this regard, it is worth observing that article 23 of the Brazilian Constitution determines that:

It is a common obligation of the Union, the States, the Federal District and Municipalities...to protect the environment and combat

We stress the fact that the actions of INCRA in Rondônia have served as a catalyst for a chain of interventions by other government agencies that ultimately serve to legitimize and encourage disorderly land occupations and the indiscriminate use of natural resources (see Section 1.3: Environmental Licensing).

2.3 Attempts to Alert the World Bank

The problems involving INCRA's land tenure policies, associated with failures to comply with the contractual agreements of PLANAFLORO, were communicated to the World Bank through a series of documents elaborated by individuals and organizations associated with the Forum. It should be emphasized that various documents were presented to the Bank prior to the signing of the loan agreements (September 1992) and the Bank's declaration of the loan effectiveness (January 1993). The following are examples of such initiatives:

1. In a letter dated December 11, 1989, signed by Osmarino Amâncio Rodrigues (Secretary of the National Council of Rubber Tappers) and Ailton Krenak (National Coordinator of the Union of Indigenous Nations), sent to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) and Mr. Armeane Choksi (Director, Brasil Department) of the World Bank (ANNEX 1.B), a series of demands were made, especially in relation to the participation of local communities in PLANAFLORO. Among these, it was stated that:

Before the approval of a loan, the Bank clarify what guarantees it will have to ensure the implementation of the agro-ecological zoning, given current reports and information about plans for agricultural colonization in areas supposedly to be reserved for extractive activities...

2. A letter dated January 9, 1990, signed by 35 Brazilian and international NGOs, sent to Mr. E. Patrick Coady, Executive Director at the World Bank (ANNEX 1.C), brought attention to a series of critical problems that had not been adequately considered in the elaboration of PLANAFLORO. The letter solicited that various issues be addressed as a pre-condition for loan negotiations. Among these, the letter cited that:

pollution in any of its forms (inciso IV) and...to preserve forests, fauna and flora (inciso VII).

In addition, the actions of INCRA in Rondônia have disregarded article 225, inciso III of the Brazilian Constitution, which determines that:

"the Government (Poder Público) will define in all federal units, territorial spaces and their components to be especially protected, with their alteration or suppression permitted only by law; any use that compromises the integrity of the attributes that justify their protection is prohibited".

Critical legal and policy uncertainties concerning the criteria under which land titling and land reform can take place must be resolved before negotiations.

In this regard, the letter emphasizes that:

...the National Institute for Colonization and Agrarian Reform (INCRA) has not modified the statutes that maintain deforestation as a basis for land titling;

...the project does not analyze nor address the need for land redistribution in agro-ecological zones 01 and 02.¹³

3. In a document signed by 19 NGOs from Rondônia, sent on February 22, 1990 to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) of the World Bank (ANNEX 1.D), demands were once again made regarding the participation of local communities in PLANAFLORO. The same document presented a series of facts that brought into question the viability of PLANAFLORO. The letter included the following remarks:

In the area of the Jaci and Mutum-Paraná Extractive Reserve, a settlement project was established by INCRA (PA Buriti) and a road opened which crosses the Rio Candeias...

Rio Cantário -- this extractive area runs the risk of being rapidly destroyed because of delays in its demarcation, as it is already being invaded by a colonization front from BR-429, which is close to and parallels the river. The invasions are occurring with the collusion of INCRA-Rondônia, which has generated the expectation that land titles will be granted...

4. In a letter dated April 25, 1990, signed by Mr. Raimundo Ramos Leitão, President of the Association of Soldiers of Rubber and Rubber Tappers of Ariquemes, addressed to Mr. Barber Conable, President of the World Bank (ANNEX 1.F), the following alert was made:

We take this opportunity to register our concerns with the present situation of several areas to be included in Zone 04 (Extractive Reserves) of PLANAFLORO. For example, the region of the upper Candeias river presently faces constant invasions of loggers and land speculators. In this area, INCRA recently created the Buriti I and II settlement projects, thus causing even more devastation of the forests of the region. Given this, we would like to know what measures will be taken by the authorities to avoid invasions of extractive reserves by loggers, ranchers,

¹³ According to the legislation regarding the socio-economic and ecological zoning of Rondônia, zone 02 covers approximately 3,015,000 hectares in areas of medium to low agricultural potential, where priority should be given to encouraging mixed-crop agroforestry systems among communities of small farmers that reside outside the limits of official colonization projects. Also within this zone are located medium to large properties, in areas destined for medium to large-scale cattle ranching.

placer mines, and colonization projects, as well as to stop the exploitation of rubber tappers by rubber patrons (seringalistas) and intermediaries who still remain in these regions.

5. In a document entitled "Open Letter" of the Forum of NGOs of Rondônia (ANNEX 3.A), sent on March 12, 1992 to the Executive Directors of the World Bank (approximately six months prior to the signing of the contractual agreements of PLANAFLORO) the following alert was made:

A lack of harmony can be observed between the state and federal governments, particularly in the case of agencies such as the National Institute of Colonization and Land Reform (INCRA) which has acted contrary to the proposals of PLANAFLORO, disregarding Rondônia's socio-economic and ecological zoning. Recently, INCRA has announced new settlement projects in regions of zone IV (extractivism) and zone V (sustained forest management).

6. In a memorandum dated May 12, 1992, presented by the Rondônia NGO Forum to Mr. Luis Coirolo of the World Bank (ANNEX 3.B), warnings were made about:

...the lack of respect for the socio-economic and ecological zoning of Rondônia on the part of INCRA.

Specifically, the letter emphasized such problems as: i) the creation by INCRA, in March 1992, of the Curupira, Agua Azul and Rio do Conto settlement projects within zone 04 (non-timber forest extraction), in disregard for the state zoning legislation, and ii) INCRA's policy of recognizing forest clearing, associated with the introduction of artificial cattle pasture, as an "improvement" for the purpose of legitimizing claims on public lands.

7. In a document entitled "Report on Conditions of Effectiveness of the Contractual Documents of PLANAFLORO", produced by the Institute for Amazonian and Environmental Studies (IEA) in September 1992, it was alerted that the agreement between INCRA and the Government of Rondônia had not yet been signed and that:

INCRA's current land tenure policies, especially with regard to the creation of new settlement projects and the alienation of public lands, appears to not be taking into consideration the contractual agreements of PLANAFLORO.¹⁴

¹⁴ This report was a contribution to the "Commission for the Examination of Compliance with the Conditions of Effectiveness of PLANAFLORO's Contractual Documents" created on May 29, 1992 by Resolution no. 006 of the State Deliberative Council of PLANAFLORO. The Commission was established with the following members: General Secretariat of PLANAFLORO, State Secretariat for Agriculture, Industry and Commerce (SEAGRI), State Secretariat for Environmental Development (SEDAM), Institute for Amazonian and Environmental Studies (IEA) and Articulation of the Indigenous Peoples

The same document warned that:

...there are various examples of environmental degradation and more generally, conflicts between the first approximation of the socio-economic and ecological zoning and the current utilization of natural resources. In many cases, these problems are aggravated by the lack of recognition of zoning and other legislation, as in the case of the land tenure policies of INCRA.

8. The serious problems involving INCRA's land tenure policies in Rondônia, including violations of the contractual agreements of PLANAFLORO, were addressed in a series of correspondences sent by the Forum of NGOs of Rondônia to the President of Brazil and the President of INCRA, with copies to the World Bank.

These documents, which can be found in ANNEX 05, include:

a) letter to the President of Brazil on 5/28/92, b) letter to the President of INCRA on 8/14/92, c) letter to the President of INCRA on 9/8/92, and d) letter to the President of INCRA on 4/15/93.

9. On March 9, 1993, the non-governmental organization ECOPORE (Ação Ecológica Vale do Guaporé or "Ecological Action of the Guaporé Valley" one of the founding members of the Rondônia NGO Forum) in a letter addressed to various state and federal authorities, with a copy to the World Bank (ANNEX 4.A), denounced the process of environmental devastation taking place in the Guaporé Valley, asserting that:

The current State Superintendency of INCRA and the organ's representative in Costa Marques constitute one of the greatest threats to the state's zoning plan while promoting the expropriation of lands traditionally occupied by extractive communities, benefitting principally land speculators and ranchers. The representative of the agency in Costa Marques asserts emphatically that he does not respect the state zoning plan nor the State Constitution, and that he only follows the orders of his boss.

10. On April 27, 1993, ECOPORE sent an Official Letter (Ofício) to the President of INCRA, with a copy to the World Bank (ANNEX 4.C), which presented:

...elements of proof regarding the destructive actions of INCRA-Rondônia, aiding groups in the occupation of areas traditionally inhabited by extractive populations and in conscious disregard of the state zoning plan...

11. In the document entitled "Record of the Meeting on Preliminary Impressions Pertinent to the Implementation of PLANAFLORO", realized on September 27, 1993, with the participation of members of the Independent Evaluation Committee

of Rondonia (APIR). A copy of IEA's report was submitted to the World Bank in September 1992.

(IEC) and a World Bank representative, some observations were made regarding the land tenure policies and zoning, including the following:

The urgent necessity of guaranteeing solutions to land tenure problems and to the actions of INCRA which have disregarded the state zoning plan and environmental legislation was discussed. In the new agreement which should be entered into by INCRA and the Government of Rondônia, special importance should be given to the aspects of alienation of public lands and land tenure regularization...

12. In February 1994, a preliminary version of the first report of the Independent Evaluation Committee (IEC) was submitted to the World Bank. On March 16, 1994, the Bank received the final version of the IEC's Executive Summary, which emphasized:

...the lack of recognition, on the part of INCRA's regional office in Rondônia, of the state's socio-economic and ecological zoning, state conservation units, and other environmental legislation, in its implementation of colonization projects and the distribution of land titles on public lands. As a result, INCRA has continually pursued practices that may undermine the objectives of the zoning plan and PLANAFLORO, including: i) proposals for land acquisitions and the creation of colonization projects, without regard to the state zoning plan and other environmental legislation and ii) the granting of titles on public lands in disregard for the zoning legislation and state conservation units

...the persistence of other INCRA policies that encourage the indiscriminate use of natural resources, such as the recognition of forest clearing and the introduction of artificial cattle pasture as a land "improvement" for purposes of granting private land titles on public lands. In so doing, INCRA fails to consider the long-term sustainability of such activities, as well as the potential social conflicts affecting existing populations (rubber tappers, indigenous peoples, etc.).

The IEC report further emphasized that:

...the "Terms of Agreement" signed by INCRA and the Government of Rondônia in November 1992 did not include arrangements for reconciling procedures of land tenure regularization with the guidelines of the state zoning legislation and the sustainable management of natural resources, as required by Section 2.12 (a) of the Project Agreement and Section 6.01 (b) of the Loan Agreement.

The principal recommendations of the IEC's report included the following:

Formalized guarantees of the effective cooperation of INCRA in PLANAFLORO, as well as the definition of guidelines and institutional responsibilities for governmental action on

land issues (e.g. criteria for acquisition of private lands and creation of colonization projects, strategies for land tenure policies within zones 01 and 02, granting of private titles on public lands, establishment of conservation units)

Re-evaluation of Normative Instruction no. 03 of September 8, 1992 (Instrução Normativa no. 03 de 08/09/92) that permits recognition by INCRA of forest clearing and the introduction of artificial cattle pasture as an "improvement" to land, for the purpose of granting land titles on public lands (while failing to consider sustainable forest management, such as that of rubber tappers, as a productive activity)

13. In a correspondence sent to the Central Forestry Unit of the World Bank on May 16, 1994 (ANNEX 3.C) during an internal Bank review of forestry policies, the Forum denounced that:

...the problems of environmental degradation in the forest ecosystems of Rondônia have been encouraged by the behavior of government agencies that operate in the State. Unfortunately, these problems have been neglected by the managers of PLANAFLORO and World Bank staff, even though they imply non-compliance with the contractual agreements of PLANAFLORO.

In this correspondence, the Forum emphasized the contradictions between INCRA's land tenure policies and the guidelines of conservation and sustainable management of forests.

14. On June 15, 1994, in a correspondence addressed to the President and Executive Directors of the Bank (ANNEX 3.D), the Forum again questioned the failure of INCRA and the Government of Rondônia to sign the agreement required by the PLANAFLORO loan agreements, and cited new examples of how:

the Regional Superintendency of INCRA in Rondônia has blatantly disregarded the state's socio-economic and ecological zoning and other environmental legislation, in the activities of expropriation, creation of settlement projects and land tenure regularization.

In the demands made in this letter, emphasis was given to the need to:

formalize the effective cooperation of INCRA in land related activities, as stipulated in the contractual agreements for PLANAFLORO

2.4 Omissions of the World Bank

The above-mentioned problems are largely attributable to the non-existence of a signed agreement between INCRA and the Government of Rondônia, foreseen in the contractual agreements

of PLANAFLORO as a pre-condition for loan effectiveness. Despite the above-mentioned alerts, the World Bank remained negligent during a significant period, in terms of soliciting and monitoring compliance with the contractual agreements, especially Section 6.01 (b) of the Loan Agreement and Section 2.12 (a) of the Project Agreement for PLANAFLORO. In this regard, we would like to point out the following facts:

1. From the first "accompaniment" mission (missão de acompanhamento) for PLANAFLORO, carried out by the World Bank/MIR/SEAIN/UNDP in November 1992, there is no evidence in the Aide Memoire of demands from the Bank regarding the signing of an agreement between INCRA and the Government of Rondônia, as required in the contractual agreements.

As mentioned above, the "Terms of Agreement" signed between INCRA and the Government of Rondônia in November 1992 were not sufficient from a legal or technical point of view to meet the conditions of Section 2.12 (a) of the Project Agreement and Section 6.01(b) of the Loan Agreement.

2. In January 1993, contradicting the conditions stipulated in the contractual documents for PLANAFLORO, regarding the need for a signed agreement between INCRA and the Government of Rondônia, the World Bank declared effectiveness for the PLANAFLORO loan.

3. In September 1993, the Bank carried out its first supervision mission after the initiation of loan disbursements (in June 1993). The Aide Memoire from this mission (ANNEX 6.B) also contains no record of commitments regarding the signing of a formal agreement between INCRA and the Government of Rondônia.

There is only a vague reference to a "Work Plan" to be signed by INCRA and the Government of Rondônia by October 7, 1993, "for the solution of land tenure problems in areas 4, 5 and 6 and land consolidation activities in areas 1 and 2".¹⁵

The above-mentioned "Work Plan" was never signed or put into practice.

4. On March 25, 1994, an internal report entitled *Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation*, signed by Mr. Shahid-Javed Burki, Vice President of Operations for Latin America and the Caribbean (ANNEX 7.B) was sent to the Executive Directors of the World Bank.

In this internal World Bank report, the only citation of problems involving INCRA and land tenure policies in Rondônia

¹⁵ According to the state zoning legislation, zone 6 covers approximately 6,400,000 hectares, including a variety of fragile ecosystems, with unknown potential for sustainable use, indigenous and biological reserves and other areas for permanent protection. In this zone, PLANAFLORO anticipates actions in demarcation, protection and management of conservation units (state parks, biological reserves, ecological stations and indigenous reserves).

appears in the section about the Independent Evaluation Committee (IEC). First, the report timidly states that the IEC identified:

possible inconsistencies between INCRA's land regularization policies and project objectives (p.10).

Later, the report limits itself to the following:

As to INCRA land regularization activities, there have been some discrepancies in pronouncements by representatives, which have raised concerns within the State about possible settlement plans for environmentally fragile areas, which should remain under permanent forest cover according to the agro-ecological zoning. However, the Bank has received firm assurances from INCRA management that it will abide by the zoning, and an operating agreement has recently been signed between INCRA and the State of Rondônia which should reinforce this understanding.

In a critical analysis, it becomes evident that there was a deliberate attempt in this document to distort the contents of the Independent Evaluation Committee's report with the apparent objective of downplaying problems identified and, at the same time, creating an excessively optimistic impression among the Executive Directors with regard to the measures taken by the Bank's operational staff and governmental agencies.¹⁶

It is unclear what is the "operating agreement" that was "recently signed between INCRA and the Government of Rondônia", as cited in the report. As previously mentioned, it is important to note that:

a) the "Terms of Agreement" between INCRA and the Government of Rondônia, signed in November 1992 did not include arrangements for reconciling procedures of land tenure regularization with the guidelines of the state zoning legislation and the sustainable management of natural resources, as required by Section 2.12 (a) of the Project Agreement and Section 6.01 of the Loan Agreement.

b) In the Aide Memoire from the Bank supervision mission of September 1993 (ANNEX 6.B), representatives of the federal and state governments only committed themselves to signing a "Work Plan" by October 7, 1993, "for the solution of land tenure problems in areas 4, 5 and 6 and land consolidation activities in areas 1 and 2". The scope of this "Work Plan", which was never signed or implemented, would have been insufficient in terms of fulfilling the contractual agreements of PLANAFLORO.

5. During the World Bank's supervision mission in August 1994 to discuss the Rondônia NGO Forum's June letter to the Bank, some advances were made in discussions about land tenure policy

¹⁶ In this regard, the World Bank's behavior in the implementation of PLANAFLORO is reminiscent of the Sardar-Sarovar (Narmada) project in India (see: SARDAR SAROVAR, The Report of the Independent Review, Morse Commission, Resource Futures International, 1992).

in Rondônia (despite the fact that INCRA did not participate in the meetings).

The Aide Memoires from this mission (ANNEX 6.C and 6.D) determined that an agreement between INCRA and the Government of Rondônia should be signed by September 30, 1994. However, this measure was never implemented.

In the Aide Memoire from the Bank latest supervision mission (March-April 1995) for PLANAFLORO (ANNEX 6.E), mention is given to:

the concerns of the IBRD with the apparent lack of collaboration of INCRA in project activities aimed at reaching an orderly occupation of the State of Rondônia, a basic condition for the sustainable development of the State...The State Government and the Bank mission hope that an agreement can be signed by April 10, prior to the departure of the mission from Brasília.

In spite of these expectations, the above-mentioned agreement between INCRA and the Government of Rondônia has not been signed to date .

6. The Staff Appraisal Report for PLANAFLORO includes an annex with a "Matrix of Environmental Policies, Measures and Actions" (ANNEX 7.A) that constitute the basis of the institutional reform program outlined in the loan agreements (IBRD 1992:51-52). Regarding land tenure issues within the institutional matrix, it is worth noting the following points:

a) Item 02 of the matrix of institutional reforms includes as a "monitorable action" the prohibition of new settlements and granting of land titles in areas without sustainable development potential, in accordance with the state zoning legislation. It emphasized that such actions would be "monitored continuously." However, the facts described above clearly demonstrate that INCRA never respected such a proposition, nor were the actions of INCRA regarding settlement and land regularization "monitored continuously", either by the PLANAFLORO authorities at the governmental level or by the World Bank.

b) Item 02 of the matrix of institutional reforms also includes as an action to be taken the "development of land tenure legislation and regulations, in conjunction with INCRA, to ensure that all land tenure activities in the State will be consistent with zoning legislation." As described above, such measures were never taken, and the World Bank, together with governmental agencies, was remiss in their failure to enforce their implementation.

c) In Item 04 of the matrix of institutional reforms, the Bank asserts that forest clearing was no longer considered by INCRA as an "improvement" for the purposes of granting private title to public land. However, the Bank ignored the existence, at the time, of INCRA's administrative rules (Portarias no.839 of 6/10/88, as well as Portarias 811, 812 and 813 of 8/26/91)

that permitted the agency to recognize forest clearing, including that associated with the introduction of artificial cattle pasture, as a means of establishing titles on public lands. As described above, these administrative rules were later revoked by INCRA's Normative Instruction no. 03 of 9/8/92, which represented a step backwards from a socio-environmental point of view.

2.5 Adverse Impacts on Local Populations

The absence of demands on the part of the World Bank regarding the existence of a formal agreement between INCRA and the Government of Rondônia, as a pre-condition for loan effectiveness in PLANAFLORO, as stipulated in Section 2.12 (a) of the Project Agreement and Section 6.01 (b) of the Loan Agreement, is directly related to the continuation of INCRA's aforementioned settlement and land tenure regularization policies, which have stimulated disorderly land occupations and the indiscriminate use of natural resources in Rondônia.

As such, we argue that these omissions of the World Bank have adversely affected various local populations in Rondônia, especially rubber tappers, riverine populations and indigenous populations who inhabit areas where the process of disorderly frontier expansion has occurred, encouraged by the policies of government agencies such as INCRA.

For small farmers and landless rural workers, the current land policies of INCRA, associated with the lack of the above-mentioned agreement with the Government of Rondônia, have caused significant harm. On the one hand, mechanisms have not been created to resolve land tenure problems within zones 01 and 02, that could promote agricultural intensification and agroforestry systems among small farmers on higher potential soils that are currently abandoned or underused.

At the same time, INCRA's actions in land expropriation, creation of settlement projects and titling of public lands have promoted the disorderly occupation of zones 04, 05 and 06, in a process that mainly benefits land speculators and logging companies. In such areas, squatters and small farmers settled by INCRA have confronted major difficulties, including a predominance of poor soils and a lack of infrastructure and basic services. In these situations, one encounters high rates of attrition among settlers, along with the reconcentration of land among large cattle ranchers and speculators. As an example, we draw attention to the Gleba Burití (municipality of Campo Novo) where the practices of INCRA have had adverse impacts on small farmers, extractive populations and indigenous communities.

We reiterate that the persistence of the problems described above are related to the lack of demands by the World Bank concerning the signing of a formal agreement between INCRA and the Government of Rondônia to define reforms in land tenure policies in the state, as anticipated within the loan agreements for PLANAFLORO.

III. Zoning and State Conservation Units

3.1 Planned Actions in PLANAFLORO

The institutional reform program defined in the contractual agreements of PLANAFLORO includes, among other measures: i) the "institutionalization" of the socio-economic and ecological zoning of Rondônia and ii) "strengthening of a State land institute to develop and administer state land policy, in accordance with the agroecological zoning" (IBRD 1992:46)¹⁷

In the contractual agreements for PLANAFLORO, the establishment and maintenance of a series of state conservation units was defined. In Section 2.10 of the Project Agreement, it was determined that the Government of Rondônia would maintain the following units: Serra dos Três Irmãos Ecological Station; Guajará-Mirim, Candeias and Rio Corumbiara State Parks; Rio Ouro Preto and Traçadal State Biological Reserves; Rio São Domingos, Rio Abunã, Rio Roosevelt and Rio Madeira State State Forests; and the Rio Preto/Jacundá Extractive Reserve.

In Section 2.11 of the Project Agreement, it was determined that by September 30, 1993, the Government of Rondônia would create by decree, and subsequently maintain, the following state conservation units: Serra dos Parecis and Serra dos Reis State Parks; Rio Pacaas Novos/Rio Novo, São Miguel/Pedras Negras, Jaci-Paraná and Rio Cautário Extractive Reserves; Rio Guaporé, Rio Maquens, Rio Machado and Rio Vermelho State Forests.

3.2 Evidence of Deviations

With regard to compliance with these aspects of the contractual agreements for PLANAFLORO, we would like to point out the following facts:

1. Despite the existence of state legislation on socio-economic and ecological zoning, its effective "institutionalization", as anticipated in the PLANAFLORO contractual agreements, has been compromised. It should be emphasized that Complementary Law no. 52 of 12/20/91 (the legal basis for the state zoning plan) determines in article 7 that enabling regulations should be issued by the State Executive within a period of sixty days. Such a legal act is necessary to define directives and norms on issues such as the management of natural resources in various zones and sub-zones, the elaboration of future "approximations" of the zoning plan, and the creation and establishment of state conservation units.

¹⁷ ITERON was created through State Law no. 203 of 6/20/88 as the main government agency responsible for executing the State's land tenure policy. Within PLANAFLORO, ITERON was designated as the principal agency responsible for the implementation of the socio-economic and ecological zoning of Rondônia.

The enabling regulations for Complementary Law no. 52 were not issued until the signing of Decree no. 6.316 of 3/2/94 (a delay of more than two years).¹⁸ Moreover, this decree limited itself to repeating, in a sparse and imprecise manner, what had already been set out in Complementary Law no. 52. As such, Decree 6.316 does not contribute effectively to overcoming the problems with the "institutionalization" of the state zoning legislation, as defined in the PLANAFLORO loan documents.

2. ITERON has not structured itself to assume the role of coordinating state land tenure policy and the administration of public lands in Rondônia. For example, ITERON has not yet presented technical proposals to INCRA justifying the transfer of federal lands to the state domain, as required by federal legislation (Decree no. 2.375 of 11/24/87). As such, ITERON is a land institute without lands, which makes its very existence questionable.

3. To date, the following conservation units have not been created as required by Sections 2.10 and 2.11 of the Project Agreement: Rio São Miguel/Pedras Negras, Jaci-Paraná and Rio Cautário Extractive Reserves; and Rio Guaporé State Sustained Yield Forest.

4. In general terms, the Government of Rondônia has not taken the necessary legal and institutional steps to guarantee the effective creation and establishment of state conservation units, especially with regard to procedures for land tenure regularization.¹⁹ In some cases, the creation of state conservation units requires the definition of new legal categories, as in case of "State Extractive Forests" and "State Sustained Yield Forests". The Government of Rondônia has not yet taken concrete initiatives in this regard.

5. Over the last several years, while INCRA has promoted a literal parcelling out of lands within state conservation units, the Government of Rondônia has not taken a single preventive action to counter this problem, despite its responsibilities established in Sections 2.10 and 2.11 of the Project Agreement. Examples of this problem can be found in the following state

¹⁸ The enabling regulations for the first legal instrument governing the state zoning plan, State Decree no. 3.782 of 6/14/88, were never issued, despite legal provisions in this regard.

¹⁹ In the case of the decrees which created the existing "State Extractive Forests" and the "State Sustained Yield Forests", it was only asserted that these lands and any improvements made within their perimeters "may be declared for the public use, if the directives of sustained management are not complied with, in keeping with the socio-economic and ecological zoning plan of Rondônia."

In the case of "State Extractive Forests", this deliberate ambiguity contrasts with the federal legislation on Extractive Reserves (Federal Decree no. 98.897 of 1/30/90), principally in what it says with respect to land tenure regularization procedure and use concession to local communities.

conservation units: Rio Corumbiara, Candeias and Serra dos Parecis State Parks; Rio São Domingos and Rio Abunã State Forests, and the Rio Preto/Jacundá Extractive Reserve.

Despite its legal attributes as "guardian" of the state zoning plan in Rondônia, ITERON has not questioned the constant disregard for the socio-economic and ecological zoning, on the part of government agencies such as INCRA.²⁰

6. During 1994, ITERON contracted private companies, using World Bank loan funds, to carry out the demarcation of various conservation units. However, these demarcations presented a series of grave irregularities.

First of all, in many cases the demarcations contracted by ITERON in 1994 did not correspond to the original borders of state conservation units, as defined in the decrees that created them. In these cases, the demarcations excluded areas where INCRA had irregularly granted land titles or areas that were simply the object of land speculation, aiming at serving the interests of land speculators, cattle ranchers and logging companies.²¹

For example, in the case of the Corumbiara State Park (created by Decree no. 4.576 of 3/23/90), the demarcation contracted by ITERON excluded 159,215 hectares, serving the interests of large cattle ranchers and land speculators. The area excluded from demarcation corresponds to various land titles granted irregularly by INCRA during 1991-92 (in other words, after the creation of the State Park) or in areas of simple land-grabbing (grilagem).

In the Guajará-Mirim State Park, established by Decree no. 4.575 of 3/20/90, the area demarcated by ITERON excluded a significant area (51,665 hectares) including a mountainous region characterized by a fragile ecosystem. In reality, this "reduction" of the Guajará-Mirim State Park had the strategic function of facilitating the opening of the BR-421 highway between the cities of Nova Mamoré (on the border with Bolivia) and Ariquemes (on the BR-364 highway), thus permitting access to an isolated region by logging companies, cattle ranchers, land speculators and others.

²⁰ For an analysis of political and institutional bottlenecks that have compromised the performance of ITERON, see the following documents: a) *Diagnóstico Institucional Preliminar de Órgãos Executores do Plano Agropecuário e Florestal de Rondônia (PLANAFLORO)*, Instituto de Estudos Amazônicos e Ambientais (IEA), Porto Velho, November 1992; b) *Diagnóstico Institucional: Situação Atual de Funcionamento do Instituto de Terras e Colonização de Rondônia - ITERON e Condições de Operacionalização do Contexto do Projeto PLANAFLORO*, by Raul Ortiz, Land Tenure Consultant, UNDP-PLANAFLORO, March 1995.

²¹ As in the case of INCRA, the actions of ITERON have entered into conflict with article 225, inciso III of the Brazilian Constitution, with regard to limitations on the alteration or suppression of areas defined for environmental protection.

In addition, there are indications of overpricing in the procurements contracted by ITERON for demarcation of conservation units, including values superior to those established in the 1994 annual operating plan (POA).²²

It should be noted that Section 2.10 of the Project Agreement of PLANAFLORO includes the Corumbiara State Park and the Guajará-Mirim State Park among those state conservation units that should be maintained by the Government of Rondônia

3.3 Attempts to Alert the World Bank

With regard to deviations in the implementation of the socio-economic and ecological zoning plan and state conservation units, we emphasize the following attempts to alert the World Bank:

3.3.1 Socio-Economic and Ecological Zoning

1. In a letter dated December 11, 1989, signed by Osmarino Amâncio Rodrigues (CNS) and Ailton Krenak (UNI) and sent to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) and Armeane Choksi (Director, Brazil Department) of the World Bank (ANNEX 1.B), it was requested that:

...before the approval of a loan, the Bank clarify what guarantees it will have to ensure the implementation of the agro-ecological zoning...

2. In a correspondence dated January 9, 1990, signed by 35 Brazilian and international non-governmental organizations, sent to Mr. E. Patrick Coady, Executive Director of the World Bank (ANNEX 1.C); it was demanded, among other measures, that the PLANAFLORO loan disbursements be conditioned on the inclusion of a timetable (to be submitted to the Bank for inclusion in the Loan Agreement) with measures to:

...establish the physical integrity of the agroecological zones, particularly zone 04, designated for extractive activities. Currently, the project lacks specific measures and timetables to commit the Brazilian authorities to ensure the integrity of the proposed agroecological zones. For example, areas designated as extractive production reserves are suffering from ongoing road construction, government endorsed land claims, illegal logging, land speculation and forest clearing.

3. In a memorandum from the Forum of NGOs of Rondônia sent to Mr. Luis Coirolo of the World Bank on 5/12/92 (ANNEX 3.B), it was initially emphasized that NGOs were not being included in the discussions regarding the state zoning plan:

²² See: Ortiz (cited above). In general, this problem is related to the facts described in Chapter VII, regarding project monitoring, evaluation, supervision, procurement and independent auditing.

Even though the state zoning plan constitutes the basis for the planning of all of PLANAFLORO's activities, non-governmental organizations have been marginalized in the activities of the Socio-Economic and Ecological Zoning Commission of Rondônia. The great majority of NGOs do not participate in this commission (as a matter of fact, not a single environmental organization). It is worth pointing out that many important decisions are being made in the Technical Sub-Commission for Zoning, where there is no participation by non-governmental organizations."

Later, the document states:

There does not yet exist a clear definition regarding the role of the state government in the land tenure policy of Rondônia, specifically the role of the State Land Institute (ITERON), whose structure is currently inoperative and which is not fulfilling the role for which it was created.

4. In the document entitled "Report on the Conditions of Effectiveness in the PLANAFLORO Contractual Documents", written by the Institute for Amazonian and Environmental Studies (IEA) in September 1992 (ANNEX 10), it was informed that:

With regards to the institutionalization of the zoning plan, Complementary Law no. 52 of 12/20/91, governing the socio-economic and ecological zoning of Rondônia, anticipates that enabling legislation should be issued by the State Executive within a period of 60 (sixty) days; this has not yet occurred.

5. In the document entitled "Record of the Meeting on Preliminary Impressions Pertinent to the Implementation of PLANAFLORO", held on September 27, 1993 with the participation of members of the Independent Evaluation Committee (IEC) and a World Bank representative (ANNEX 11.A), the following observation is made:

There was agreement on the importance of creating an inter-institutional working group, involving government and non-government agencies, with the objective of defining a strategy for ensuring the compatibility of land tenure policy with the objectives of the state's socio-economic and ecological zoning and other environmental legislation. The group, as one of its duties, should be responsible for the drafting a preliminary version of enabling regulations for Complementary Law no. 52 of 12/20/91, which governs the state's socio-economic and ecological zoning.

6. In the report of PLANAFLORO's Independent Evaluation Committee (IEC), dated March 1994, the problems mentioned above were again identified. The Executive Summary pointed out:

the absence of effective measures to guarantee the institutionalization of the socio-economic and ecological zoning of Rondônia, particularly the required enabling

legislation for the state zoning law (Complementary Law no. 52 of 12/20/91).

the lack of consolidation and structuring of the Rondônia State Land and Colonization Institute (ITERON), in a manner necessary for it to assume the effective administration of lands and tenure issues within the State.

7. In the letter dated 6/15/94 from the NGO Forum of Rondônia to the President and the Executive Directors of the World Bank (ANNEX 3.D), demands were repeated in relation to several problems that had been previously identified, including:

...the omissions of the Government of Rondônia with regard to measures necessary to guarantee implementation of the socio-economic and ecological zoning regulations and state conservation units.

In this document, the Forum criticized the lack of political interest of the State Government to issue enabling legislation for the socio-economic and ecological zoning. With regard to the decree which provided enabling regulation for Complementary Law no. 52, it was argued that:

Decree no. 6316 of 03/02/94 does not effectively contribute to needed regulations for the state zoning law (Complementary Law No.52), principally with regard to guidelines for natural resource management within specific zones and measures for the implementation of state conservation units. Moreover, the decree does not include a description of the boundaries of the various zones, including geographical coordinates, as required by article no. 3 of Complementary Law no. 52.

A draft version of the decree was not previously submitted for approval to the State Commission for Socio-Economic and Ecological Zoning, contravening article 1, paragraph IV of Decree no. 5.449 of January 16, 1992. All evidence would suggest that the recent issuing of enabling legislation on the state zoning plan (Decree 6.316) in the manner carried out by the Government of Rondônia, represented nothing more than a maneuver to please the World Bank (in a "for the English to see" style). Such an attitude, on the part of the Government of Rondônia, once more undermines the efficiency of socio-economic and ecological zoning policy as an instrument of regional planning.

3.3.2 State Conservation Units

1. On October 13, 1988, Francisco "Chico" Mendes of the National Council of Rubber Tappers (CNS) sent a letter to Mr. Barber Conable, President of the World Bank (ANNEX 1.A), in which he protested the lack of active participation by CNS and other representative organizations in the elaboration of the Extractive Reserves sub-component of PLANAFLORO. Furthermore, Chico Mendes affirmed the following:

We think that the extractive reserves included in Polonoroeste II only serve to give the governmental proposal to the World Bank an ecological tone, so much in fashion lately, in order to secure this large loan.²³

The above letter also warned that:

...if the presence of the National Council of Rubber Tappers continues to be ignored by the Government of Rondônia, it is certain that what will be created are not extractive reserves, but "colonization settlements" with the same errors that led Polonoroeste to the current disaster. In other words, much money will be spent on the creation of an infrastructure inappropriate to forest populations, whose maintenance will be unsustainable, causing the demoralization of our proposal for the creation of extractive reserves...

2. In the memorandum sent by the NGO Forum of Rondônia to Mr. Luis Coirolo of the World Bank on 5/12/92 (ANNEX 3.B), an alert was made on the necessity of defining instruments to guarantee the effective establishment of state conservation units, as anticipated in PLANAFLORO:

The creation of Extractive Reserves in the State of Rondônia depends on the expropriation of various private properties in order to grant land use concessions to rubber tappers. It should be emphasized that the implementation of "state extractive forests" in PLANAFLORO does not anticipate any changes in the land tenure structure of these areas. Moreover, large properties exist within the boundaries of "sustained yield state forests" (zone 05), whose owners do not accept the limits imposed by the state zoning plan with regard to forest clearing and the introduction of artificial cattle pasture; and who are lobbying state deputies to revoke the decrees establishing these conservation units.

3. The necessity of hastening the creation of various state conservation units in Rondônia (including those defined in the contractual agreements of PLANAFLORO) as well as the existence of illegal acts of environmental degradation in these areas were the focus of a series of documents elaborated by NGOs in Rondônia, copies of which were sent to the World Bank.

For example, the following letters from the Rondônia Rubber Tappers Organization (Organização dos Seringueiros de Rondônia - OSR) and ECOPORÉ (Ação Ecológica Vale do Guaporé) were sent to government agencies with copies to the World Bank. These documents refer to serious problems in the Guaporé Valley, including the Cautário river, an area identified in the PLANAFLORO loan agreements for creation of an Extractive Reserve (Section 2.11 of the Project Agreement):

²³ In the early stages of the elaboration of PLANAFLORO, its initial name was "POLONOROESTE II".

a) Official Letter (Ofício) no. 19/93 from ECOPORE, dated March 9, 1993; sent to the Governor of Rondônia, SEDAM, ITERON and the Forest Police (ANNEX 4.A);

b) Official Letter from OSR and ECOPORE, dated April 26, 1993, addressed to the Secretary of Environmental Development (SEDAM) of the Government of Rondônia (ANNEX 4.B);

c) Official Letter no. 042/93 from ECOPORE, dated April 27, 1993, addressed to the President of INCRA (ANNEX 4.C);

d) Official Letter from OSR and ECOPORE, dated June 22, 1993, sent to various state and federal government agencies (ANNEX 4.E);

e) Official Letter no. 41/94 from ECOPORE, dated April 7, 1994, sent to SEDAM, PMF, and IBAMA (ANNEX 4.H);

f) Official Letter no. 055/94 from ECOPORE, dated May 23, 1994, sent to SEDAM, PMF, ITERON, IBAMA and INCRA (ANNEX 4.J);

4. In the document entitled "Record of the Meeting on Preliminary Impressions Pertinent to the Implementation of PLANAFLORO", held on September 27, 1993 with the participation of members of the Independent Evaluation Committee (IEC) and a World Bank representative, it was stated that the "inter-institutional working group" described above should include within its mandate the responsibility for:

the elaboration of proposals defining the legal guidelines for Extractive Reserves and other conservation units at the state level, and proposing complementary rules for the effective establishment of these state units.

5. In the Executive Summary of the Independent Evaluation Committee's final report (submitted to the Government of Rondônia and the World Bank in March 1994) warnings were again made about:

the lack of definition, on the part of the Government of Rondônia, of legal and institutional mechanisms to guarantee the effective establishment of state conservation units (including needed actions in land tenure regularization, resource use concessions, management plans, etc.);

the lack of presentation by ITERON of technical projects to INCRA to justify the transfer of federal public lands to the state domain, as well as legal actions necessary for their establishment (including legislation defining the legal categories of various state conservation units).

6. In a letter sent to the Central Forestry Unit of the World Bank, dated May 16, 1994 (ANNEX 3.C), the Forum brought attention to the existence of governmental policies that were compromising the directives of conservation and sustainable

management of forests. The specific observations of this letter included the following:

In the case of "State Extractive Forests", whose creation and establishment was anticipated in PLANAFORO, no strategy has yet been defined for land tenure regularization and resource use concessions, in contrast with the federal legislation on Extractive Reserves. Furthermore, the first version of the zoning was defined without prior field studies and consultations with local extractive populations. The result of these factors, in combination with the mistaken policies of INCRA, SEDAN and IBAMA, has been the constant invasion of areas occupied by rubber tappers, facilitated by the actions of the governmental agencies themselves.

7. In the letter dated June 15, 1994, sent to the President and Executive Directors of the World Bank (ANNEX 3.D), the NGO Forum of Rondônia warned that:

The Government of Rondônia has not taken the necessary legal and institutional steps to guarantee the effective implementation of these conservation units, especially with regard to procedures for land tenure regularization. In some cases, the creation of state conservation units requires the definition of new legal categories, as in the case of "State Forests for Sustained Yield" (timber management). Unfortunately, the Government of Rondônia has not yet taken any coherent measures in this regard.

In the same document, the Forum further denounced that:

"the contracting of private companies, by ITERON, to carry out the demarcation of state conservation units, presents serious irregularities, including the illegal reduction of their borders;

ITERON is promoting the demarcation of several conservation units where necessary measures for land tenure regularization have not been carried out;

ITERON is contracting the demarcation of state conservation units, without previously arranging for the transfer of Federal public lands to the State's domain;

ITERON has contracted the demarcation of various "Extractive Reserves" that simply do not exist. For example, the Rio Cautário, Curralinho and Baixo São Miguel Reserves have not yet been established by decree. As such, the demarcations will have no legal effect. At least in the case of the Rio Cautário, this situation is the result of opposition by local elites, associated with timber exploitation and cattle ranching, who do not accept the creation of Extractive Reserves.

3.4 Omissions of the World Bank

Over the past several years, during the preparation and initial execution of PLANAFLORO, the Bank was negligent in the face of various problems related to the state zoning plan and state conservation units. In this regard, we would like to bring attention to the following points:

3.4.1 State Zoning Legislation

Although the World Bank, since the initial phase of negotiation for PLANAFLORO, pressed the Government of Rondônia to "officialize" the socio-economic and ecological zoning of the state; such initiatives have been taken in a timid and insufficient manner, from the point of view of the loan agreements. In this respect, we emphasize the following points:

1. The first legal instrument related to the state zoning plan, Decree no. 3.782 of June 14, 1988, was never fully implemented due to a lack of enabling legislation, in spite of legal requirements in this regard. There is no evidence of oversight on this issue by the World Bank during the period 1988 to 1991.

2. In September 1989, a new State Constitution was passed by the Rondônia State Legislative Assembly; in which it was established, in article 6 paragraph 2, that the state's socio-economic and ecological zoning would be instituted through a complementary law. However, it took the Executive branch more than two years to send a draft of a complementary law for zoning to the State Legislative Assembly. As mentioned earlier, Complementary Law no. 52, governing the socio-economic and ecological zoning of Rondônia, was only approved by the State Assembly on December 20, 1991.

During this period, there is no evidence of the Bank taking initiatives on its own accord to guarantee action on this issue.

3. As described above, Complementary Law No. 52 of December 20, 1991 determined that enabling legislation should be issued within a period of sixty days. However, it took the Government of Rondônia more than two years until it took an initiative in this regard, through the issuing of Decree no. 6.316 on March 2, 1994. During the interim, there is no evidence of efforts by the World Bank to resolve this issue, despite requirements in the PLANAFLORO contractual agreements regarding the "institutionalization" of the state zoning plan.

4. The Aide Memoires from the Bank's supervision missions in November 1992 (ANNEX 6.A) and September 1993 (ANNEX 6.B), contain no record of Bank demands regarding measures needed to establish enabling legislation for the state zoning law (Complementary Law no. 52 of 12/29/91).

5. In the internal Bank report dated March 25, 1994, entitled *Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation*

(ANNEX 7.B) it is stated that the Independent Evaluation Committee (IEC) identified "the necessity of passing enabling regulations for the zoning law". Later, the report asserts that following the submission of the IEC report, the Government of Rondônia approved enabling regulations for the state zoning legislation and that the World Bank would conduct a detailed analysis of these regulations.

It would be appropriate to investigate whether or not the World Bank completed an analysis of Decree no. 6.316 of 3/2/94, considering the problems mentioned above. To our knowledge, there is no evidence of the Bank having questioned the contents of this decree until the August 1994 supervision mission, which was prompted by the Forum's June 1994 letter.

6. The Aide Memoire between the Government of Rondônia and the Rondônia NGO Forum (ANNEX 6.D) resulting from the Bank's August 1994 supervision mission determined that the corrective measures would be taken to guarantee:

the revision of Decree no. 6.316, the enabling regulation for Complementary Law no. 52, with the proposal for the alternate decree to be submitted by 10/6/94.

To date, such a measure has not been taken.

7. In the Aide Memoire from the Bank's most recent supervision mission in April 1995 (ANNEX 6.E), there is no record of the Bank's having reiterated the importance of promoting the revision of Decree no. 6.316, despite the government's failure to comply with the actions outlined in the Aide Memoire dated August 1994.

8. With regard to the "Matrix of Main Environmental Policy Issues, Measures and Actions" included in PLANAFORO's institutional reform program (IBRD 1992:51-52, see ANNEX 7.A), the following points should be emphasized, in relation to the socio-economic and ecological zoning plan:

a) According to item 01 of the institutional matrix, the "monitorable actions" include the "continuous enforcement of the zoning plan" on the part of ITERON and the Forest Police. Clearly, this measure has never been satisfactorily implemented by government agencies and the World Bank has been negligent in assuring its implementation.

b) According to item 01 of the institutional matrix cited above (ANNEX 7.A), the "actions already taken" include signing of Decree no 3.782 of 6/14/88 and Complementary Law no. 52 of 12/20/91. However, the passing of enabling regulations for the state zoning legislation is not included among the "actions to be taken", in spite of the legal requirements in this regard and the importance of this measure for effective implementation of the state zoning plan.

3.4.2 State Conservation Units

1. Since the initial negotiation phase of PLANAFLORO, the World Bank has pressed the Government of Rondônia to formalize the creation of state conservation units. For example, one of the Aide Memoire documents from 1989 states that:

The creation of all of the State Conservation Units, without restrictions on the part of the Federal Government, will be a basic condition for the disbursement by the Bank of any project funds. This condition of disbursement obliges IEF and SEMARO to accelerate the studies corresponding to the creation of these units, and obliges the State in general to urgently adopt necessary measures in this regard. (Aide Memoire/IBRD. Components: Environmental Conservation and Protection and Sustained Utilization of Forest Resources, August 14, 1989).²⁴

2. During the period of 1989 to 1991, the Governor of Rondônia signed decrees creating a series of state conservation units, largely in response to pressures from the World Bank. However, the legal deficiencies of these decrees, as described above, were not the object of scrutiny on the part of the Bank.

3. Similarly, the World Bank did not make demands regarding the need for ITERON to present technical proposals justifying the transfer of federal lands to the state domain (or their joint administration with the state government). These steps are legally required for effective establishment of the conservation units defined in the contractual agreements of PLANAFLORO.

4. Largely as a result of pressures from the NGO Forum, the Aide Memoire from the Bank's September 1993 supervision mission (ANNEX 6.B) was the first such document to contain commitments regarding the definition of new legal instruments for effective establishment of state conservation units. In this document, it was asserted that:

by November 15, 1993, draft legislation creating the category of Extractive Reserves will be presented to the State Legislative Assembly. Subsequently, the respective decrees for the regulation and creation of each extractive reserve will be issued.

by November 15, 1993, draft legislation creating the category of State Sustained Yield Forests (FERS) will be elaborated and presented to the State Legislative Assembly. Subsequently, the respective decrees for the regulation and creation of each FERS will be issued.

²⁴ During a transition in the Rondônia state government in early 1991, the State Forestry Institute (IEF) and Special State Secretariat for the Environment (SEMARO) were extinguished with the creation of the State Secretariat for Environmental Development (SEDAM).

Unfortunately, these tasks was never implemented.

5. In the documents of the Aide Memoire between the World Bank, MIR and the Government of Rondônia dated August 1994 (ANNEX 6.C), the following commitments were made:

SEPLANAFLORO, together with SEDAM and ITERON, and with the support of UNDP, will, by September 30, 1994, prepare a document defining the directives and procedures for the establishment of conservation units in the State of Rondônia, and will ensure its submission to the Forum of NGOs and the Environmental CNP (Normative Planning Commission) for discussion.

...it is necessary to define the legal instruments that will characterize a "state sustained yield forest" by December 15, 1994;

..SEDAM will undertake in conjunction with the Rondônia Rubber Tappers Organization (OSR) and ITERON, and with the support of UNDP, the elaboration of a Plan for the establishment of Extractive Reserves, addressing relevant issues relating to environmental, land tenure, health and education questions, to be submitted by November 1994..

To date, these tasks have not been completed.

6. In the Aide Memoires from the World Bank's supervision missions of 11/92, 09/93 and 8/94, there is an absence of commitments regarding the creation within specified time limits of various state conservation units, including those defined in Sections 2.10 and 2.11 of the Project Agreement: Rio São Miguel/Pedras Negras, Jaci-Paraná and Rio Cautário Extractive Reserves, and Rio Guaporé State Sustained Yield Forest).

The Aide Memoire from September 1993 (ANNEX 6.B) defines time limits for the demarcation of conservation units that did not yet exist (for example, Rio Cautário, Curralinho and Jaci-Paraná Extractive Reserves), but contain no evidence of oversight from World Bank on time limits for the legal creation of such areas.

7. The internal Bank report entitled Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation (ANNEX 7.B) contains no reference to the irregularities pointed out above, despite the fact that these issues were addressed in the Independent Evaluation Committee's report.

8. The Aide Memoire signed by representatives of the World Bank, MIR, Government of Rondônia and UNDP during the August 1994 supervision missions (ANNEX 6.C) does not contain any evidence of oversight by the World Bank on the irregular demarcations contracted by ITERON, despite violations of Sections 2.10 and 2.11 of the Project Agreement (as denounced in the Forum's June 1994 letter).

Despite promises made in the August 1994 Aide Memoire between the Forum and the Government of Rondônia (ANNEX 6.D), ITERON refused to publicly disclose the maps showing irregular demarcations of conservation units, contracted with funds from the World Bank loan.

3.4.3 Operational Directives and Policies of the World Bank

In light of the facts presented above, we emphasize the following points with respect to the operational directives and policies of the World Bank:

1. According to the World Bank's operational policy on Forestry (OP 4.36, September 1993), borrower countries should:

"adopt policies and an institutional and legal framework to guarantee the conservation and sustainable management of existing forests", (1.d.i).

Furthermore, OP 4.36 asserts that borrower countries should:

"establish the institutional capacity to implement and enforce these commitments" (1.d.v).

2. According to the World Bank's operational policy regarding Wildlands (OP 11.02, June 1986),

To maintain their legitimacy in the eyes of policy-makers and local populations, Wildland Management Areas (WMAs) must have a firm legal foundation...Bank staff should ensure that Bank-supported WMAs are established and managed within a compatible legal and policy context.

3. We would like to point out that the facts cited above, referring to the absence of a legal and institutional framework to ensure the adequate implementation of the socio-economic and ecological zoning plan and state conservation units, demonstrate that in the case of PLANAFLORO, the World Bank has not adequately implemented or enforced the above-mentioned operational directives regarding forests and wildlands.

3.5 Adverse Impacts on Local Populations

The facts related above, with respect to omissions of the World Bank in guaranteeing the existence of a legal and institutional framework for implementation of the state zoning plan and state conservation units, created an extremely prejudicial situation for various local populations in Rondônia.

In the case of the rubber tappers, the lack of effective creation and establishment of the Extractive Reserves defined in the contractual agreements of PLANAFLORO (for example, Rio Cautário, Rio São Miguel, Rio Jaci-Paraná) has resulted in significant harm, since this situation has facilitated invasions of these areas.

The absence of adequate enabling legislation for the state zoning plan has, in the case of extractive areas (zone 04), facilitated disrespect by public agencies (such as INCRA) and subsequent acts of environmental degradation.

For example, in the region of the Cautário river, constant invasions by logging companies and land speculators, facilitated by the non-creation of an Extractive Reserve, has already resulted in serious social conflicts and environmental damage.

Similarly, indigenous peoples have suffered harm due to the omissions of the World Bank described in this chapter. The failure to institutionalize the state zoning plan has facilitated invasions by logging companies and land speculators, both in existing indigenous reserves (such as the AI Uru-eu-wau-wau) as well as other locations inhabited by isolated indigenous groups (generally in zones 04, 05 and 06). In the case of the Gleba Buriti (zone 04), the unbridled frontier expansion associated with agricultural, livestock and logging has caused unmeasured harm to isolated indigenous peoples in the region.

With regards to small farmers, it should be mentioned that the lack of enabling regulations for the state's socio-economic and ecological zoning has hindered access to the most fertile agricultural lands, especially in zones 01 and 02. At the same time, landless rural workers have been encouraged to invade areas of restricted use (according to the zoning plan) and state conservation units, where they often enter into conflict with the traditional populations of Indians, rubber-tappers, etc.

Finally, the lack of oversight by the World Bank on necessary measures for implementation of the zoning plan and state conservation units, as defined in the official documents of PLANFALORO, has contributed to environmental damage to fragile ecosystems, as in the case of the Corumbiara and Serra dos Parecis State Parks, as well as restricted use zones (e.g. Gleba Buriti within zone 04). Such environmental damage, the extent of which is difficult to calculate, has negatively affected the collective interests of civil society, at both the regional and national levels.

IV. Environmental Licensing and Protection

4.1 Planned Actions in PLANAFLORO

Within PLANAFLORO, the actions of environmental protection have as their main objective the strengthening of institutional capacity among responsible government agencies (IBAMA, SEDAM and the Forest Battalion of the Military Police) as a means to: a) protect and enforce the limits of conservation units and indigenous areas,²⁵ b) control and prevent illegal acts of deforestation, timber transport and forest fires, and protect endangered wildlife, and c) promote the sustainable management of forest areas.

It is worth pointing out that environmental licensing and protection policies should be linked to the institutional reform program anticipated in PLANAFLORO, as part of efforts to:

institute a series of changes in policies, regulations and public and private investment programs, in order to create a coherent base of incentives for the sustainable development of Rondônia (IBRD 1992:01).²⁶

It should be noted that such initiatives are relevant to the World Bank's operational policy on Forestry (OP 4.36), where it is defined that borrower countries should:

adopt policies and an institutional and legal framework to guarantee the conservation and sustainable management of existing forests, and

establish the institutional capacity to implement and enforce these commitments.

4.2 Evidence of Deviations

In spite of the innumerable denunciations on the part of non-governmental organizations; there persist various governmental policies in the areas of environmental licensing and enforcement that compromise the objectives of conservation and sustainable management of natural resources and the contractual agreements of PLANAFLORO. As examples of this problem, we highlight the following points:

²⁵ It should be observed that the protection activities are linked to the obligation of the Government of Rondonia to maintain the conservation units outlined in the contractual agreements of PLANAFLORO (Sections 2.10 and 2.11 of the Project Agreement).

²⁶ As pointed out earlier, the said institutional reform program was addressed in Section 3.04 of the Loan Agreement and in section 2.14 of the Project Agreement.

1. The State Secretariat for Environmental Development (SEDAM) has unduly recognized "declarations of occupation" (declarações de posse), irregularly issued by INCRA, as a basis for granting authorizations for forest clearing and burning, and has furthermore approved plans for "selective felling" (removal of wood in areas to be clear-cut) within restricted use area of zones 4 (non-timber forest extraction) and 5 (sustained forest management).

This mistaken practice was initially supported by State Decree no. 4.709 of June 19, 1990 and later by State Decree no. 6.403 of June 10, 1994, both of which constitute an affront to the state zoning legislation and the contractual agreements of PLANAFLORO.

2. The State Superintendent of IBAMA has used "declarations of occupation" and other land documents irregularly-issued by INCRA to approve "management plans" for timber exploitation.

More disturbingly, IBAMA has approved plans for "forest management" (in reality, plans for tree-felling that lack a technical basis) without consideration for the directives of the state zoning legislation. For example, IBAMA routinely approves large timber exploitation projects that are located in areas of restricted use according to the zoning plan, and in disregard of other legal restrictions.

This practice was "officialized" by Service Order no.005/94/-GAB/SUPES/RO of February 10, 1993, issued irregularly by the State Superintendent of IBAMA in Rondônia.²⁷

3. Based on Service Instruction no.001/94/SUPES/RO of February 9, 1994 (ANNEX 9.D), the State Superintendent of IBAMA also permits authorizations for forest clearing and "selective felling" without reference to the state zoning plan. In this manner, IBAMA has already approved various "selective felling" projects, allowing for clear-cutting of 50% of private properties, within zones 04 and 05.

4. Based on authorizations for forest clearing and timber exploitation, IBAMA has granted "Authorizations for the Transport of Forest Products" (ATPFs) that legalize the transportation of roundlogs to local sawmills. In reality, such documents issued by SEDAM and IBAMA are deliberately used to disguise the illegal removal of a huge volume of timber from vast areas, principally indigenous reserves and other conservation units. In other words, the policies of government agencies responsible for environmental protection in Rondônia have an inverse function: i.e. to facilitate environmental degradation.

²⁷ In April 1995, a federal judge in Rondônia issued a restraining order, declaring illegal the above-mentioned Service Order signed by the Superintendent of IBAMA in Rondônia. This important decision was the direct result of a Popular Action (Ação Popular) lawsuit initiated by members of the NGO Forum of Rondônia.

5. Actions in enforcement and environmental protection in Rondônia have recently been rendered practically inviable, as a result of the failure of IBAMA, SEDAM and the Forest Battalion to sign the cooperative agreements envisaged in the official PLANAFLORO documents (Section 2.12 (b) of the Project Agreement).

6. In addition to the facts stated above, there exist innumerable examples of political interference in the environmental agencies that operate in Rondônia (IBAMA, SEDAM, Forest Police); this interference has resulted in the paralización of enforcement activities to prevent illegal acts of deforestation, timber exploitation, etc.

4.3 Attempts to Alert the World Bank

The following presents some examples of attempts to inform the World Bank about the problems described above:

1. In the "Open Letter" of March 12, 1992, sent by the Forum of NGOs of Rondônia to the Executive Directors of the World Bank (ANNEX 3.A), it was alerted that:

"...The majority of the areas defined for sustainable timber management are being pillaged, due to the negligence of SEDAM, the Forest Police and IBAMA. There are various cases of documents irregularly issued by these agencies, which reflect the political interference of economic interests associated with the predatory exploitation of timber in zone 05 and even areas of permanent preservation (zone 06)..."

2. The contradictions in environmental licensing policies, along with the ineffectiveness of enforcement activities, have been communicated to the World Bank in several documents elaborated by the NGOs in Rondônia.

As evidence, we refer to the following documents of the Rondônia Rubber Tappers Organization (OSR) and ECOPORE sent to government authorities, with copies to the World Bank:

a) Official Letter no. 19/93 from ECOPORE, dated March 9, 1993, sent to the Governor of Rondônia, SEDAM, ITERON, and the Forest Police (ANNEX 4.A);

b) Official Letter from OSR and ECOPORE, dated April 26, 1993, addressed to the Government of Rondônia's Secretariat for Environmental Development (SEDAM-RO) (ANNEX 4.B);

c) Official Letter from OSR dated June 23, 1993, sent to SEDAM, ITERON, INCRA, IBAMA, the Forest Police and the Executive Secretariat of PLANAFLORO (ANNEX 4.F);

d) Official Letter no. 122/93, from ECOPORE, dated November 22, 1993, sent to the State Secretariat for Environmental Development (SEDAM) (ANNEX 4.G);

e) Official Letter no. 41/94 from ECOPORE, dated April 7, 1994, sent to SEDAM, PMF and IBAMA (ANNEX 4.H);

f) Official letter no. 052/94 from ECOPORE, dated May 14, 1994, addressed to the President of IBAMA (ANNEX 4.I);

g) Official letter no. 55/94 from ECOPORE, dated May 23, 1994, addressed to SEDAM, PMF, ITERON, IBAMA and INCRA (ANNEX 4.J).

3. On May 4, 1993, ECOPORE sent Official Letter no. 048/93 to Mr. Francisco Vita, the local World Bank representative in Cuiabá (Mato Grosso) denouncing invasions of extractive areas that were encouraged by the environmental licensing practices of SEDAM, the ineffectiveness of enforcement actions, and the Government of Rondônia's lack of political interest, in the face of large logging and cattle ranching interests (ANNEX 4.D).

4. In the first report of the Independent Evaluation Committee (IEC) of PLANAFLORO, problems were also identified with respect to environmental licensing policies and enforcement activities. The Executive Summary of the report warns about:

the existence of contradictory policies and procedures for environmental licensing, on the part of state and federal environmental agencies (SEDAM and IBAMA, respectively). The inappropriate application of legal instruments, particularly with regard to permits for forest clearing and commercial logging, have actually encouraged the indiscriminate and predatory use of natural resources.

In this regard, it should be emphasized that: i) SEDAM has issued licenses for forest clearing (including within the restricted areas of zones 04 and 05) without field inspections or requiring prior demonstration of formal land ownership and ii) IBAMA has approved plans for selective logging and "forest management", without consistent technical criteria and field inspections. The above practices are prerequisites for the granting by IBAMA of "Authorizations for the Transport of Forestry Products" (ATPFs) which are widely used by timber companies to facilitate illegal logging operations within vast tracts of forest, including indigenous reserves and other conservation units.

...additional factors limiting the effectiveness of activities in environmental protection, such as: i) the insufficient involvement of the State Public Prosecution Service (Ministério Público Estadual), that has remained ill-prepared to address current demands on environmental issues, ii) the lack of police investigations into environmental crimes, and iii) the lack of collection of fines, on the part of the State Prosecution Service, among those charged with environmental crimes (such fines have not been registered in public finances as debts owed to the state)

5. The letter from the Forum of NGOs of Rondônia to the "Central Forestry Unit" of the World Bank, dated May 16, 1994 (ANNEX 3.C) criticized the environmental licensing policies of government agencies in Rondônia, making the observation that:

...all of this documentation provided by SEDAM and IBAMA is used to disguise the illegal extraction of huge volumes of timber from vast areas, principally indigenous areas and other conservation units.

In other words, the policies of the government agencies responsible for environmental protection in Rondônia have an inverse function: to facilitate environmental degradation. At the same time, indiscriminate deforestation on large estates and public lands simply invaded for speculative purposes, as well as the uncurbed theft of timber, typically go unpunished, as a result of the traffic of influence within government agencies such as IBAMA and SEDAM.

Unfortunately, such mistaken policies in the area of environmental licensing and protection have not been questioned by the staff of the IBRD or by the governmental authorities responsible for the administration of PLANAFLORO.

6. In the Forum's letter of June 15, 1994 to the World Bank, denunciations were once again made regarding:

...the lack of coherence in the current system of environmental licensing, in which authorizations for forest clearing, burning and timber exploitation disregard the state zoning regulations and environmental legislation, therefore encouraging acts of environmental degradation, including the illegal exploitation of timber in indigenous areas and other conservation units;

...the ineffectiveness of the present system of environmental protection and enforcement, mainly due to interventions by political and economic interests, resulting in a situation of generalized impunity that encourages illegal practices of environmental degradation.

4.4 Omissions of the World Bank

During the preparation and initial execution of PLANAFLORO, the World Bank was negligent in the face of various problems related to PLANAFLORO's environmental protection activities. These omissions are contradictory to the Bank's determination to establish an institutional framework of public policies aimed at conserving and sustainably managing natural resources, as described in the contractual agreements of PLANAFLORO (Section 3.04 of the Loan Agreement, Section 2.14 of the Project Agreement).

As evidence of the World Bank's omissions, we would like to bring into consideration the following facts:

1. The Aide Memoire documents from the Bank's supervision missions in November 1992 (ANNEX 6.A) and September 1993 (ANNEX 6.B) contain no commitments regarding changes in the environmental licensing procedures of SEDAM and IBAMA, in spite of alerts from NGOs and the contractual agreements of PLANAFLORO.

2. In the World Bank's internal report entitled *Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation* (March 25, 1994) (ANNEX 7.B), the only mention of the problems involving environmental licensing appears in a reference to the preliminary report of the Independent Evaluation Committee (IEC). Even here, in contrast to the detailed description of problems in the IEC report, the internal Bank document simply cites:

the need to improve environmental licensing practices, with particular attention to forestry exploitation.

3. During the World Bank/MIR supervision mission of August 1994, the principal objective of which was to discuss the Forum's June 1994 letter to the President and Executive Directors of the Bank, there were finally some advances made in the discussions regarding the problems of environmental licensing and protection.

The Aide Memoire of August 9, 1994, signed by the Government of Rondônia and the Forum of NGOs of Rondônia (ANNEX 6.D), registers the following measures with regard to "Environmental Monitoring, Protection and Licensing":

The Public Policy Working Group shall revise IBAMA's Service Instruction no. 001 and Service Order no. 005; and present by 9/30/94 a proposal for needed revisions or otherwise cancellation by the President of IBAMA;

The Working Group shall revise the proposal for the agreement between IBAMA and the Government of Rondônia, adapting it to current reality and securing its effectiveness by 9/30/94.

The Technical Cooperation Program of UNDP will draft a proposal for training in environmental legislation and operational procedures, with regard to environmental protection and licensing, by 10/15/94.

Moreover, the Aide Memoire signed by the IBRD, MIR and the Government of Rondônia on August 12, 1994 (ANNEX 6.C), states that:

SEDAM will be responsible for the legal establishment, by September 30, 1994, of the continuation of an agreement with IBAMA aimed at promoting the conservation of nature and its resources, especially in observance of the federal

Forestry Code and Law for Protection of Fauna. To make it better suited to PLANAFLORO, this agreement should include new clauses making viable a better integration of the two institutions for the optimization of programmed actions. These clauses may consider the revision of licensing procedures, with an emphasis on instruments such as Service Order no. 005/04/SUPES/RO of 2/10/93 and Service Instruction no. 001/94/SUPES/RO of 2/9/94, whose application has largely contributed to the intensification of deforestation in the State, aside from promoting conflicts with relation to the state zoning plan.

However, none of the measures in environmental licensing and protection have been carried out, as anticipated in the Aide Memoire from the Bank's August 1994 supervision mission.

4. In the Aide Memoire from the Bank's latest supervision mission (March-April 1995), there is no evidence of demands from the Bank regarding implementation of revisions in environmental licensing policies, as defined in the commitments of the Aide Memoire dated August 1994 (ANNEX 6.E).

5. As previously described, the Bank's operational policy on Forestry (OP 4.36) states that borrower countries should:

adopt policies and an institutional and legal framework to guarantee the conservation and sustainable management of existing forest, (l.d.i) as well as establish the institutional capacity to implement and enforce these commitments (l.d.v).

The problems described in this chapter, related to environmental licensing and protection, illustrate that in the design and implementation of PLANAFLORO, the Bank has not adequately followed its own operational directives regarding both Forestry (OD 4.36) and Wildlands (OP 11.02)

6. The "Matrix of Environmental Policies, Measures and Actions" which formed the basis of PLANAFLORO's institutional reform program (ANNEX 7.A), contemplates environmental licensing and protection actions in various items.

According to items 01, 02 and 07 of the institutional framework, the "monitorable actions" include the utilization of remote sensor images to monitor the integrity of the state's socio-economic and ecological zoning and of conservation units (including indigenous areas), rapidly detecting acts of illegal deforestation, opening of roads and encroachment (IBRD 1992:51-52). However, without adequate monitoring on the part of the Bank, the few initiatives in this regard have been timid and inconsequential.

4.5 Adverse Impacts on Local Populations

The omissions of the World Bank, with regard to failures to enforce implementation of necessary reforms in environmental licensing and protection within PLANAFLORO, have permitted the

continuation of government policies and practices that encourage invasions of protected areas and other acts of environmental degradation.

We argue that such omissions on the part of the Bank have adversely affected various local populations in Rondônia, especially the rubber tappers, riverine populations and indigenous populations who inhabit the areas where the predatory use of natural resources has occurred, principally in the form of deforestation and timber exploitation.

V. Investment Programs/Media Program

5.1 Planned Actions in PLANAFLORO

According to the World Bank's Staff Appraisal Report, the institutional reform program in PLANAFLORO should include, among other measures:

- the elimination of economic and fiscal incentives that encourage inefficient resource allocation, non-sustainable private investment and environmental degradation
- the revision of Federal and State investment programs, to take into account land use capabilities and other environmental considerations

During negotiations on the loan for PLANAFLORO, the Federal Government and the State of Rondônia provided assurances that institutional reforms at the state and federal levels would be implemented during the execution of the program.

Furthermore, it was agreed that by September 30 of each year, the State would send to the Bank, for analysis and commentary, any modifications in the investment programs foreseen for the next year (Section 2.14 of the Project Agreement; Section 3.04 of the Loan Agreement).

The institutional reform program further anticipate the use of an informative media program, aimed at:

the reduction of the rate of spontaneous migration to Rondônia, through the dissemination of information in other regions of the country, especially in states from which most migrants originate, to explain the agro-ecological zoning and the State's new policies on land occupation. (IBRD 1992:50)

5.2 Evidence of Deviations

With regard to investment policies and the media program, as defined in the official documents of PLANAFLORO, the following facts should be noted:

5.2.1 Rural Credit

Within PLANAFLORO, a rural credit fund (FUNDAGRO) was created, with the goal of encouraging the adoption of agroforestry systems among small farmers in Rondônia.

However, there are other rural credit programs in Rondônia with a much larger volume of resources, the directives and priorities of which have not been made compatible with the objectives of the state's zoning and PLANAFLORO. This situation compromises the effectiveness of project initiatives.

For example, the Bank of the Amazon (BASA) through the Northern Constitutional Fund (FNO) has privileged the expansion of cattle ranching in the State of Rondônia. In 1994, BASA projected investments on the order of US\$ 32 million, benefitting 3,800 projects in the live stock sector. In contrast, for agricultural sector BASA set aside only US\$ 4.3 million in FNO funds for approximately 1,700 projects.

Recently, it was confirmed that BASA approved subsidized financing for a large cattle ranching project using FNO funds, to benefit a large property with a land title that was irregularly granted by INCRA, within the limits of the Rio Abunã State Forest. In reality, the interested party is the "owner" of six landholdings totalling approximately 2,500 hectares, all of which received titles (CPCVs) issued by INCRA in 1991, following creation of the Rio Abunã State Forest (Decree no. 4.572 of 3/23/90).²⁸

5.2.2 Fiscal Incentives

As an example of the lack of coherent criteria in fiscal incentive policies, it can be verified that SUFRAMA has conceded exemptions from the Industrialized Products Tax (Imposto sobre Produtos Industrializados - IPI) to logging companies operating within zone 04, as in the example of the region of PA Burití (municipality of Campo Novo).

5.2.3 Road Transport

In the elaboration of PLANAFLORO, it was defined that the Department of Highways (DER-RO) should elaborate a "State Road Plan", identifying all existing and planned rural roads and highways in Rondônia and ensuring their compatibility with the socio-economic and ecological zoning plan. However, to date, the State Road Plan and its respective map have not been presented by DER-RO.

In the absence of a road plan for the State of Rondônia, a series of problems have occurred, including the following:

1. Typically, the opening and maintenance of rural roads are carried out by municipal governments (with the collaboration of logging companies and other interested parties) which do not recognize the state zoning plan or other pertinent environmental legislation. For example, the governments of Nova Mamoré and Campo Novo have agreed to the opening of highway BR-421, which runs through the Karipuna Indigenous Area, the Guajará-Mirim State Park and part of the upper Rio Jaci-Paraná area which is located in zone 04 (non-timber forest extraction).

²⁸ It should be noted that the Rio Abunã State Forest was included in Section 2.10 of the Project Agreement as a conservation unit to be maintained by the Government of Rondonia throughout the implementation of PLANAFLORO.

This situation was communicated by the Forum in a previous correspondence to the World Bank (ANNEX 3.D) and was recently the object a denunciation by CUNPIR (Coordination of the Union on Indigenous Peoples and Nations of Rondonia, Northern Mato Grosso and Southern Amazonas) to the UN Human Rights Commission, in a letter dated May 10, 1995 (ANNEX 4.K)

2. In 1993, DER-RO published a state road map that displayed several planned roads that would be inconsistent with the state zoning plan and the existence of several conservation units (ANNEX 15.B). As previously mentioned, DER-RO has not yet published a substitute map. Without an official government map for reference, commercially-produced maps of the state (including those used in schools) have typically displayed projected roads that traverse indigenous areas and other conservation units.

5.2.4 Energy Sector

Currently, ELETORNORTE is planning to construct the Ji-Paraná Hydroelectric Plant in Rondônia, with a 512 MW capacity and investments of US\$ 780 million (over three times the cost of PLANAFLORO).²⁹ The construction of the plant is scheduled to begin in 1995, with an estimated completion date of March 2003.

It should be emphasized that the Ji-Paraná dam will flood an immense area of forest along the Ji-Paraná river, including portions of the Jarú Biological Reserve and the Lourdes Indigenous Area, as well as the lands of approximately 5,000 small farmers.

In spite of the significant social and environmental impacts foreseen, an analysis of alternative investments has not yet been realized. Public hearings have also not been held, a step required by Resolution 001/86 of CONAMA, with respect to the EIA/RIMA elaborated for the said plant.

5.2.5 Media Program

The informative program about PLANAFLORO and the state's socio-economic and ecological zoning plan, outlined in Section 2.09 of the Project Agreement, was never implemented by the Government of Rondônia. Obviously, the annual revisions of this program, which were to be sent by November 15 of each year to the World Bank (according to the institutional reform program of PLANAFLORO) were also never realized.

Contrary to the requirements made in the contractual agreements of PLANAFLORO, the Government of Rondônia has disseminated distorted information in the media regarding the reality of the State. An example of this fact is the publicity entitled "Rondônia: The Frontier of Progress" that was

²⁹ Programa Decenal de Geração 1994/2003, Sistema Isolados das Capitais da Região Norte, Final Report, Cycle 1992/1993, Rio de Janeiro, ELETROBRÁS, December 1993.

published as a 16-page "Special Informative Bulletin" in a recent edition of "ISTO É", a national weekly magazine of wide circulation within the Brazilian business community. As an example of its contents, we cite a passage of the document that refers to PLANAFLORO:

In spite of its positive results, there are those who do not agree with the program for political reasons. "The implementation of PLANAFLORO was greatly delayed because of NGOs, who, for political opposition, pressured the World Bank to interrupt the program" says Governor Piana. "But fortunately we were able to overcome these obstacles."

The results are evident. The clearing of virgin forests, which in 1985 reached an unbelievable two million hectares -- an area which corresponds to two times the size of Belgium -- has now fallen to around 40 hectares (sic).

The existence of an informative program in the media is fundamental when considering the current level of misinformation among the general public about PLANAFLORO and the socio-economic and ecological zoning plan. Aside from the type of publicity cited above, this misinformation is due, in large part, to the declarations of politicians in the media. These politicians typically argue that: i) the state zoning legislation is a "straitjacket" which is impeding the development of the State, ii) the state zoning and its environmental concerns are impositions of the World Bank and iii) PLANAFLORO represents "too little money" for the government and businessmen to relinquish the "development" of the State.

5.3 Attempts to Alert the World Bank

Regarding the problems described above, various attempts were made to inform the World Bank, including:

1. The letter dated December 11, 1989, signed by Osmarino Amancio Rodrigues (Secretary of the National Council of Rubber Tappers) and Ailton Krenak (National Coordinator of the Union of Indigenous Nations), sent to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) and Armeane Choksi (Director, Brasil Department) of the World Bank (ANNEX 1.B), discussed the problem of road construction by governmental agencies, without regard for zoning legislation and environmental impact studies:

We know that the Machadinho-Tabajara road cuts across an area designated as zone 04, for extractive activities, and was just opened without the preparation of the legally required environmental impact study (RIMA).

2. Again, it worth noting the January 9, 1990 correspondence to Mr. E. Patrick Coady, World Bank Executive Director, in which 35 Brazilian and international NGOs (ANNEX 1.C) alerted that:

Currently, the project lacks specific measures and timelines that oblige the Brazilian Government to guarantee the proposed agro-ecological zones. For example, areas designated as extractive reserves are currently the site of road construction.

3. In the document signed by 19 non-governmental organizations from Rondônia, sent on February 22, 1990 to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) of the World Bank (ANNEX 1.D), it was stated that:

"...Within the state extractive forest of Rio Preto-Jacundá, a road linking the Machadinho and Tabajara settlement projects is being opened that would facilitate the invasion of the area by land speculators and logging companies..."

4. The document entitled "Open Letter" sent by the Forum of NGOs of Rondônia on 3/12/92 to the Executive Directors of the World Bank (ANNEX 3.A), it was stated:

The Karipuna (Indians) are...being threatened by the construction of BR-421, which would result in the reduction of their lands by 20 thousand hectares. Such a project, if executed, would bring grave consequences, not only for the Karipuna, but also to the isolated indigenous groups which inhabit this area, and furthermore would threaten the boundaries of the Lages and Uru-eu-wau-wau Indigenous Areas.

5. The problems cited above, involving investment and rural credit programs, the energy sector and road construction were all identified in the preliminary report of the Independent Evaluation Committee (IEC) in February 1994.

In this regard, it is worth noting that the document entitled "Record of the Meeting on Preliminary Impressions Pertinent to the Implementation of PLANAFLORO", realized on September 27, 1993, with the participation of members the IEC and a World Bank representative states the following:

"The Committee expressed its concerns with the publication of a road map by DER-RO, in 1993, which showed planned roads that would compromise the socio-economic and ecological zoning plan and various conservation and environmental preservation units. Although it is asserted that this map was published as a result of the depletion of an earlier version, and that it was based on the road plan from that period; the publication of this map is alarming in that it could be interpreted as a lack of official commitment from the Government of Rondônia to the state zoning plan, and in this manner, serve to encourage invasions and land speculation. The World Bank representative confirmed that shortly, the Government of Rondônia should present a new road plan, compatible with the recommendations of the state zoning plan, to be published shortly thereafter. This map should include the

limits of the various zones, as well as those of conservation units."

6. The problems described above, involving the state and federal level investment programs, were also communicated to the World Bank in the letter from the Forum of NGOs of Rondônia which was sent to the President and Executive Directors of the Bank on 6/15/94 (ANNEX 3.D).

5.4 Omissions of the World Bank

With regard to the problems involving the investment and media programs defined in the official documents of PLANAFLORO, we would like to point out the following omissions of the World Bank:

1. According to item 05 of the matrix of institutional reforms in PLANAFLORO ((IBRD 1992:52), joint evaluation with government agencies should be carried out by the supervision missions of the World Bank to review policies of economic incentives and needs to make these compatible with the recommendations of the state socio-economic and ecological zoning plan.

However, the existence of the problems identified above, with respect to rural credit, electrical energy and fiscal incentives demonstrate that such joint evaluations have not taken place in a satisfactory manner.

2. Considering the impact of the opening of new roads on the dynamic of frontier expansion in Rondônia, as well as the already mentioned problems of the new roads' incompatibility with the state zoning plan (see, for example, the letter from CNS and UNI, dated October 1989, ANNEX 1.B), the World Bank should have demanded the prior elaboration of a Master Road Plan (which would have served as a guide for municipal governments) as a pre-condition for disbursement of the road transport sector funds of PLANAFLORO. Strangely, the World Bank adopted this policy for the river transport sector (IBRD 1992:29, item 3.39), but not for investments in road transportation (in spite of their infinitely greater socio-environmental impacts).

It should be observed that the loan documents for PLANAFLORO did not define a time schedule for conclusion of the Master Road Plan for Rondônia. The Aide Memoire documents from the supervision missions of November 1992 (ANNEX 6.A) and September 1993 (ANNEX 6.B), also contain no schedules for submission of the Master Road Plan.

Only in the Aide Memoire document from the World Bank/MIR supervision mission of August 1994 (ANNEX 6.C) was there mention of this subject:

the mission was informed that the documents related to the Master Road Plan will be ready for the CNP (Normative Planning Commission) by August 22, and will be sent for revision to MIR and the Bank with the comments of the CNP by September 30, 1994.

MTR shall send to the Bank, by September 30, 1994, the investment plans of the federal agencies in Rondônia, principally of FNO, SUDAM, SUFRAMA, ELETRONORTE and others relevant to the management of PLANAFLORO.

Apparently, these commitments from the August 1994 aide memoire have not yet been fulfilled. It should be noted that in the Aide Memoire from the Bank's latest supervision mission (March-April 1995), there are no specific commitments related to the State Road Master Plan, fiscal incentives policies or investments in the energy sector, in contrast to the Aide Memoire of August, 1994.

3. In spite of the warnings made by NGOs and the Independent Evaluation Committee (IEC), the Bank's internal report entitled *Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation* (March 25, 1994) makes no comments about the problems identified above, involving state and federal investment programs (ANNEX 7.B).

4. In the case of the media program anticipated in the loan agreements for PLANAFLORO, there is no record of oversight by the World Bank, in the Aide Memoires of November 1992, September 1993 and August 1994 and April 1995, in spite of the lack of implementation of this activity by the Government of Rondônia.

5.5 Adverse Impacts on Local Populations

The present and potential adverse impacts of World Bank omissions, related to the lack of implementation of reforms in investment and media programs, as defined in PLANAFLORO's contractual agreements, are considerable.

The lack of oversight on the part of the Bank regarding the implementation of a Master Road Plan for Rondônia, to serve as a reference for the private and public sectors, has facilitated the opening of new roads without consideration for the zoning plan and other related environmental legislation. This fact has contributed to both environmental damage and social conflicts involving squatters, land speculators and traditional populations (as in the example of highway BR-421).

The lack of Bank supervision with regard to investment and fiscal incentive programs (FNO, SUFRAMA, etc.) has facilitated the continuation of investment policies and programs that contribute to environmental degradation, concentration of wealth and social conflict, with negative consequences for indigenous groups, rubber tappers, and small farmers.

Furthermore, the absence of a media program to improve public understanding and opinion about the state zoning plan and PLANAFLORO has also resulted in adverse impacts on local populations and the environment.

VI. Support to Indigenous Communities

6.1. Planned Actions in PLANAFLORO

According to the World Bank's Staff Appraisal Report, the principal actions of the indigenous component of PLANAFLORO should include: a) the demarcation of five indigenous reserves with a total area of 500,000 hectares; b) renewal of sections of the boundaries of another twelve reserves; c) identification of isolated indigenous groups and the possible demarcation of fourteen more indigenous areas; d) improvements in health programs serving indigenous populations, including use of mobile health teams (equipes volantes de saúde - EVS); e) improvements in the protection of indigenous areas, including support of the Forest Police; and f) creation of a joint FUNAI-Government of Rondônia team to improve monitoring of problems in indigenous communities.

According to Section 3.06 of the Loan Agreement, the obligations of the Brazilian Government with regard to the indigenous component of PLANAFLORO include: a) registration with the "Property Department of the Union" (Departamento de Patrimônio da União - DPU) of the Pacaas Novos, Roosevelt, Tubarão Latundê and Uru-eu-wau-wau Amerindian reserves, as well as registration of these reserves with local land registries in Rondônia, and b) the transfer, assignment or allocation, by December 31, 1992, of health staff necessary for the efficient carrying out of the health care of the Indigenous Population under part C.1 (d) of PLANAFLORO.

6.2 Evidence of Deviations/Omissions of the World Bank

Initially, the following aspects of the World Bank Operational Directive on Indigenous Peoples (OD 4.20, September 1991) should be noted:

- OD 4.20 emphasizes the importance of "informed participation" by indigenous populations in projects financed by the Bank. Among other measures, this participation should include direct consultations to identify local preferences, incorporation of indigenous knowledge into project approaches, and appropriate early use of specialists experienced with indigenous populations.

- OD 4.20 states there should be mechanisms to ensure the participation of indigenous populations in decision making throughout the process of planning, implementation, monitoring and evaluation of projects, including their representative organizations;

- According to OD 4.20, in projects financed by the World Bank, a culturally-appropriate "Indigenous People's Development Plan" should be prepared. This plan must be based on full consideration of the interests of indigenous populations,

incorporating local patterns of social organization, religious beliefs and resource use.

- The components of a development plan can include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, entitlement to natural resources and education.

- The development plan should support production systems that are well adapted to the needs and environment of indigenous peoples.

- The indigenous people's development plan should avoid creating or aggravating the dependency of indigenous people on project entities. Planning should encourage early handover of project management to local people. As needed, the plan should include general education and training in management skills for indigenous people from the onset of the project.

- All possible measures should be taken to guarantee that government agencies possess the institutional capacity to execute the project in a satisfactory manner, especially in terms of financial capability and adequacy of experienced professional staff.

- The government's commitments toward implementing the indigenous peoples development plan should be reflected in the loan documents; legal provisions should provide Bank staff with clear benchmarks that can monitored during supervision missions.

With regard to the indigenous component of PLANAFLORO, we point out the following examples of non-compliance with the contractual agreements of the project and the World Bank's operational directive on indigenous peoples (OD 4.20):

1. Within PLANAFLORO, an "indigenous peoples' development plan" was not elaborated as stipulated in the Bank's operational directive (OD 4.20). In the elaboration of PLANAFLORO, there were many deficiencies in terms of guaranteeing direct consultations at the level of indigenous villages and indigenous organizations, aimed at securing their "informed participation".

2. The problem described above has manifested itself in the absence in the original design of PLANAFLORO of specific activities that should have been included in an "indigenous peoples' development plan" including: economic alternatives, productive infrastructure, cultural and linguistic preservation, nutrition, education, etc.

3. The financial resources allocated to the sub-component "Support for Indigenous Communities" were clearly underestimated in the budget of PLANAFLORO. It is worth noting that the indigenous peoples sub-component of PLANAFLORO was allocated US\$3.9 million (1.7% of the total project budget) while funds for the road and river transport reach a total of US\$56.9 million (24.9% of the total budget of PLANAFLORO).

The funds allocated for the indigenous sub-component are insufficient for the activities initially anticipated in PLANAFLORO (demarcation, renewal of boundaries, indigenous health, etc.). Not surprisingly, such limited funds do not meet the other demands of local populations (education, economic projects, etc.) It is estimated that the US\$3.9 million of the indigenous sub-component of PLANAFLORO will be entirely spent by the end of 1995, implying the paralyzation of project activities in 1996.

4. Although the indigenous populations of Rondônia, through their organizations and communities, have on various occasions demands (verbally, during Bank supervision missions) the allocation of funds for funding a sub-project in indigenous education, this was never concretized. On the contrary, this subject has been neglected by the World Bank, as demonstrated by the lack of references to indigenous education in the Staff Appraisal Report and the Aide Memoires of various supervision missions.

5. As a result of demands by indigenous and support organizations, funds were negotiated in PLANAFLORO for the financing of community projects in economic alternatives. However, there has been a lack of rigorous criteria in the elaboration and selection of these projects.

Initially, the few projects analyzed originated only from villages where the commercialization of timber is taking place, to the detriment of other communities. In many cases, projects were elaborated essentially by government technicians (EMATER, FUNAI, SEDAM) without the participation of communities and specialists in indigenous cultures.

Another fact that is criticized by the Indians is that projects in economic alternatives were not analyzed by the Indigenous CNP (sectoral planning commission) of PLANAFLORO. Rather, they were submitted directly to the World Bank for analysis, disrespecting the structure for discussions and approval for all projects implemented through PLANAFLORO. It is worth noting that to date, no funds have been released for these community projects, which has both caused harm and contributed to a disbelief with regard to PLANAFLORO among indigenous populations.

6. In contrast to the guidelines established in OD 4.20, several critical activities in the indigenous sub-component of PLANAFLORO are not listed as government commitments in the loan documents; as in the case of the demarcation and protection of indigenous areas.

7. There does not yet exist a strategy to guarantee the participation of indigenous peoples and their representative organizations in the monitoring of PLANAFLORO's activities. As shown in Chapter VII, this fact is indicative of a larger problem within the monitoring system of PLANAFLORO.

8. In the preparation and initial execution of PLANAFLORO, the World Bank did not adequately follow either the guidelines set out in OD 4.20, with regard to ensuring institutional capacity of executing agencies, especially FUNAI. This problem is also relevant to the Bank's operational directive on Project Supervision (OD 13.05, see Chapter VII). Evidence of this problem includes:

a) the failure to demarcate five indigenous areas considered priorities (Sagarana, Rio Guaporé, Rio Mequens, Karipuna and Massaco) in the first year of project execution;

b) suspension of the demarcation of the Rio Mequens Indigenous Area, as a result of delays in allocating funds resources to the Army, as well as political pressures;

c) the failure to resolve land tenure problems in the Uru-eu-wau-wau Indigenous Area, which has impeded its official registration in the DPU, as anticipated in the loan agreements for PLANAFLORO;

d) the delays of more than two years in the contracting of specialized personnel necessary to implement the indigenous health component of PLANAFLORO (especially the mobile health teams). Moreover, the contracting of personnel through the UNDP does not represent a long-term solution to this problem.³⁰

In December 1994, FUNAI requested agreement from the World Bank on authorizing the administration of funds from the indigenous sub-component directly between the Ministry of Planning and Budget (MP), Bank of Brazil and FUNAI, while maintain recognition of decision-making bodies at the state level (CNPBs, State Deliberative Council). The objective would be to reduce bureaucratic procedures that have caused delays in the release of funds to FUNAI, causing enormous problems for the implementation of PLANAFLORO. FUNAI is still awaiting a response from the World Bank on this subject.

9. In 1991, through "Operation Flora Viva", various state and federal agencies, together with NGOs, carried out enforcement activities in various conservation units, including indigenous areas (such as the Mequens and Uru-eu-wau-wau reserves).

However, there does not yet exist a coherent strategy for guaranteeing the protection and enforcement of Indigenous Areas and other conservation units (see also Chapter IV). In PLANAFLORO, one observes major expenses with sporadic operations that are poorly planned and lack continuity, with little practical impact. Meanwhile, there is a persistence of institutional disarticulation between government agencies (IBAMA, SEDAM, FUNAI, PMF), along with policies of environmental

³⁰ It should be mentioned that in the planning of indigenous health activities in PLANAFLORO, it was anticipated that health services would be focused mainly at the village-level. Other measures would include the creation of mobile health teams and the training of Indians as health monitors. Unfortunately, only activities related to the mobile health teams have been carried out, and in a precarious fashion.

licencing that encourage illegal acts of resource exploitation within indigenous areas (see chapter IV).

6.3 Attempts to Alert the World Bank

In relation to the problems mentioned above, the following attempts to alert the World Bank should be noted:

1. In a letter dated December 11, 1989, signed by Osmarino Amancio Rodrigues (Secretary of the National Council of Rubber Tappers) and Ailton Krenak (National Coordinator of the Union of Indigenous Nations), sent to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) and Armeane Choksi (Director, Brasil Department) of the World Bank (ANNEX 1.B); the following demands were made:

...that the Bank not negotiate this project with the government while local communities and their organizations (the National Council of Rubber Tappers, the Union of Indigenous Nations, local unions, associations of small producers) are not informed of the content of the project and its purposes, given that these entities have yet had any participation in the project;

...that a date be set, with an deadline to convene all of these organizations to carry out a discussion of the project, where the groups can propose changes and additions to the project;

...that the indigenous areas that were, during the POLONOROESTE project, to be demarcated and regularized and that were not, and new areas for more remote groups of Rondônia, all be regularized before the liberation of any funds.

6.4 Adverse Impacts on Local Populations

In this chapter, we argue that the World Bank is co-responsible for various problems in the design and initial implementation of the indigenous sub-component of PLANAFLORO, especially with regard to: a) deficiencies in the planning of the sub-component, in terms of the "informed participation" of indigenous peoples, elaboration of an "indigenous peoples' development plan" (as stated in OD 4.20) and in the adequate dimensioning of financial resources, b) insufficient analysis of problems and necessities related to the institutional capacity of executing agencies and the administration of financial resources, and c) insufficient attention to the problems of environmental licensing and enforcement, which have compromised the activities of PLANAFLORO (see Chapter IV).

The facts described in this chapter, in which we have noted omissions on the part of the World Bank, have resulted in serious damage to indigenous communities in Rondônia. The obstacles to the implementation of planned activities in demarcation, border renewal, and protection of indigenous areas have facilitated invasions by loggers, miners, land speculators

and unscrupulous entrepreneurs, causing serious damage to the environment and to indigenous peoples. In this regard, we point out the invasions associated with delays in the demarcation of the AI Mequens, the creation and demarcation of the AI Karipuna, and in the registry in the DPU of the AI Uru-eu-wau-wau.

With regard to issues of health, education and economic alternatives in the indigenous sub-component of PLANAFLORO, the problems described above have led to harm in relation to the quality of life of indigenous peoples in Rondônia. For example, the lack of medical attention has already had repercussions in the Uru-eu-wau-wau reserve, where three disease-related deaths have already been recorded in 1995.

VII. Project Administration

The component for project administration in PLANAFLORO anticipated such activities as the structuring of a project coordination unit, consultancies and technical assistance, monitoring and evaluation. With respect to this component of PLANAFLORO, we would like to point out the following examples of non-compliance and omissions on the part of the World Bank:

7.1 Popular Participation

According to the operational directive entitled "NGO Involvement in World Bank-Supported Activities" (OD 14.70, August 1989), the Bank recognizes the importance of NGO participation in strategic areas such as analysis of public policies and development problems, identification of projects, conception and elaboration of projects, implementation of projects and finally, monitoring and evaluation activities.

In item 11, OD 14.70 further states that:

Staff should be responsive, and encourage governments to be responsive, to NGOs that request information or raise questions about Bank-supported activities.

In contrast to this operational directive, the process of elaboration of PLANAFLORO by government staff and World Bank consultants, was characterized by a lack of effective participation of organized civil society, especially the representatives of the project beneficiaries (rubber tappers, riverine populations, small-farmers, indigenous communities).

There is a long history of demands made by NGOs and social movements about the necessity of guaranteeing effective popular participation in PLANAFLORO. This history was registered in various documents sent to the World Bank, including: a) the letter by Chico Mendes to Mr. Barber Conable, President of the World Bank, on October 13, 1988 (ANNEX 1.A); b) the letter from the National Council of Rubber Tappers and the Union of Indigenous Nations to the World Bank, dated December 11, 1989 (ANNEX 1.B); c) the letter signed by 35 Brazilian and international NGOs, sent to Mr. E. Patrick Coady, an Executive Director of the World Bank on January 9, 1990 (ANNEX 1.C); d) the letter signed by 19 NGOs from Rondônia, sent on February 22, 1990 to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) of the World Bank (ANNEX 1.D).

Initially, rather than accepting a dialogue with NGOs about alternatives for popular participation in PLANAFLORO, the World Bank and the Government of Rondônia were defensive, trying to discredit such criticisms (see, for example, ANNEX 1.E).

It was only possible to come to an agreement regarding the official participation of NGOs in PLANAFLORO on the occasion of the signing of a "Protocol of Understanding" between the Government of Rondônia and NGOs in June 1991 (ANNEX 2). In this

agreement, spaces for the institutional participation of NGOs were guaranteed in the activities of project planning, monitoring and evaluation, as well as on the Deliberative Council--the highest-level decision making body at the state level. Furthermore, the Government of Rondônia committed itself to taking a series of emergency measures aimed at protecting the environment and territories occupied by traditional populations.

As publicly denounced by the Forum, the vast majority of commitments assumed by the Government of Rondônia in the "Protocol of Understanding" were never fulfilled, including the items referring to popular participation. This situation was communicated to the World Bank through various correspondences, such as: a) the "Open Letter" from the Forum of NGOs of Rondônia, sent on 3/12/92 to the Executive Directors of the World Bank (ANNEX 3.A); b) the memorandum elaborated by the Forum and submitted to Mr. Luis Coirolo of the World Bank, on 5/12/92 (ANNEX 3.B); and c) the letter from the Forum to the President and Executive Directors of the World Bank on 6/15/94 (ANNEX 3.D).

It was only in August 1994 that a supervision mission of the World Bank took more concrete measures to promote the re-evaluation of the administrative model of PLANAFLORO, including the aspects of popular participation. Even so, the great majority of the problems identified in the Forum's letter from June 1994 have not yet been resolved.

It should be noted that in item 17 of OD 14.70, the Bank asserts that:

"When the participation of NGOs is probable, the Executive Project Brief should indicate their role; and the Project Brief and staff appraisal report should, if appropriate, mention the relevant NGOs and their relation to the project, as well as describe the agreements reached with the Government and NGOs, with respect to NGO participation in projects that affect large groups of low-income populations"

In this regard, it is strange to note that the "Protocol of Understanding" of June 1991 was not mentioned in the Staff Appraisal Report for PLANAFLORO (issued in February 1992). This document only mentions NGO participation with regard to the State Deliberative Council (p. 31) and the Independent Evaluation Committee (p. 43). It should be noted that in the memorandum to Mr. Luis Coirolo of the World Bank, dated May 12, 1992 (ANNEX 3.B), the Forum argued that:

It is necessary that the agreements included in the Protocol of Understanding be included in the official documents of PLANAFLORO, which are soon to be signed in Washington.

We believe that the Government of Rondônia's failure to comply with the commitments made to the NGOs can be explained, at least in part, by the lack of reference to the "Protocol of

Understanding" of June 1991 in the official documents of PLANAFLORO.

7.2 Supervision

With respect to the supervision of PLANAFLORO by the World Bank, given the Bank's operational directive on this subject (OD 13.05), the following points should be noted:

1. As evidenced by the facts presented in this document, we assert that the Bank failed to adequately implement the directives of OD 13.05, in the areas of:

-ensuring that the borrower implements the project with due diligence to achieve the agreed development objectives and in conformity with the loan agreement;

-identifying problems promptly as they arise during implementation and helping the borrower resolve them;

-monitoring compliance with the legal agreements and, where conditions are not being fulfilled, determining the causes and the best means for remedying the situation.

2. According to OD 13.05, the Bank should not initiate loan disbursements until all conditions of effectiveness are fulfilled. In this regard, the declaration of effectiveness of loan BR-3444 in January 1993, prior to the signing of the agreement between INCRA and the Government of Rondônia, as stipulated in Section 2.12 (a) of the Project Agreement and Section 6.01 (b) of the Loan Agreement, constituted a violation of OD 13.05.

3. Until recently, the World Bank supervision missions have maintained very sporadic contact with non-governmental organizations in Rondônia. During supervision missions, Bank staff have generally dedicated the majority of their time to negotiations with executing agencies; in some cases undermining the ongoing discussions in the CNPs (Normative Program Commissions) as well as the decision-making power of the State Deliberative Council.

4. As described above, it should be emphasized that the problems related to the failure to implement the Institutional Reform Program and the incompatibility of public policies with the directives of the state zoning legislation and PLANAFLORO have not received due attention during the Bank's supervision missions.

5. Another particularly grave aspect of the Bank's behavior in the supervision of PLANAFLORO relates to the flaws in the elaboration of internal reports ("Reporting"), a duty under the principal responsibility of the Task Manager.

Considering the directives of OD 13.05, which discuss the methods and criteria for periodic preparation and updating of Form 590 (the principal instrument of information for the superior levels of the Bank), it can be concluded that an

improper act was committed when the internal Bank report entitled *Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation (3/25/94)* conceded a rating of "2" to the execution of PLANAFLORO. Consequently, this report contributed to disguising from the Executive Directors problems identified the implementation of PLANAFLORO, such as those enumerated by the Independent Evaluation Committee.

7.3 Monitoring

According to the World Bank operational directive on Project Monitoring and Evaluation (OD 10.70, September 1989), monitoring activities should receive special attention in projects such as PLANAFLORO that are innovative or complex from the institutional point of view. Furthermore, OD 10.70 determines that these activities require regular contact with the beneficiary population and that, in cases where there is an unexpected reaction on the part of the beneficiaries, those responsible for the project should conduct a diagnostic study to identify necessary corrective actions.

According to Section 2.05 (b) of the Project Agreement, "the Government of Rondônia must, by no later than December 31, 1992, complete the revision and simplification of all project performance indicators and all operating procedures of the Monitoring and Evaluation Unit, and make the new system function in a manner which is satisfactory to the Bank".

The problems with PLANAFLORO's monitoring system were communicated to the World Bank in a series of correspondences from non-governmental organizations in Rondônia. For example, in its "Open Letter" dated 3/12/92, sent to the Executive Directors of the World Bank (ANNEX 3.A), the Forum informed the Bank that:

Mechanisms for the participation of NGOs in the monitoring and evaluation of PLANAFLORO have not yet been defined.

In the letter sent by the Forum to the World Bank in June 1994 (ANNEX 3.D), the monitoring system adopted in PLANAFLORO was again questioned:

In the current administrative model of PLANAFLORO, there does not exist an effective monitoring strategy to accompany the execution of PLANAFLORO.

Initially, it should be observed that the objectives and goals which make up the great majority of the POAs are extremely vague, which makes the definition of monitoring indicators difficult. The monitoring reports elaborated by the executing agencies and Executive Secretariat of PLANAFLORO do not present sufficient information, from the quantitative and qualitative points of view, to allow the project's execution to be accompanied closely. The trimestral monitoring reports are organized by the executing agency, without any systematic reference to each sub-component and executive project. In the current

monitoring system, there is no way to verify up to what point the execution of the projects is compatible with the actions outlined in the POAs and in the analyses written by the CNPs (and later approved by the Deliberative Council).

It should be noted that to date, no strategy has been defined for the participation of NGOs, especially those organizations representing project beneficiaries, in the monitoring of PLANAFLORO.

Considering these statements, it can be affirmed that various guidelines of OD 10.70 (Project Monitoring and Evaluation) and of OD 14.70 (Involvement of NGOs), in addition to the contractual conditions of PLANAFLORO, were not complied with during the execution of the project. Only after being pressured did the World Bank, in August 1994, take more concrete measures to resolve this impasse. Even so, the problems related to the monitoring system of PLANAFLORO have not yet been dealt with adequately.

7.4 Independent Evaluation Committee

According to Section 2.08 of the Project Agreement, the Government of Rondônia must convene annually an Independent Evaluation Committee (IEC), including the participation of NGO representatives, to analyse the implementation of the environmental policy and regulatory reforms undertaken in connection with PLANAFLORO, the compatibility of investment programs with the state's socio-economic and ecological zoning, and the performance achieved in each of the various project components. By June 30 of each year, the Government of Rondônia should present the findings of the Independent Evaluation Committee to the Bank for its review and comment.

The first "Independent Evaluation Committee" was convened in September 1993, with the participation of four representatives of government institutions and four non-governmental organizations. In February 1994, the IEC presented a preliminary evaluation report. On March 16, 1994, upon the solicitation of the World Bank, a final version of the Executive Summary of the evaluation report was submitted to the Bank.

However, until the present date (more than two years after the initiation of loan effectiveness) the final evaluation report of the IEC has not been officially submitted. This fact resulted from a blocking of logistical support and financial resources by the Executive Secretariat of PLANAFLORO during 1994, as well as political pressures to "soften" the contents of the IEC report.

During a considerable period, there was no oversight by the World Bank with respect to submission of the final report of the IEC. In other words, the World Bank did not require compliance of the Government of Rondônia with Section 2.08 of the Project Agreement.

As previously described, in the internal Bank report entitled *Brazil: Rondônia and Mato Grosso Natural Resource*

Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation, signed by Mr. Shahid-Javed Burki, Vice President of Operations for Latin America and the Caribbean (March 25, 1994), one observes an attempt to "soften" the contents of the IEC report, to the point of provoking distortions in its contents. Moreover, the Bank's report affirms that:

The report (of the IEC) will be discussed with the Government, and will be the subject of various seminars and workshops with state authorities in the next few months.

Unfortunately, no such seminars and workshops were ever held, due to a lack of interest of the part of the Government of Rondônia. Nor was the preliminary report of the IEC discussed in any decision-making forum of PLANAFLORO (CNPs, Deliberative Council, etc). These facts and the impediments which made inviable the submission of the IEC's final report (which amounts to non-compliance with Section 2.08 of the Project Agreement) were not communicated to the Executive Directors by the operational staff of the Bank.

In conclusion, the omissions of the World Bank with regard to enforcement of Section 2.08 of the Project Agreement have contributed to obstruct the process of project evaluation in PLANAFLORO (one of the main mechanisms of "quality control" in the project). Clearly, these facts contrast with the Bank's operational directive on Project Monitoring and Evaluation (OD 10.70).

7.5 Procurement

In the process of the prequalification of firms for the procurement of studies associated with the second approximation of the socio-economic and ecological zoning plan, one may observe violations of the procedures outlined in OD 13.05 (Project Supervision) and OD 11.00 (Procurement).³¹

We refer initially to an internal World Bank Memorandum from March 28, 1994 (ANNEX 7.C), regarding a meeting held in Washington, D.C. on March 15 of that year. In a visit to the World Bank, representatives of the Government of Rondônia were actively striving to obtain a "no objection" from the Bank in the prequalification of firms for the procurement of studies for the second approximation of the state zoning plan.

³¹ We point out that the arrangements of paragraph 14(b) of Resolution 93-10 of the Executive Directors of the World Bank, establishing the Inspection Panel, do not apply to the issues mentioned here for the following reasons:

1) the complaint regarding violations is not about a procurement decision made by Borrowers of the Bank, but about the failure to supervise the procurement procedures and implement other Bank rules;

2) the complaint is not being presented by suppliers of goods and services, nor by losing tenderers for the supply of any such goods and services.

In the cited memorandum, two World Bank staff members related to their superiors their knowledge of irregularities committed by the Government of Rondônia in the prequalification of firms for the said procurement, which made this process incompatible with the internal directives of the Bank. The memorandum recorded that this problem had been confirmed by a financial specialist of the Bank. In short, it demonstrated evidence that the Government of Rondônia had used questionable methods to disqualify various firms from the competition, while favoring a certain firm with strong political support.

According to the World Bank's directives, borrowers should be informed of Bank decisions regarding procurement documents within one week after these documents are received by the Bank (and in complex cases, within ten working days).

Furthermore, according to paragraph 82 of OD 11.00,

*when the Bank determines (inter alia)...that judgements exercised in the process are not reasonable and fair, the Bank should point this out to the Borrower and advise that, if not rectified, the Bank may declare misprocurement.*³²

Rather than responding punctually regarding the problems identified in the prequalification phase, the Bank spent several months without issuing an official response to the Government of Rondônia. Apparently, such "timidness" of the Bank was motivated by the possibility of "embarrassments" which news regarding irregularities in the procurement of the state zoning studies could cause the Government of Rondônia during an election year.

This situation was confirmed in another internal memorandum dated June 6, 1994, sent by the local representative of the World Bank to Washington (ANNEX 7.D). In this memorandum, it is recorded that the Governor of Rondônia had personally telephoned the local representative of the Bank, complaining about the delays in procurement for the zoning plan and consequently, in the disbursement of funds for the infrastructure component of PLANAFLORO (as a result of the "pari-passu" policy of the Bank). In this phone call, the Governor of Rondônia threatened to cancel the project if this problem was not "resolved" immediately.

³² According to the World Bank's internal directives (OD 13.05 and OD 11.00) the principal responsibility for the monitoring of procurement procedures lies with the Task Manager, who guides the decisions (including those about misprocurement) made in the superior administrative fora of the Bank.

We emphasize that OD 13.05 establishes that "special efforts shall be made during supervision to a) inform country representative about the Bank's rules and procedures for procurement, and b) when necessary, improve procurement procedures and measures for greater efficiency and effectiveness of implementation". This last arrangement is reinforced by OD 11.00, which in paragraph 83 establishes that "all efforts shall be made to avoid misprocurement, supplying commentary and consultation..."

Rather than follow its own internal directives, with an aim at correct errors and "improve procurement procedures and measures for greater efficiency and effectiveness of implementation" (OD 11.00), the World Bank initially waited several months to reply to the Government of Rondônia. Afterwards, the Bank accepted a "gentlemen's agreement" which readmitted companies that had been disqualified, without the formal carrying out of a new judgement by the Government of Rondônia.³³

7.6 Independent Auditing

According to Section 3.01 (a) of the Project Agreement, the Government of Rondônia should present to the Bank at the end of each fiscal year the results of an independent audit of the project expenses. To date, such a financial audit of PLANAFLORO has not been carried out.

7.7 Use of Consultants

In the preparatory phase (1993-95) of the Technical Cooperation Project in PLANAFLORO, carried out in conjunction with UNDP, we have observed a series of irregularities in the contracting of consultants (many of which are public employees already involved with the project), without the due carrying out of a competitive selection process. The collusion of the World Bank in this process constitutes a violation of its operational directive on the use of consultants (OD 11.10), where rigorous measures are defined to guarantee the maintenance of technical criteria in the selection of individuals and firms for consulting services.

7.8 Suspension of Disbursements

The conditions outlined in the General Conditions of the World Bank (item.6.02), within OD 13.40, and in article V of the PLANAFLORO Loan Agreement define the cases and procedures in which the Bank can and/or should activate mechanisms related to the suspension of disbursements.

The Loan Agreement of PLANAFLORO includes a list of possible situations in which suspension of disbursements would be justified, in addition to those established by the General Conditions. These situations include: 1) if the Government of Rondônia shall have failed to perform any of its obligations under the Project Agreement, 2) if the state zoning legislation shall have been amended, suspended or modified in its essence and 3) if the Borrower (Brazilian Government) or the Government of Rondônia shall have amended the Reform Program or taken any other action or failed to take any action so as to affect, materially and adversely, their ability to carry out the project.

³³ During the first semester of 1995, there were also significant delays in the Bank's response on the final stage of selection of the firm that will carry out the studies for the second approximation of the state zoning plan.

Considering the facts described in this document and the directives of OD 13.40 (Suspension of Disbursements), the World Bank should have activated the mechanisms for the suspension of disbursements for PLANAFLORO, using the following list of successive actions:

a) If the Bank determined that failure of compliance with the loan agreements was motivated by temporary problems and the borrower agreed to resolve them rapidly, an informal suspension could be used, after a written warning to the Borrower. Such a suspension would last for a period of sixty days, affecting only those components identified by the Bank as relevant. During this time period, the Borrower could take measures necessary to guarantee the continuity of the project.

b) If the problem persisted, the Bank could transform the informal suspension into a formal suspension, without affecting the validity of the contractual conditions of the loan. In any event, the components not subject to the suspension would continue to receive funding.

c) If attempts failed to ensure compliance in the previously cited stages, the Bank could implement a general suspension of loan disbursements. Even in this case, the contractual agreements of the project would continue to apply.

We conclude that the World Bank, contrary to its own operational directives, failed to use one of the principal legal instruments at its disposal to ensure compliance with the contractual agreements of PLANAFLORO.

7.9 Adverse Impacts on Local Populations

The problems described above, involving omissions of the World Bank in the compliance with PLANAFLORO's contractual agreements and the Bank's own operational directives, have caused a series of adverse effects for the beneficiaries of PLANAFLORO.

The failures of the Bank identified in this chapter, related to the project's monitoring, evaluation and supervision activities, impeded the timely undertaking of corrective measures which could have minimized the social conflicts and problems of environmental degradation that were aggravated over the course of time.

With regard to the deviations in procurement procedures pointed out above, it should be remembered that the studies for the second approximation of the state's socio-economic and ecological zoning constitute a fundamental aspect of PLANAFLORO, including as a means to ensure implementation of other project components. In this sense, it can be argued that delays in the detailing of the zoning plan have contributed to the aggravation of social conflicts and environmental damage.

VIII. Conclusions

Considering the facts presented in this document, we request that the INSPECTION PANEL proceed with an investigation of the errors committed by the World Bank in the implementation of PLANAFLORO (as well as other errors eventually identified), in light of the rules applicable in this procedure of inspection, independently of their explicit citation in the course of this text.

We believe that it is essential to investigate the motives that led the World Bank, during a significant period in the preparation and initial execution of PLANAFLORO, to surprising omissions with respect to necessities for compliance with the project's contractual agreements and the implementation of the Bank's own operational directives. In this regard, we believe that it is especially relevant to investigate the omissions of the World Bank in relation to the following issues, as described in the present document:

a) the lack of enforcement by the World Bank with respect to implementation of reforms in public policies and the formalization of agreements between executing agencies, as anticipated in the official documents for PLANAFLORO; particularly with regard to land tenure policy, environmental licensing, institutionalization of the socio-economic and environmental zoning, state conservation units, and investment and fiscal incentive policies. In this sense, in addition to neglecting the contractual agreements of PLANAFLORO, the World Bank has not adequately implemented its operational directives in Forestry (OP 4.36) and Wildlands (OP 11.02);

b) the lack of an adequate analysis, on the part of the World Bank, of the enormous deficiencies in technical capacity of the executing agencies of PLANAFLORO (such as SEDAM, ITERON, FUNAI and IBAMA), as well as corrective measures to minimize these problems. In addition, despite the World Bank's recent statements concerning the importance of "ownership", we argue that the Bank failed to conduct an adequate evaluation of the political commitment of government agencies to the objectives and goals of PLANAFLORO. Such problems have represented the most important obstacle to project implementation. Such practices contrast with various operational directives of the World Bank, including: Indigenous Peoples (OD 4.20), Forestry (OP 4.36), and Investment Lending (BP 10.00, Annex D).

c) in the activities of supervision, the lack of enforcement by the World Bank in ensuring implementation by government agencies of various actions outlined in the staff appraisal report, loan agreements, and Aide Memoires from previous supervision missions. Such practices contrast with the Bank's operational directives on project supervision (OD 13.05) and in some cases, suspension of disbursements (OD 13.40).

d) the lack of orientation and enforcement, on the part of the World Bank, of activities in monitoring and evaluation that were anticipated in the official documents of PLANAFLORO, in contrast to the operational directive on project monitoring and evaluation (OD 10.70);

e) the difficulties in guaranteeing a flux of up-to-date and accurate information on project progress in PLANAFLORO between operational staff and the Executive Directors of the World Bank, in contrast to the operational directive on project supervision (OD 13.05) and other internal procedures, including the recommendations of the "Wapenhans Report";

f) the omissions of the World Bank in the design and implementation of the component "Support for Indigenous Communities" of PLANAFLORO in relation to the Bank's operational directive on indigenous peoples (OD 4.20) and the official project documents.

g) the lack of implementation of World Bank procedures in the activities of procurement (OD 11.00) and use of consultants (OD 11.10), as well as the carrying out of an independent audit of annual project expenses, as defined in the contractual agreements of PLANAFLORO.

h) the omissions of the World Bank, with regard to implementation of measures to ensure the effective participation of civil society in PLANAFLORO, as defined in the operational directive on involvement of NGOs in Bank-supported activities (OD 14.70).

In the past several years, the organizations that today compose the Forum of NGOs and Social Movements of Rondônia, as well as other NGOs and leaders of social movements, have made various attempts to alert the World Bank about the problems described in this document. However, almost all of the correspondences sent by NGOs from Rondônia never received a response from the World Bank (as in the case of the documents included as annexes 1.A, 1.B, 1.C, 3.A, 3.C, and all of the documents in annexes 04 and 05).³⁴

Unfortunately, the World Bank only assumed a firmer stance when pressured by public opinion, after having received a letter from the Forum dated June 15, 1994, addressed to the President and Executive Directors of the Bank (ANNEX 3.D). On this occasion (August 1994), the Bank sent a supervision mission that, nonetheless, did not result in adequate measures being

³⁴ It is worth noting that the failure of the Bank to respond to various correspondences sent by NGOs and leaders of social movements conflicts with item 11 of OD 14.70, which asserts that:

Staff should be responsive, and encourage governments to be responsive, to NGOs that request information or raise questions about Bank-supported activities.

taken to address the problems identified in the present document.

We conclude that in the preparation and initial execution of PLANAFLORO, the interests of ensuring the approval of the loan and the liberation of financial resources (both in governmental spheres and in the World Bank itself) prevailed over the necessity of guaranteeing the effective implementation of the project, in accordance with the contractual agreements and operational directives of the Bank.

We hope that this Panel and the Executive Directors of the World Bank will recognize the necessity of analyzing the motives that led to serious omissions of the Bank and consequent damage to local populations and the environment, as well as to Brazilian society in general, and will determine an investigation as soon as possible, instead of postponing such an exercise for an "ex-post" project evaluation. Such an investigation would greatly contribute to the resolution of ongoing problems in the execution of PLANAFLORO, and more importantly, to efforts at avoiding the repetition of similar problems in other projects supported by the Bank.

Finally, we remain at the disposal of this Panel to provide any additional information that may become necessary. We kindly request to informed of communications on this subject between the Inspection Panel, Executive Directors and Operational Staff of the World Bank, with copies of all correspondences sent to the office of the Forum of NGOs and Social Movements in Rondônia.

Sincerely,

Annexes are available upon request from the Inspection Panel.

IX. List of Annexes

ANNEX 01: Correspondence between NGOs and the World Bank Prior to the Approval of the PLANAFLORO Loan (1988-1990)

a) Letter from Francisco "Chico" Mendes of the National Council of Rubber Tappers (CNS) sent to Mr. Barber Conable, President of the World Bank (October 13, 1988);

b) Letter dated December 11, 1989, from Osmarino Amancio Rodrigues (CNS) and Ailton Krenak (Union of Indigenous Nations -- UNI) addressed to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) and Armeane Choksi (Director, Brasil Department) of the World Bank;

c) Letter dated January 9, 1990, signed by 35 Brazilian and international non-governmental organizations, sent to Mr. E. Patrick Coady, an Executive Director of the World Bank;

d) Document signed by 19 non-governmental organizations from Rondônia to Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) of the World Bank, with cover letter from the Environmental Defense Fund (EDF), dated February 22, 1990;

e) Letter from Mr. Shahid Hussain (Vice President for Latin America and the Caribbean) of the World Bank to Mr. Frank E. Loy, President of the Board of Directors of the Environmental Defense Fund (EDF), dated March 5, 1990;

f) Letter from Raimundo Ramos Leitão, President of the Association of Soldiers of Rubber and Rubber Tappers of Ariquemas, to Mr. Barber Conable, President of the World Bank, dated April 25, 1990.

ANNEX 02: Protocol of Understanding signed by the Government of Rondônia and NGOs on June 20, 1991

ANNEX 03: Correspondence Sent by the NGO Forum of Rondônia to the World Bank (1992-1994)

a) "Open Letter" to the Board of Directors of the World Bank, dated March 12, 1992;

b) Memorandum to Mr. Luis Coirolo of the World Bank, dated May 12, 1992;

c) Letter to the Central Forestry Unit of the World Bank, dated May 16, 1994;

d) Letter to the President and Executive Directors of the World Bank, dated June 15, 1994;

ANNEX 04: Correspondence sent by local NGOs to the World Bank

a) Official Letter (Ofício) no.19/93 from ECOPORE, dated March 9, 1993, addressed to the Governor of Rondônia, SEDAM, ITERON and Forest Police;

b) Letter from the Rondônia Rubber Tappers Organization (OSR) and ECOPORE, dated April 26, 1993, addressed to the Secretariat for Environmental Development of Rondônia (SEDAM-RO);

c) Official Letter no. 042/93 from ECOPORE, dated April 27, 1993, addressed to the President of INCRA;

d) Official Letter no. 048/93 from ECOPORE to Francesco Vita, representative of the local office of the World Bank in Cuiabá (Mato Grosso State), dated May 04, 1993;

e) Letter from OSR and ECOPORE, dated June 22, 1993, addressed to various state and federal agencies;

f) Letter from OSR dated June 23, 1993, sent to SEDAM, ITERON, INCRA, IBAMA, the Forest Platoon and the Executive Secretariat of PLANAFLORO;

g) Official Letter no. 122/93, from ECOPORE, dated November 22, 1993, addressed to the State Secretariat for Environmental Development (SEDAM);

h) Official Letter no. 41/94 from ECOPORE, dated April 7, 1994, addressed to SEDAM, PMF and IBAMA;

i) Official Letter no. 052/94 from ECOPORE, dated May 14, 1994, addressed to the President of IBAMA;

j) Official Letter no. 055/94 from ECOPORE, dated May 23, 1994, addressed to SEDAM, PMF, ITERON, IBAMA and INCRA;

k) Letter of CUNPIR (Coordination of the Union on Indigenous Peoples and Nations of Rondonia, Northern Mato Grosso and Southern Amazonas) to the UN Human Rights Commission, dated May 10, 1995

ANNEX 05: Correspondence from the Forum of NGOs of Rondônia regarding INCRA's Land Tenure Policy (1992-1993)

a) Letter to the President of the Republic (May 28, 1992);

b) Letter to the President of INCRA, (August 14, 1992);

c) Letter to the President of INCRA, (September 8, 1992)

d) Letter to the President of INCRA, (April 15, 1993);

e) Letter to the President of the World Bank (including English translation) sending a copy of the April 15 letter to the President of INCRA (Annex 5.E)

ANNEX 06: Aide Memoires from World Bank Supervision Missions (1992-1995)

a) Aide Memoire from the World Bank's November 1992 supervision mission for PLANAFLORO;

b) Aide Memoire from the World Bank's September 1993 supervision mission for PLANAFLORO;

c) Aide Memoire from the World Bank's August 1994 supervision mission for PLANAFLORO (IBRD/MIR/Government of Rondônia);

d) Aide Memoire from the World Bank August 1994 supervision mission (Government of Rondônia/Forum of NGOs of Rondônia);

e) Aide Memoire from the World Bank April 1995 supervision mission;

ANNEX 07: World Bank Documents

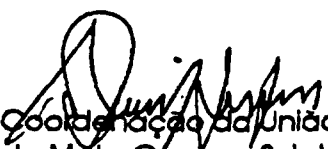

a) Matrix of Environmental Policies, Measures and Actions, Staff Appraisal Report (Report 8073-BR), World Bank, February 27, 1992 (Annex 1, Table 1.1, pp. 51-52);

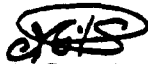
b) Brazil: Rondônia and Mato Grosso Natural Resource Management Projects (Loans 3444-BR and 3492-BR) Status of Implementation, (internal World Bank report), Mr. Shahid-Javed Burki, Vice President of Operations for Latin America and the Caribbean, March 25, 1994;

c) Office Memorandum, LA1AE, March 28, 1994;

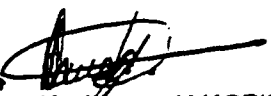
d) Office Memorandum, LA1CB, June 6, 1994;

SIGNATORY ORGANIZATIONS OF THE ABOVE DOCUMENT, TO BE FORWARDED
TO THE WORLD BANK INSPECTION PANEL

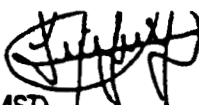
 
1. Coordenação da União das Nações e Povos Indígenas de Rondônia,
Norte do Mato Grosso e Sul do Amazonas (CUNPIR)
Rua Carlos Gomes, 1001, Centro, Porto Velho-RO

MANOEL TEÓFILO DA SILVA. 
2. Organização dos Seringueiros de Rondônia (OSR)
Rua Joaquim Nabuco, 1215, Areal, Porto Velho-RO


3. Federação dos Trabalhadores na Agricultura de Rondônia (FETAGRO)
Av. Ji-Paraná, 397 S2, Jardim dos Migrantes, Ji-Paraná-RO

ORLANDO KARITIANA 
4. Associação do Povo Karitiana (AKOT'PYTIM ADNIPA)
Rua D. Pedro II, 650, Centro, Porto Velho-RO


5. Articulação Central das Associações Rurais para Ajuda Mútua
(ACARAM)
Rua Vilagram Cabrita, 700, Centro, Ji-Paraná-RO

Adir Vicente 

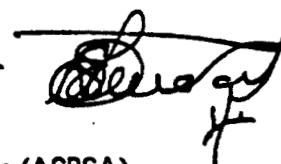
6. Movimento Sem-Terra (MST)
Rua dos Seringueiros, 763, Centro, Ouro Preto D'Oeste-RO

ANTONIO BUINTINO ROCHA 
7. Associação dos Seringueiros de Machadinho (ASM)
Prédio da Sedam, Centro, Machadinho D'Oeste-RO

Marinete Neves Cerqueira 
8. Associação dos Seringueiros e Soldados da Borracha de Pimenta Bueno (ASSBP)
Rua Ermílio Vieira, s/nº, Centro, Pimenta Bueno-RO

Nevaline dos Santos Dias
9. Associação dos Seringueiros de Guajará-Mirim (ASGM)
Rua Dr. Leveger, s/nº, Triângulo, Guajará Mirim-RO

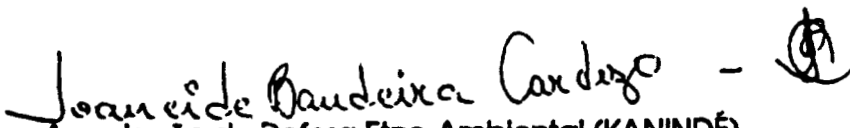
Guilherme Lúcio dos Santos 
10. Associação dos Seringueiros do Vale do Guaporé (AGUAPÉ)
Av. Santa Cruz, 341, Centro, Costa Marques-RO

ELIAS SILVA LIMA VALE 
11. Associação dos Soldados da Borracha de Ariquemes (ASBSA)
Rua Bahia, 3958, Setor 5, Ariquemes-RO


ROBERTO SNERALDI 
12. Associação Programa Amazonia - Amigos da Terra Internacional
Av. Brig. Luis Antonio, 4442 CEP 01402-002 São Paulo-SP



13. Comissão Pastoral da Terra (CPT-RO)
Rua D. Pedro II, c/ Gonçalves Dias, Centro, Porto Velho-RO

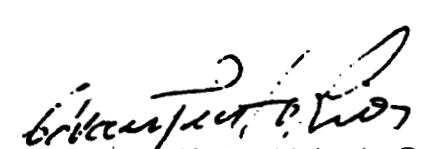

14. Conselho Indigenista Missionário (CIMI-RO)
Rua D. Pedro II, 650, Centro, Porto Velho-RO


15. Associação de Defesa Etno-Ambiental (KANINDÉ)
Rua D. Pedro II, 1900, Ap. 18, Centro, Porto Velho-RO


16. Associação de Preservação Ambiental e Recuperação de Áreas
Indígenas (APARAI)
Rua D. Pedro II, c/ Gonçalves Dias, Centro, Porto Velho-RO


17. Projeto Pe. Leônidas (Diocese de Ji-Paraná)
Av. Marechal Rondon, Centro, Ji-Paraná-RO


18. Centro de Estudos e de Pastoral dos Migrantes (CEPAMI)
Rua das Pedras, 299, Jardim dos Migrantes, Ji-Paraná-RO


19. Ação Ecológica Vale do Guaporé (ECOPORE)
Caixa Postal, 68, Rollim de Moura-RO

Jaime B. Dehtian

20. Comunidade BAHÁ'Í
Caixa Postal, 999, Porto Velho-RO

Carlos Marcelo Dias

21. Centro de Educação e Alfabetização Popular (CEAP)
Rua Carlos Gomes, c/ Campos Sales, Porto Velho-RO

VITAS KIASAS Uto Kiam

22. Sociedade Beneficente São Casimiro
Rua Joaquim Nabuco, 2854, Porto Velho-RO

Luizmarcos Cavalcante

23. Proteção Ambiental Cacoalense (PACA)
Rua Antônio de Paula Nunes, 1528, Cacoal-RO

MARCELO GIRALDI DE CASTRO

24. Associação das Escolas Famílias Agrícolas de Rondônia (A.E.F.A.R)
Rua Júlio Guerra, 257, Centro, Ji-Paraná-Ro

Willem P. Groenewald

25. Instituto de Pre-História, Antropologia e Ecologia (IPHAE)
Rua Alvaro Maia, 1034, Porto Velho - RO


ANNEX 2

OFFICE MEMORANDUM

RECEIVED
95 JUL 19 PM 5:41
THE INSPECTION PANEL

DATE: July 19, 1995

TO: Mr. Ernst-Gunther Broder, Chairman, The Inspection Panel

FROM: Gautam S. Kaji, Acting President, EXC 

EXTENSION: 81384

SUBJECT: Brazil - Rondonia Natural Resources Management Project (Loan 3444-BR)
Management Response to Request for Inspection

1. Reference is made to the Memorandum, dated June 19, 1995, to the President of the International Bank for Reconstruction and Development (the Bank), by which the Chairman of the Inspection Panel requested the Bank Management to provide the Panel with written evidence that it has complied or intends to comply with the relevant policies and procedures in the implementation of the above-captioned Project.

2. The Panel may wish to assess the eligibility of the Request for review by the Panel. It is the Management's judgement that, as explained in Annex A, the Request does not meet the eligibility requirements as set forth in Resolution 93-10 dated September 22, 1993, of the Board of Executive Directors of the Bank, which established the Inspection Panel (the Resolution).

3. Management nevertheless shares some of the concerns raised in the Request, and notes that the authors of the Request appear to support the objectives of the Project. In fact, the thrust of the complaint is not that the Project in itself is causing harm, but that it is not proceeding quickly enough and that the Bank Management has not sufficiently used available legal remedies to accelerate progress. Management shares the frustration with the Project's slow progress, and throughout its execution Bank staff have supervised the Project intensively in an effort to move it forward. This is more fully explained in Annex B, which is attached for your information. Annex B comments extensively on the specific alleged violations by Bank Management of applicable policies and procedures, describes some recent actions by the Government of Rondonia to improve performance, and sets out our current supervision strategy to help improve and accelerate Project implementation.

4. As regards legal remedies, if the Requesters were eligible, their arguments that the Bank should have exercised its rights to suspend disbursements because of non-compliance by the Federative Republic of Brazil (the Borrower) or the State of Rondonia with respect to certain obligations under the Loan or Project Agreements might be discussed.

However, the suspension of disbursements is not an automatic sanction to be applied in all cases regardless of its impact on the project and the Bank's relationship with the borrower. It is one of the remedies available to the Bank as a discretionary power to be exercised by it in cases of default taking into account the interest of the Bank, the borrower and the Bank members as a whole. What would have been relevant for the Panel is whether the lack of suspension was a sign of negligence or lack of concern on the part of Management or, rather, a conscious decision taken in deference to other considerations while Management pursues other means to achieve the Project's objectives. In this case, Management has considered that a suspension of disbursements would have been detrimental to the achievement of the objectives of the Project, and opted, instead, for an intense dialogue with the Borrower and the State of Rondônia towards solving the existing problems, as demonstrated in detail in Annex B.

5. Bank Management stands ready to provide any additional assistance that the Panel may consider helpful for purposes of preparing its recommendation to the Executive Directors and would be happy to meet with the Panel for this purpose.

ELIGIBILITY REQUIREMENTS UNDER THE RESOLUTION

1. Paragraph 12 of the Resolution determines that cases brought before the Panel must demonstrate that the alleged failure of the Bank, due to action or omission in following its own policies and procedures with respect to the design, appraisal and implementation of projects financed by it, has had or threatens to have a material adverse and direct effect on the affected parties. According to the Resolution, such action or omission could also include the failure of the Management of the Bank to follow-up on the borrower's observance of its obligations under the provisions of the loan agreement with respect to Bank policies and procedures.
2. In paragraph 16, the Resolution requires all requests to state the harm suffered by or threatened to the affected parties. The Resolution also states, in its paragraph 14 (a), that "complaints with respect to actions which are the responsibility of other parties, such as a borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank" shall not be heard by the Panel. Furthermore, in its paragraph 14 (b), the Resolution bars the Panel from reviewing procurement decisions.
3. Based on the above, and with respect to ascertaining the eligibility of a request, two essential conditions should be present: (i) that material harm exists or may reasonably be expected to take place; and (ii) that such harm can be directly attributed to Bank's actions or omissions. It is the view of the Bank Management that the Requesters have failed to show that either of these two conditions have been met for the following reasons:
 4. First, the Project does not finance or promote any of the adverse impacts alleged in the Request. In fact, the Project aims at the improvement of the very situations raised in the Request. As such, the Project may be considered not the "illness" but part of the "cure" for the conflicts faced in the pursuit of sustainable development in the State of Rondonia. It is a project that aims at reversing several decades of environmental mismanagement of the Rondonia area through an improved approach to natural resource management and conservation.
 5. Second, in every area covered in the Request under the sub-heading "adverse impact on local population", the allegations of adverse impact are of a very general nature and do not present any substantive evidence that the alleged fact could only have happened as a result of a Bank action or omission under applicable policies and procedures. Also, while most of the allegations claim the occurrence of natural resource degradation or depletion, none of such alleged adverse impacts are sufficiently identified or quantified. There is, however, an exception. It is claimed that three indigenous persons died as a result of lack of medical attention. The Request does not indicate what kind of disease they had, the circumstances surrounding their deaths, the identification of those persons, their medical

history, etc. In any case, such an unfortunate event cannot be imputed to the failure of the Management of the Bank to follow its policies and procedures with respect to the design, appraisal and/or implementation of the Project or its failure to follow up on the Borrower's and the State of Rondonia's observance of covenants in the Loan and Project Agreements. In fact, the Bank supervision of the Project by Bank staff has been intense in this case, as described in detail in Annex B.

6. Third, claims made under Section V of the Request referring to Investment Programs and the Media Program fail to indicate what policy and/or procedure of the Bank has been violated.

7. Fourth, the Request presents the following allegations without indicating any harm caused to the Requesters:

- (a) violation of BP 10.00, Annex D (Outline for a Staff Appraisal Report);
- (b) non-enforcement by the Bank of the provisions of Sections 2.08 (b) and 3.01 (b) of the Project Agreement, relating, respectively, to submission of the report of the Independent Evaluation Committee established to evaluate the progress of the Project, and to annual audits of the Project accounts.

8. Fifth, the Request alleges violations of Bank policies which were not in force at the time of Project appraisal (July/August 1989) or post-appraisal (June-July 1991) and in one respect relates to procurement decisions which are not within the mandate of the Panel. These are:

- (a) OP 4.36 of September 1993 (Forestry). The recommendations of the Forest Policy Paper which provided the basis for OP 4.36 were approved by the Board of Directors of the Bank shortly after the post-appraisal of the Project. This notwithstanding, Management followed in substance the new policy as detailed in Annex B.
- (b) OD 4.20 of September 17, 1991 (Indigenous Peoples). As explained in Annex B, the Management applied, in the preparation of the Project, the then applicable policy on this subject which was stated in OMS 2.34 of February 1982 (Tribal People in Bank-Financed Projects);
- (c) BP 10.00 of June 1994 (Investment Lending: Identification to Board Presentation). Most of the procedures contained in this BP were required under other similar procedures applicable at the time of the preparation of the Project and these were strictly followed, as detailed in Annex B; and

- (d) OD 11.00 (Procurement) and OD 11.10 (Use of Consultants). According to the Resolution, as interpreted by the Board in a previous case, any claim based on procurement issues is excluded from consideration by the Panel.

9. On the basis of the foregoing, it is the view of Bank Management that the Requesters have failed to meet the eligibility requirements set forth in the Resolution.

ANNEX B

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Attachments:

- A Matrix Summary of the Request for Inspection and the Management
- B Chronology of Project and Loan Processing and Supervision Missions
- C Operational Policies and Procedures
- D Correspondence to the Bank

ACRONYMS

AEZ	Agro-ecological/Socio-Economic Zoning
AI	Indigenous Area <i>Area Indígena</i>
BASA	Bank of the Amazon S.A. <i>Banco da Amazônia S.A.</i>
BERON	State Bank of Rondônia <i>Banco do Estado de Rondônia</i>
CNP	Program Normative Committee <i>Comissão Normativa do Projeto</i>
CPT	Pastoral Land Commission <i>Comissão Pastoral da Terra</i>
CU	Conservation Unit
CY	Calendar Year
FETAGRO	Federation of Rural Workers <i>Federação dos Trabalhadores Rurais</i>
FUNAI	National Indigenous Peoples Foundation <i>Fundação Nacional do Índio</i>
IBAMA	Brazilian Institute for the Environment and Renewable Natural Resources <i>Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis</i>
IBDF	Brazilian Institute of Forestry Development <i>Instituto Brasileiro de Desenvolvimento Florestal</i>
ICB	International Competitive Bidding
IEC	Independent Evaluation Committee
INCRA	National Institute for Colonization and Agrarian Reform <i>Instituto Nacional de Colonização e Reforma Agrária</i>
INPE	National Institute for Space Research
ITERON	Land Institute of Rondônia <i>Instituto de Terras de Rondônia</i>
LA	Loan Agreement
M & E	Monitoring and Evaluation
MIR	Ministry of Regional Integration <i>Ministério de Integração Regional</i>
MIRAD	Ministry of Agrarian Reform and Development <i>Ministério da Reforma Agrária e do Desenvolvimento</i>
MP	Military Police
MST	Landless Peoples' Movement <i>Movimento dos Sem-Terra</i>
NGO	Non-Governmental Organization
OD	Operational Directive
OP	Operational Policy
OP/BP	Operational Policy/Bank Procedure
OPN	Operational Policy Note
OSR	Organization of Rubber Tappers of Rondônia <i>Organização dos Seringueiros de Rondônia</i>
PA	Project Agreement
PCU	Project Coordinating Unit
PLANAFLO	Rondônia State Agricultural and Forestry Plan <i>Plano Agropecuário e Florestal de Rondônia</i>
POLONOROESTE	Northwest Rural Development Program <i>Programa Integrado de Desenvolvimento do Noroeste do Brasil</i>
PU	Protocol of Understanding
SAR	Staff Appraisal Report
SEDAM	Rondônia State Secretariat of Environmental Development <i>Secretaria de Estado de Desenvolvimento Ambiental</i>
SGR	State Government of Rondônia
SIR	Status of Implementation Report
SUFRAMA	Superintendency for the Free Zone of Manaus <i>Superintendência da Zona Franca de Manaus</i>
UNDP	United Nations Development Program

1. PROJECT CONTEXT, ORIGINS AND PRESENT STATUS

1.1 The Rondonia Natural Resources Management Project¹ is designed to introduce an improved approach to natural resource management, conservation and sustainable development in Rondonia, a State in the southwestern part of the Brazilian Amazon Basin which experienced large-scale inward migration and massive deforestation in the 1970s and 1980s. The Project's design is based on the introduction of agro-ecological/socio-economic zoning, which distinguishes areas that are capable of sustainable development from those which are without known, long-term potential or which have special ecological or social significance and, therefore, need to be protected.

1.2 The Project's strategy calls for directing investment and the provision of services into those parts of Rondonia with sustainable development potential. Poverty alleviation through economic development in those areas is essential to retain population and to reduce, if not remove, the incentives for continued expansion of the cultivated area via deforestation in the rest of the State, either through permanent or shifting agriculture. It is important to note that the areas contemplated for development were already settled prior to the Project. PLANAFLORO includes components to improve the productivity and welfare of small farmers and significant actions to conserve biodiversity through the establishment and protection of Conservation Units, Amerindian reserves, extractive reserves and public forests. Sustainable development also calls for a coherent incentive framework to be supported by the Project through changes in key policies, regulations and public investment programs, and through the consolidation of the technical, managerial and operational capacity of State institutions.

1.3 PLANAFLORO reflects in all its components a major effort to learn the lessons of earlier development programs in the Brazilian Northwest, most notably the Bank-financed POLONOROESTE program in the frontier areas of Rondonia and Mato Grosso. Launched by the Brazilian Government in 1980 to address the growing problems caused by the influx of land-seeking migrants from other parts of Brazil, POLONOROESTE encountered many technical, institutional and financial problems, and was widely criticized for not reversing the destructive development patterns set in motion in the 1970s; in practice, under POLONOROESTE the pace of occupation actually accelerated and the rate of deforestation increased. Factors undermining the program included: (a) inadequate technical knowledge of the natural resource base; (b) very weak institutional capacity of key implementing agencies; (c) perverse incentives, including policies, regulations and investment programs which promoted deforestation; (d) road construction which encouraged further migration into fragile areas; and (e) inadequate support services to small farmers to encourage productive diversification and sound environmental practices.

1. Also known as the Plano Agropecuário e Florestal de Rondônia - PLANAFLORO.

1.4 The design of PLANAFLORO differs markedly from POLONOROESTE. A first approximation of the zoning, completed as part of project preparation, has become the cornerstone for public investments and is the guiding principle for an evolving policy and regulatory framework to promote sustainable development. Improvements in scientific and technical knowledge in the past decade have informed this zoning process. Excessively centralized decision-making is gradually giving way to decentralization in favor of the State and municipalities, a shift which is embodied in the Brazilian Constitution of 1988. The Project recognizes that partnership with and participation by the private sector, non-governmental organizations (NGOs) and beneficiaries promotes accountability and responsiveness. One practical expression of this is the inclusion of NGOs in the Project's structure (where they have 50% membership of all key administrative units).

1.5 At the beginning of the Project, the State had experienced more than two decades of uncontrolled and unplanned inward migration and settlement. The forest cover, for example, had been reduced from over 99% of the total area of the State in 1975 to 76% in 1987, and the population had grown from 113,000 in 1970 to 1.4 million in 1987. Rondonia's Amerindian population, which had declined considerably since colonial times, was officially estimated at only 4,400 people. Government plans at that time still included the paving and construction of new roads and the establishment of new settlement projects; these would probably have caused additional threats for Amerindian communities and rubber tappers and a continuation of high rates of deforestation, mainly by small itinerant subsistence farmers using slash-and-burn cultivation techniques.

1.6 The Project has supported the reversal of these negative trends. It promoted the incorporation of zoning into Rondonia's State Constitution and legislation, and some 60% of the area of the State is now zoned off-limits for development. Total levels of deforestation in Rondonia have been decreasing and, according to preliminary information from the National Institute for Space Research (INPE) are already lower than anticipated for the fourth and fifth years (even though the Project is now only in its second year of implementation). Progress has been made, albeit slowly, on the demarcation and establishment of Conservation Units and the protection of Amerindian reserves, with corollary deterrent effects on the pre-project rate of investment.

1.7 The Project has, nevertheless, faced serious implementation problems which give rise to the concerns underlying the Request. These include changes in political leadership at the Federal and State levels, scarcity of funds, weakness and instability of implementing institutions, and difficulties inherent in a complex, ambitious design. Project implementation is behind schedule, with expenditures around half of their forecast level for this stage of the Project. Supervision of the Project has been intense, the most intense of any project in LA1, with 11 missions since May 1992, representing some 182 staffweeks. This has been supplemented by specialist visits, activities of the Cuiaba Field Office (which was established in 1993 expressly to assist with the supervision of the Natural Resources

Management Projects of Rondonia and Mato Grosso), and the involvement of NGOs in the supervision cycle of field visits, meetings and briefings. Recent actions by the Government suggest that there are now grounds for cautious optimism for improvements in implementation, but funding constraints, institutional weakness and complex interactions among the many interests involved will continue to be challenges.

1.8 In regard to the substance of the Request, those policies and directives applicable during preparation and supervision were followed, as described in detail in Chapter 3. We are aware that the Borrower and the State are currently in violation of dated covenants in the Loan and Project Agreements, mainly because of the one-year delay in start-up but also because of interruptions in implementation due to changes in political leadership. The Bank Management has not chosen to enforce these covenants by a suspension of disbursements. The Bank Management has, so far, chosen to pursue a policy of intensive supervision and dialogue, explaining and promoting the Project to successive management regimes, with the objective of getting the project back on track. Bank staff judged that this strategy was most likely to achieve the Project's objectives. These are difficult judgments to make, however, and reasonable observers may well hold different views.

1.9 The concerns raised in the Request reflect the deep frustration felt by many NGOs, and are shared by Bank staff, concerning the progress of the Project. The Bank's role has been positive in that it has been a catalyst in promoting the incorporation of zoning into the State Constitution and legislation. This has already prevented the realization of various plans for roads, settlements and other investments in ecologically-fragile areas, thus reducing the level of environmental damage. At the same time, annual deforestation rates, even though sharply reduced, are still cause for concern. The Amerindian population has stabilized and is growing in some areas, but remains highly vulnerable. Zoning policy runs counter to the interests of powerful economic interest groups, and the institutions charged with maintaining and enforcing zoning policy in the face of those interests are poorly staffed and funded. Several changes in political leadership in the last three years have led to fluctuations in the level of the Borrower and the State's commitment and the inevitable delays and changes in direction associated with staff turnovers in implementing institutions. In sum, the achievements to date are substantial, but fragile, and could easily be reversed if Borrower and State commitment seriously flags. For these reasons, the concerns underlying the Request are real, and are shared by Bank staff.

1.10 What are the most serious implementation difficulties? First, project design is complex, with some 22 public and 30 NGOs involved, directly or indirectly, in project implementation. Most of these institutions lack funds and sufficient qualified staff. In their diversity, they reflect the strong and often conflicting views in Rondonia and in Brazil concerning the appropriate model for development. While such broad participation is essential to ensure that project objectives can be achieved in a sustainable manner, it also imparts considerable complexity to decision-making and implementation. Second, the Project was adversely affected by unexpected turnover at the Federal level associated with the impeachment of a President, followed less than two years later by major national and state elections. One consequence, for example, was the elimination of the federal implementing

ministry and the transfer of the project to the Ministry of Planning. Third, release of Federal counterpart and Loan funds to the State has been chronically late, jeopardizing agreed plans of action, some of which can be carried out only during the fairly short Amazon Basin dry season. During the first six months of 1995, for example, the Project received virtually no funding, although this problem now appears to be resolved for the time being.

1.11 Although zoning is taking hold and compliance with it has been growing on various fronts, there has been a tendency to backslide by the National Institute for Colonization and Agrarian Reform (INCRA), a Federal entity whose commitment to project goals both in word and deed is a *sine qua non* for success. The Bank's efforts to secure INCRA's legal and practical adherence to the zoning as it underwent several leadership changes, through the signature of different forms of agreement (1991, 1992, 1994 and 1995), reflects the Bank's perception of wavering commitment. INCRA signed a new operational agreement with the State Government on June 26, 1995, and the preparation of an acceptable Work Plan within 30 days for resolving land issues in disputed areas is being carefully monitored by the Bank.

1.12 Progress on the establishment of Conservation Units (CUs), the centerpiece of the Project's environmental management and conservation objectives, has been encouraging but needs to reach closure. Many complex, interrelated actions make up the legal establishment and enforcement of the CUs and, to date, none of the CUs planned has reached finality, although a substantially larger area has been set aside with Project support than was specifically mentioned in the Loan and Project Agreements. The Project is underway simultaneously in different areas of the State, at different stages of the Project's implementation schedule and in a context of both weak institutional capacity and coordination and constant shortages of financial resources. Final demarcation requires the completion of technical work for each CU, *inter alia*, to define boundaries more specifically and to resolve existing claims to land or exploitation rights. Final demarcation also requires monitoring and enforcement (which is still weak, and largely reactive rather than preventive) and an education campaign which disseminates widely the purpose and value of the conservation program.

1.13 The Request is correct in noting that the sub-component of support to indigenous communities has suffered badly from Project delays and constraints. Implementation was affected by delays in transferring funds to FUNAI and insufficient cooperation of State and Federal agencies to protect more effectively indigenous reserves. Registration of areas in the Department of the Union, as required under the Loan Agreement, were done; however, land tenure issues in a small area of the *Uru-eu-wau-wau* Indigenous Area need to be resolved to allow its registration in the Public Registry. Three of the four areas to be demarcated under the Project have been completed, but the re-demarcation of existing reserves is further behind schedule. The health program is substantially behind schedule. While vaccination campaigns have been undertaken against poliomyelitis, small pox, typhoid, tuberculosis and hepatitis, in the context of national vaccination efforts, it was not until 1995 that the first Mobile Health Unit implemented under the UNDP technical cooperation program was in place in Rondonia; major effort is still required to ensure its

immediate integration with the National Health Program for the indigenous population under the cooperation of FUNAI, which integrates existing health agencies and entities at the local level and stresses the delivery of basic health services to the indigenous communities. Transfer of resources to FUNAI to complete its proposed work program needs to be ensured and closely monitored. Also, it is important to assist indigenous communities to improve their participation in the decision-making process of PLANAFLORO; while this situation is expected to improve substantially with the decentralization of Project implementation, representation of the indigenous communities needs special attention as they claim that some of the NGOs involved in the Project do not represent their interests.

1.14 Substantial improvement is needed in the working relationships between NGOs, government representatives and Bank staff. The Request reflects the perception that the Bank is the main entity responsible for Project outcome. Rightly or wrongly, and despite their incorporation into the project structure, many NGOs continue to feel they are not fully informed about discussions and agreements undertaken by the Federal and State Governments and the Bank. There are also divergent views among a number of the NGOs about how certain issues should be handled. This is especially true in the area of land policy, and reflects the wide range of interest groups the NGOs represent. Bank staff will need to redouble their already considerable efforts to strengthen these working relationships. Moreover, the project needs to provide support to strengthen key agencies and NGOs; agreements were reached on the last supervision mission to put such arrangements in place. The NGOs need to assume greater responsibility for project success and strengthening their capacity will foster this.

1.15 The new State Government which took office in January, 1995 has affirmed its commitment to project objectives and to improving overall implementation. It has already taken a number of steps: (a) streamlining the Project Administration Unit and reducing its size by 50%; (b) signing an implementation agreement with the NGO Forum of Rondonia; (c) designing a draft strategy for the decentralization of project management, which has been submitted to the NGO Forum for review; and (d) signing the long-sought operational agreement with INCRA and agreements with FUNAI and IBAMA in June 1995. Finally, the State prevented the construction of roads BR-421 and BR-429 with the intention of controlling invasions of indigenous lands, and strengthened law enforcement and fiscal support for the *Mequens* and *Uru-Eu-Wau-Wau* indigenous areas.

2. THE REQUEST FOR INSPECTION: SPECIFIC ISSUES

2.1 This Chapter summarizes the key claims made in the Request, which states² that:

".... during a long period of preparation and initial implementation of PLANAFLORO, the World Bank was negligent in its fulfillment of the contractual agreements for PLANAFLORO and its own operational directives and procedures."

The Request further states that such "negligence" occurred in five defined areas of "Project Activity"³ and one generic group of actions under "Project Administration". The claims presented in the Request have been summarized in matrix form and presented in Attachment A. In essence, the claims are as follows:

2.2 In the Project Activity 1. Land Tenure Policy:

- (a) Failure by the Bank to insist on the signature of an agreement between the National Institute for Colonization and Agrarian Reform (INCRA) and the State Government of Rondonia (SGR), and the declaration of Loan Effectiveness without it.
- (b) Submission to the Board by the LAC Region in March 1994 of a misleading Status of Implementation Report (SIR) for CY1993.
- (c) Improper monitoring of two Sections of the institutional reform program⁴ supported by the Project: specifically (i) prohibition of new settlement and granting of titles in certain areas, and development of land tenure, legislation and regulations; and (ii) failure to recognize INCRA's continuation of acceptance of deforestation as a basis for granting titles.

2. The Request, p. 4, para. 10.

3. These areas of Project Activity and group of actions do not correspond to the project's components or sub-components. The Request (page 3) describes them as "the principal themes relevant to the implementation of PLANAFLORO".

4. The "Matrix of Main Environmental Policy Issues, Measures and Actions" contains the institutional reform program; it is presented in the SAR, Annex 1, and referred to hereinafter as the SAR Matrix.

- 2.3 **In the Project Activity 2. Zoning and State Conservation Units:**
- (a) Timid and insufficient efforts by the Bank concerning the institutionalization of the agro-ecological zoning, and failure to insist on the revision of Decree No. 6,316 of March 1994;
 - (b) Failure to enforce the zoning plan (a monitorable action under Section 1 of the SAR Matrix).
 - (c) Failure to scrutinize legally-deficient Decrees of the SGR concerning Conservation Units (CUs) and to monitor the drafting by the SGR of legal instruments for the effective establishment of CUs.
 - (d) Failure to report adequately on irregularities in the SIR of March 1994.
 - (e) Failure to monitor the irregular demarcation of CUs.
- 2.4 **In the Project Activity 3. Environmental Licensing and Protection:**
- (a) Negligence during preparation and initial project implementation concerning supervision of environmental licensing and protection activities.
 - (b) Submission to the Board of misleading information on environmental licensing and protection in the SIR of March 1994.
 - (c) Inadequate monitoring by the Bank with respect to remote sensing analysis of violations of zoning.
- 2.5 **In the Project Activity 4. Investment Programs and the Media Program:**
- (a) Unsatisfactory carrying out of the joint evaluations to review State and Federal investment programs and economic incentives.
 - (b) Failure by the Bank to insist on a Master Road Plan for Rondonia being prepared as a condition of disbursement of the Loan for the road investment sub-component of the Project.
 - (c) Failure in the SIR of March 1994 adequately to inform the Board on the subject of State and Federal investment programs.
 - (d) Failure by the Bank to insist on implementation of the Media Program.

2.6 In the Project Activity 5. Support to Indigenous Communities:

- (a) Failure by the Bank: (i) to produce an Indigenous Peoples' Development Plan; and (ii) to guarantee consultation with and participation by indigenous people in project preparation.
- (b) The costs of the Indigenous Communities sub-component were underestimated.
- (c) Funds were not allocated for an education sub-project.
- (d) A lack of rigorous criteria used for the selection and elaboration of indigenous community economic sub-projects.
- (e) Several critical activities in the Indigenous Communities sub-component were not included in the Loan and Project Agreements.
- (f) The institutional capacity of executing agencies was not ensured, especially at the National Indigenous Peoples Foundation (FUNAI).
- (g) A lack of coherent strategy for guaranteeing the protection and enforcement of Indigenous Areas (AIs) and other CUs.

2.7 In the group of actions under 6. Project Administration:

- (a) In project preparation and implementation, there has been
 - (i) a lack of effective participation of organized civil society;
 - (ii) The SGR did not fulfill the majority of its commitments under the Protocol of Understanding (PU); and
 - (iii) A major reason for (ii) above is the failure to include references to the PU in the SAR and in the Loan and Project Agreements.
- (b) In supervision, the Bank failed to:
 - (i) ensure that the Borrower implements the Project with due diligence to achieve the agreed development objectives and in conformity with the Loan Agreement;
 - (ii) identify and help to resolve problems; and
 - (iii) monitor compliance with legal agreement covenants.

- (c) The Bank declared effectiveness of the Loan without the required agreement between INCRA and the SGR.
- (d) There were flaws in the Bank's internal reporting (Forms 590 and the SIR).
- (e) In project monitoring, the project indicators were not revised, and the Monitoring and Evaluation (M & E) Unit operated in a deficient manner.
- (f) The mechanisms for NGO participation in M & E were not defined.
- (g) The Independent Evaluation Committee (IEC) Report for CY1993 was not submitted to the Bank in final form.
- (h) In procurement, there were irregularities in pre-qualification for International Competitive Bidding (ICB).
- (i) The project accounts for CY1993 were not audited.
- (j) In the use of consultants for project preparation, there were irregularities in contracting.
- (k) The Bank did not respond to failures on the part of the Borrower and the SGR by activating mechanisms for a Suspension of Disbursements.

3. COMMENTS ON THE ISSUES RAISED

Introduction

3.1 The introduction of the Request refers to the Bank's failure to implement seven Operational Directives (ODs), one Operational Policy (OP), one Operational Policy Note (OPN) and one Operational Policy/Bank Procedure (OP/BP). In its Notice of Registration of the Request, sent to Management under its Memorandum to the President of June 19, 1995, the Panel refers to eight of these documents, and states that allegations of non-compliance with one of the remaining two (OD 11.00 on Procurement) need not be addressed because such matter is outside the scope of the Panel's mandate. It makes no reference to the remaining directive (OD 11.10 on the Use of Consultants). However, according to the Resolution 93-10 establishing the Panel, as interpreted by the Board in a previous case, any claim based on procurement issues is excluded from consideration by the Panel. Therefore, we are not commenting on issues related to OD 11.10.

3.2 For each of the five areas of "Project Activity" and the group of actions entitled "Project Administration", considerable detail is presented under the heading "Omissions of the World Bank". However, in two of the six cases no reference is made to the OD, OP, OPN or OP/BP supposed to have been violated; in the other four cases, where reference is made, it is almost always to the OD, OP, OPN or OP/BP as a whole; only rarely is a specific paragraph referred to or a Section of the Loan or Project Agreement quoted. In this Chapter, therefore, we comment on the substance of the supposed omission, supplemented by reference to the OD, OP, OPN or OP/BP, and the Loan or Project Agreement, where appropriate.

Project Activity: 1. Land Tenure Policy

Claim:

- 3.3 The failure to insist on the signature of an agreement between INCRA and the SGR, and the declaration of Loan Effectiveness in its absence, violate Sections 6.01 (b) of the Loan Agreement and 2.12 (a) of the Project Agreement. [Matrix 1 (a)].

Comments:

3.4 The Agreement of November 1992, signed by INCRA and the SGR, contains provisions that INCRA should not violate the provisions of the State of Rondonia's zoning⁵ and that it should receive approval for its settlement activities in the State from the State Commission on Land. It was considered fully to meet the condition of effectiveness in Section 6.01 (b) of the Loan Agreement and the requirements of Section 2.12 (a) of the Project Agreement⁶.

3.5 The Request placed great importance on the whole question of land tenure policies and the Bank agrees fully that these are crucial for the success of the Project. The SAR described the pre-project land tenure situation in Rondonia as one which was "complex and clearly reflects the increased migration to the State over the past 15-20 years". It was estimated that, as of 1985, there were approximately 81,000 farms accounting for some 6 million ha. The remainder of the State (18 million ha) included "public lands, forest, ecological or Amerindian reserves; areas set aside for future colonization schemes; and lands which have been precariously occupied by a small number of farmers without officially recognized titles or land rights".⁷

3.6 It was known at the time that the land tenure situation in much of the State was uncertain, due to many overlapping laws and regulations, and that it would be essential to clarify this, develop appropriate rules governing land tenure activities and build the capacity to enforce. When Rondonia's zoning was developed and put into the State Constitution and State law, it was known that some people were living in, or held claims to, lands classified as Zones 4, 5 and 6 (i.e., land which should remain under natural forest cover). These included indigenous people (thought to number about 4,400), small scale extractivists (mainly rubber tappers, numbering about 2,500), inhabitants of small towns (including some municipal centers) and an unknown number of squatters (*posseiros*) of different categories.

3.7 However, since the area affected by these groups was still quite small in relation to the total area of these Zones, the State Government decided to proceed with the establishment of conservation units, forests and extractive reserves, and protection of indigenous reserves, and to begin enforcement of the zoning as soon as possible, in order to halt further encroachment and occupation of the Zones. Over the medium-term, a two-pronged approach would be followed with Project funding: (a) development would be

5. For an explanation of the agro-ecological/socio economic zoning, see paras. 3.44 to 3.54.

6. The Agreement was invoked by the Federal prosecutor to obtain an injunction against INCRA in a Federal court in Rondonia. The injunction was granted by the court.

7. SAR, para. 2.16.

encouraged in Zones 1 and 2, which are suitable for sustainable agriculture, thus attracting small-scale migrant farmers away from Zones 4, 5 and 6; and (b) the project would also support socio-economic and tenure studies and the development of management plans for the latter three Zones, and strategies would be developed for dealing with existing settlers (e.g., expropriation, establishment of buffer zones, involvement in conservation unit management, etc.).

3.8 As Rondonia had been transformed from a Federal territory to a State only a few years before, much of the land was still under Federal jurisdiction at the time of project preparation. INCRA had historically been the main Federal agency responsible for settlement and land regularization activities in Federal lands and, hence, it was critical: (a) to ensure INCRA's compliance with Rondonia's zoning; and (b) to develop the capacity of a State land institute to take on increasing responsibilities from INCRA⁸.

3.9 From the start of project preparation, the Bank engaged in numerous discussions with INCRA's management, at both Federal and State levels, on the implications of zoning for its activities in Rondonia. To cite a few examples:

- (a) The Identification Mission of September 14-October 9, 1987 met with technical staff and the State Superintendent of MIRAD in Rondonia and MIRAD management in Brasilia. MIRAD... "which in the past has promoted settlements in areas that afterwards proved to be totally unable to sustain permanent agriculture, agreed on the need to comply with the zoning... it was agreed that no more settlements will be made outside Area 1... and MIRAD will work with the State to better organize land use in areas where agricultural development will be concentrated. MIRAD will also work with the State in enforcing the non-recognition of land rights in areas that should be preserved, as well as in organizing usufruct rights in areas destined for extractive activities." (Report of November 10, 1987)
- (b) The Preparation Mission of April 11-29, 1988, included an external specialist with experience on land policy issues in the Brazilian Amazon. The mission had extensive meetings with MIRAD, both in Rondonia and Brasilia. "Both the Federal and the State agencies seem unusually open to the idea of doing their planning in accordance with the Zones ... the mission has consistently, indeed insistently, stressed that the result of the policy negotiations would result in ... no new colonies in inappropriate areas and no new services or expansions of existing colonies in areas with poorer soils ... concentration of the agrarian reform program, already underway in the State, in Zone 1 ... the right to dispossess people through disappropriation of their land if they are using it in a

8. For part of this period, INCRA was absorbed into the Ministry of Agrarian Reform and Development (MIRAD), and is referred to in the documents as MIRAD.

manner inconsistent with those specified for the zone ..." (Report of May 26, 1988, Annex 4).

- (c) In a letter from the then Minister of Interior (the Federal Ministry with oversight responsibility over the Rondonia project) to the Bank's President, the Federal and State Governments committed themselves to a program of action which eventually, with only minor modifications, became Rondonia's Reform Program. The program of action was signed by the Secretary General of MIRAD. (Letter of April 29, 1988).
- (d) In a follow-up letter from the Secretary-General of MIRAD to the Secretary General of the Ministry of Interior, MIRAD committed itself to suspend issuance of any kind of title not in accordance with Rondonia's zoning, and to re-orient the operational programs of settlements in Machadinho and Cujubim (previously-established settlements in areas which proved not suitable for sustainable development) with a view to consolidation and no further expansion. In the same letter, MIRAD detailed all of its ongoing and previously planned activities in Rondonia, but confirmed that "... the totality of these actions will suffer, necessarily, a compatibilization with the strategy of regional development established in the referred Zoning." (Letter of June 29, 1988).

3.10 Despite these examples of a satisfactory dialogue with MIRAD/INCRA during project preparation, there were occasional indications of behavior inconsistent with the zoning, and frequent concerns expressed by different NGOs (some complaining about alleged INCRA settlement actions, others complaining about lack of settlement activity by INCRA). In addition, during the long course of project preparation and appraisal, there were several changes in management at INCRA, at both the Federal and the State level. Therefore, given the importance of INCRA for the success of the Project, the Bank sought further special commitments in the course of negotiations:

- (a) Prior to completion of loan negotiations, the Bank sought and obtained a written understanding between INCRA and SGR confirming that INCRA would respect Rondonia's zoning. (Protocol of Intentions between INCRA and SGR, June 1991).
- (b) Section 3.04 of the Loan Agreement committed the Federal Government, of which INCRA is an agency, to enforce Rondonia's Reform Program (which includes policies related to zoning) and to observe the zoning in all federally-financed investment activities in Rondonia.
- (c) Section 6.01 (b) of the Loan Agreement stipulated that an agreement between INCRA and SGR concerning land regularization policies and practices to be observed in the State would be a condition of effectiveness. The Agreement of

November 1992, signed by INCRA and SGR, constitutes a legally enforceable agreement under Brazilian law, and contains provisions stating that INCRA would not violate the provisions of Rondonia's zoning. This Agreement has been carefully reviewed by the Bank's Legal Department, which concluded that it was acceptable for purposes of fulfilling the condition of effectiveness.

3.11 The Bank has subsequently asked for further operational agreements and/or work plans between the SGR and INCRA because they were judged, in the course of supervision, to be important for implementation purposes. It is not uncommon for such decisions to be made during supervision; additional operating agreements with INCRA and/or other agencies may be requested before the Project is completed. The first such decision was made by the Bank's supervision mission of September 1993, which requested an additional operational agreement between SGR and INCRA. This was not because of violations on INCRA's part with respect to the 1992 Agreement, but because the preparatory work for Conservation Units (CUs) was behind schedule and the mission judged that it was important to have an agreement between INCRA and the SGR for carrying out the socio-economic and tenure studies needed before demarcation of the CUs. This is the agreement which the Requesters claim was not signed (and, therefore, was "misrepresented" to the Board in the March 1994 Status of Implementation Report). In fact, the agreement was signed on February 3, 1994.

3.12 Because of serious concerns over new decrees issued by INCRA to prepare for settlement activities that would be inconsistent with the zoning, particularly during April - July 1994, the Bank's August 1994 supervision mission decided that it was essential to obtain a further operational agreement on land regularization and settlement activities in order for INCRA to re-state its commitment to respect the Zoning Law and the Bank's Loan Agreement, and to encourage a more active collaboration of INCRA with the Project. While INCRA had basically refrained from new settlement activities during the first year of the Project, beginning in December 1993 the pattern changed and worsened as the 1994 electoral period approached.

3.13 Negotiations of such an agreement continued in September and October 1994 between representatives of the SGR, the Ministry of Regional Integration (MIR, formerly the Ministry of Interior), INCRA and NGOs, but the climate in which these negotiations took place was uncertain and complicated. The first round of Brazil's general elections was conducted on October 3, but Rondonia had to go to the second round on November 15 to elect its Governor. In the circumstances, INCRA was reluctant to commit to such an agreement. The final election results determined a change of ruling party in Rondonia, at which point it was clear to the Bank that the agreement between INCRA and the SGR would have to await the new administration.

3.14 Nonetheless, the Bank's presence in the Project at that crucial time was extremely important to prevent the possible abandonment of zoning; at the same time, it was equally clear that ensuring INCRA's collaboration had to be the center of Bank discussions

with the new administration. The first such discussions took place with the Governor-elect in December 1994. The new administration got off to a slow start and negotiations with INCRA did not start until February 1995, with the full participation of the State Secretary of Planning, the State Attorney General and the President of the Land Institute of Rondonia (ITERON).

3.15 A draft agreement in March 1995 was found to be unacceptable to the Bank. Moreover, in discussions with NGO representatives, the Bank learned that, in early 1995, INCRA's actions continued to disrespect the zoning. A strongly-worded letter was sent to the President of INCRA (and copied to the Ministers of Finance and Planning and to the Governor of Rondonia) on March 24, 1995, requesting an urgent resolution of the issue and stating that, if a solution were not found, the Bank would need to take remedial action as provided for in the Loan Agreement. INCRA continued to resist, and the Bank sent an additional letter on April 4, 1995.

3.16 During the Bank's March 1995 supervision mission, the President of INCRA committed verbally to take firm action, in close collaboration with the SGR, to ensure that implementation of settlement projects decreed during 1994-95 in Zones 4 and 5 would be made consistent with the zoning. To build upon these commitments and to stress the need to finalize a satisfactory agreement with the SGR before May 30, 1995, a letter was sent to INCRA, copied to the Ministry of Finance, on April 24, 1995. The Bank was extremely concerned about the approaching dry season (a relatively short period which normally begins in June, when encroachment and deforestation normally increase).

3.17 On April 25, the Bank was informed that INCRA had taken administrative action against the Superintendent of INCRA-Rondonia and that an answer would soon follow. The Bank was then informed that the President of INCRA was also replaced, on May 12. In the post-supervision letter to the Governor of Rondonia, on May 18, the Bank again stressed the need for a satisfactory agreement with INCRA by end-May, to ensure the continued flow of Bank funds to the Project. However, the new President of INCRA requested additional time to become acquainted with the issues in Rondonia, and the State Secretary of Planning recommended that the Bank accede to this request.

3.18 The Bank agreed to a further 30 day extension, but stated, in a letter dated June 16, 1995, to the Federal Minister of Finance that it would have no choice but to exercise its remedies if a satisfactory agreement was not signed by June 30, 1995. During a mission to Brazil by Bank staff, a satisfactory agreement was finally signed on June 26, 1995. A work program to make the agreement operational, due within 30 days of the date of signature, is being prepared. The Bank is monitoring this activity carefully, and is hopeful that a satisfactory work program will be produced in the time required and thereafter implemented.

Claim:

- 3.19 The Status of Implementation Report dated March 25, 1994, sent to the Board of Directors by the LAC Region, was misleading in that it distorted the contents of the Report of the Independent Evaluation Committee (IEC) with respect to INCRA, down-playing the problems identified and creating an "excessively optimistic" impression concerning measures taken by Bank staff and Governmental agencies.
[Matrix 1 (b)]

Comments:

3.20 No distortion of the IEC's Report took place in the preparation of the Status of Implementation Report (SIR), and an inaccurate impression was not given concerning measures taken by Project implementing agencies or Bank staff.

3.21 The Request suggests that the 1994 SIR was misleading because it referred to an operating agreement between INCRA and the SGR which had been recently signed and it downplayed the IEC's findings on land tenure problems. The following points should be noted:

- (a) The SIR did not state that the Loan had been declared effective in spite of not having a legally satisfactory agreement with INCRA, because it is the Management's view that the November 1992 Agreement met the condition for effectiveness.
- (b) The reference in the SIR to a recent agreement with INCRA was also correct; an operational agreement (originally requested by the September 1993 supervision mission) had just been signed in February 1994.
- (c) With respect to the findings of the IEC, although there were communications from various parties during the course of the work, the Bank received an Executive Summary dated February 1994. This was officially transmitted by the Chairman of the IEC and described as the "definitive final" version of the Executive Summary of the IEC Report. Most of the language quoted in the Requesters' report as being from the IEC Report is not, in fact, included in that Final Executive Summary, and the SIR provides a faithful condensation of the points made in the Executive Summary received from the IEC Chairman.⁹

9. Some of the language quoted in the Request was included in a document prepared by one member of the IEC in March 1994, but not adopted by the full IEC. In fact, although the Bank did receive the Executive Summary from the Chairman of the IEC in February 1994, the IEC was never able to agree on the text of a full report because of differences of opinion between members and with the SGR on a range of details.

The SIR does not suggest that settlement or land regularization was out of control in Rondonia. This certainly was not the case during 1993 when new settlement activities were not carried out in the field, despite strong pressures on INCRA and the SGR to do so, and when the number of titles given for holdings outside of settlement areas and Zones 1-2 had dropped off dramatically; this provided some reason for encouragement at that time. Also, the activities covered in the February 1994 agreement between INCRA and the SGR on CU work in Zones 4, 5 and 6 were proceeding in a satisfactory manner, with significant participation by the NGOs.

Claim:

- 3.22 The SAR Matrix is the basis of the institutional reform program supported by the Project. The Request alleges: (i) that Section 2 was not monitored properly¹⁰ and (ii) that the Bank ignored evidence concerning INCRA's violation of the assertion made in Section 4 with respect to deforestation and land titles.¹¹
[Matrix 1 (c)]

Comment:

3.23 The Bank has closely supervised and taken action when INCRA proposed settlement activity inconsistent with zoning. None of the areas declared by INCRA to be of "social interest" between 1992-1995 in Zones 4 and 5 were expropriated by INCRA nor have they benefitted from any investment by INCRA. During 1992-1995, INCRA issued about 2,474 titles mainly in Zones 1 and 2. Titling generally dropped off dramatically from 1,034 in 1992 to only 129 in 1993 but then picked up again in 1994 to 1,311. According to INCRA, about 5% of these titles were issued for holdings in Zones 4 and 5, and these were undetected by the Bank.

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10. Monitorable actions: Section 2: (i) no new settlement or land titling in areas without sustainable development potential as identified in agro-ecological zoning; (ii) development of land tenure legislation and regulations in conjunction with INCRA to ensure ... consistency with zoning.
11. The assertion was that MIRAD Regulations had nullified previous decrees that recognized deforestation as evidence of land occupation for titling purposes.

3.24 **Settlement.** The Requesters cite several instances of settlement activities by INCRA during 1992-95 which seem to be inconsistent with Rondonia's zoning and suggest that the Bank either has not been supervising these matters closely or has not been taking them seriously, or both. This is not the case. The Bank has been in dialogue with INCRA, the SGR and NGOs, and believes that its involvement has been catalytic in preventing INCRA proceeding with the settlement projects.

3.25 The cases mentioned in the Request have certain characteristics in common: (a) they are complex, involving a number of occupation claims which pre-date Rondonia's Zoning Law, in some cases by several years; (b) they often involve serious conflicts between earlier occupants with claims to larger properties, and small farmers who have recently migrated to the areas and are desperate to obtain land; (c) there are divergent opinions among NGOs, including among member organizations of the NGO Forum itself, as to how these problems should be resolved, with some pressuring the Bank, INCRA and the SGR intensely not to permit any settlement whatsoever in Zones 4, 5 and 6, and others campaigning for selective settlement provided the beneficiaries are small farmers; (d) while the areas in question are sizeable in absolute terms, they constitute only a very small proportion of the total areas of Zones 4, 5 and 6. To illustrate the nature of the issues and of the Bank's involvement, the following is a summary description of two of the main sets of settlement activities mentioned by the Requesters.

3.26 **Curupira, Rio do Conto and Agua Azul.** Shortly after Board presentation, the Bank received information from both the NGO Forum and the SGR about INCRA plans to create three settlement projects at *Curupira, Rio do Conto* and *Agua Azul*. On June 22, 1992, the Department Director sent a letter to the President of INCRA and the Minister of Finance inquiring about the matter, calling attention to the zoning and agreements reached during Loan negotiations. In follow-up discussions in June 1992 between Bank staff and INCRA, MIR and the SGR, INCRA informed that these actions were intended to regularize occupants (*posseiros*) whose occupation pre-dated the zoning by a number of years. The Bank emphasized that, whatever the validity of the individual claims might be, settlement activities *per se* could not proceed, as the lands were not suitable for sustainable agricultural development and settlement of them would be a clear violation of the zoning.

3.27 In a formal reply to the Bank on July 6, 1992, the President of INCRA confirmed that the lands had been partly occupied before the zoning (the letter mentions that when the lands passed to the patrimony of the Union on February 3, 1982, they were already partly occupied). INCRA suggested that, as an alternative, it would be willing to transfer the inhabitants to another location where settlement would be possible, but that they did not want to move. It also alleged that NGOs had been involved in the initial occupations, despite the fact that NGOs were now objecting. Nonetheless, INCRA did not explicitly agree not to proceed with the settlements.

3.28 The Bank's November 1992 supervision mission pursued the matter further; two mission members visited the area in question and found no evidence of recent settlement at field level. INCRA reconfirmed to the mission that it would not undertake any colonization or land regularization activities in these areas, since to do so would be inconsistent with the zoning.

3.29 In early 1993, on learning that INCRA's annual budget included provision for the projects at *Curupira*, *Rio do Conto* and *Agua Azul*, the Bank objected and INCRA management advised that the provision had been included in the 1993 budget prior to the understandings reached in 1992, but that they were not actually being utilized and would be transferred to other activities. INCRA complied with this commitment throughout 1993¹².

3.30 The Bank has continued to monitor these areas, through field visits and review of INCRA documentation. As of late June 1995, there was still no physical evidence of further settlement activity by INCRA nor were INCRA budgetary resources being spent for this purpose. There are 29 recognized occupants (involving perhaps 150 people) all of whose claims pre-date the zoning, and perhaps another 25-30 families with no official occupation documents (they also appear to have been there for a number of years, although there are no records to substantiate this). In early July 1995, INCRA signed a written commitment to terminate these three settlement projects.

3.31 Nova Vida, Rio Branco, Oriente, Pedra do Abismo. This is the latest major activity which INCRA initiated in Rondonia, under a decree of expropriation for public interest on July 22, 1994 (preceded by a related action in *São Sebastião* in April 1994). This was accompanied by intense pressure for and against such action by local municipal and State congressional representatives and various NGOs.

3.32 A large number of small farmers are involved; Bank staff visiting the area estimate that there could be as many as 3,000 families. Some have claims pre-dating Rondonia's zoning. During 1993, three NGOs¹³, requested INCRA's Regional Superintendent in Rondonia to undertake expropriation (of original *posseiros*) and settlement of small landless families in several areas. While the Bank's September 1993 supervision mission had concentrated on the *Curupira-Rio Conto-Agua Azul* case described above, it

12. The February 1994 Final Executive Summary of the IEC, which reviewed the first year of project activities, made reference to "*tentativas não concretizadas*" (attempts not realized) by INCRA to establish new settlements, suggesting that, at the time, the IEC also did not find evidence of actual INCRA settlement activities in the field.

13. The Landless Peoples' Movement (*Movimento dos Sem Terra*, MST), the Pastoral Land Commission (*Comissão Pastoral da Terra*, CPT) and the Federation of Rural Workers (*Federação dos Trabalhadores Rurais*, FETAGRO).

learned also that there were additional pressures for other settlements but received firm assurances from INCRA-Rondonia that no such activities would be undertaken.

3.33 Throughout the rest of 1993 and early 1994, various newspaper articles appeared, one of which reported on complaints by MST, CPT and FETAGRO that INCRA had not undertaken a single expropriation (for purposes of settlement) in Rondonia in all of 1993¹⁴. On March 3, 1994, in a meeting between INCRA, a State Deputy and representatives of some NGOs (FETAGRO, MST, CPT and a representative of the NGO Forum), it was agreed, *inter alia*, that INCRA would take all necessary action, by April 1, 1994, to launch an expropriation for settlement purposes in *Aquidaban, Fazenda Belotto, Rio Branco* and *São Sebastião*.

3.34 On March 11, 1994, the NGO Forum of Rondonia sent a letter to INCRA objecting to this decision. In a follow-up meeting on March 15, with some municipal Presidents of FETAGRO present, INCRA stressed the contradiction in the position of the NGOs. The point was also made that a group of 16 State Deputies and the Rural Labor Syndicates of two municipalities had appealed to the President of the Republic to undertake the expropriations. In a separate meeting with INCRA management in Brasilia on March 17, 1994, the NGO Forum, Vice-President of FETAGRO, and State Director of MST agreed that INCRA should proceed with some expropriations but not others.

3.35 In a meeting on May 13, with some representatives of NGOs, it was agreed that a joint State-Civil Society Commission should be established to study the situation, including site visits. Finally, on May 24, in another meeting limited to INCRA and some members of FETAGRO, it was decided: (a) to proceed with the expropriation actions; (b) that the size of lot to be established should be no larger than 30-50 ha; (c) politicians, loggers and traders would not be recognized; and (d) a Commission including INCRA, FETAGRO, CPT and MST should be created to study alternatives to address the needs of rubber tappers in lots of 250-300 ha. The point of citing these various meetings, and there may well have been others, is to illustrate the diversity of views within and among many institutions on how to deal with those issues.

3.36 INCRA initiated the expropriation process in July 1994 for *Rio Branco, Nova Vida, Pedra do Abismo* and *Oriente* (having already launched *São Sebastião* in April 1994). However, a Federal judge put a restraining order on any expropriation or land settlement to be carried out by INCRA which were in contradiction with the zoning; this restraining order included *Rio Branco, Nova Vida, Pedro do Abismo* and *Oriente*. The Bank supervision mission in August 1994 took the position that these areas of conflict would need an urgent solution and that such areas should have first priority in the studies for the Second Approximation of the zoning. It concluded that problems of existing occupations would have

14. "O Estadão", Rondonia, October 23, 1993.

to be addressed, but that a rushed resolution of these areas in the midst of a political campaign would substantially accelerate land invasions.

3.37 In November 1994, the Governor of Rondonia came to Washington D.C. to request the Bank's agreement to change the zoning category of lands around the road BR-429, including the above-mentioned areas, in order to begin an aggressive titling campaign of settlers based on studies carried out by ITERON in collaboration with INCRA and the Rondonia State Secretariat of Environmental Development (SEDAM) in 1994. The Bank did not accept the proposal and, as of the time of writing this report, no official settlement actions have begun at field level.

3.38 The only other case cited in the Request concerns an expropriation decree issued in December 1993 for a much smaller area known as *Fazenda Roncauto*. It involves 1,500 ha and 42 families, of which 38 have been occupying the land since 1986. The Bank is in discussion with INCRA over this case, for which final titles have not yet been given. INCRA has reconfirmed to a recent supervision mission that there are no other new settlements underway or planned in Rondonia.

3.39 **Titling.** Recent information seems to indicate a decline in land regularization compared with the pre-project/pre-zoning period, and that the number of titles issued declined markedly in 1993, suggesting that the first year of the project was positive as reported in the SIR but was then followed by an upswing in titling in 1994. The total number of titles given dropped from 1,034 in 1992 to only 129 in 1993 but then increased again to 1,311 in 1994. However, INCRA insists that for the entire 1992-94 period, no more than 5% of titles issued were outside Zones 1 and 2, and the majority of these related to pre-project claims. The data also suggest that the average size of property is under 100 ha (i.e., not considered large in the Rondonia context).

3.40 **Regulations.** On the subject of forest clearing, the information in the Request is correct as regards the language of INCRA's Portarias and Instructions. However, other policies of INCRA do not accept forest clearing alone as proof of occupation but, rather, requires evidence of actual use of the land in farming or pasture. In other words, there is no incentive to simply deforest an area in order to lay claim, without following up by working the land. This is not to say that, in some cases, INCRA staff may not actually look for such evidence of active use of land, only that this is not an issue of regulations because they should be doing so to comply with internal requirements.

Project Activity: 2. Zoning and State Conservation Units

Claim:

- 3.41 The Bank made only timid efforts concerning the institutionalization of zoning, and failed to insist on the revision of Decree No. 6,316 of March 24, 1994 concerning zoning.
[Matrix 2 (a)]

Comments:

- 3.42 We do not agree that the Bank's efforts concerning zoning were timid and, since the Bank's opinion is that Decree No. 6,316, which provides the Regulations for the Zoning Law, is adequate for the purposes of zoning based on the Zoning Law and the first stage of technical work, we do not agree on the need for its revision.

- 3.43 At the time of project identification in late-1987, Rondonia had already been subject to nearly two decades of massive inward migration, poverty was widespread, and Amerindian communities were in a particularly precarious situation. Despite some efforts to address such issues, there were official plans to initiate new settlements, several of them already started, as well as other public investments including the opening of new roads in ecologically fragile areas. The Government was becoming increasingly concerned about the long-term consequences of what was essentially still a laissez-faire approach to occupation of the State.

- 3.44 When the Bank first began preparation of the Project, many individual ingredients for proper environmental management, conservation and sustainable development were missing in Rondonia: adequate technical knowledge, a supportive incentives structure, strong institutions, political consensus, effective local participation and empowerment, and adequate financial resources were all conspicuous by their absence. The main deficiency was the lack of an objective framework giving priority to efforts to address these problems. The most significant action taken at the start of project preparation was to reach agreement with the Federal and State Governments on the use of zoning to provide that framework. This helped to shift the debate on environmental management and conservation issues from a highly-charged emotional plane to a more technical one.

- 3.45 A special FAO Technical Cooperation Program (FAO-TCP), supported by the Bank under an earlier project, worked with SGR officials to review existing data (e.g., satellite imagery and public and private research information). The result, the First Approximation of the zoning, made an assessment of land use capabilities, distinguishing those areas of the State which appeared to have sustainable development potential from those which should remain under permanent forest cover because of poor soils, biodiversity considerations and/or the presence of Amerindian communities.

3.46 The first zoning exercise was completed in September 1987. The State was divided into six zones and basic development strategies were prepared for each one. Zones 1 and 2 (with a total of 9.2 million ha) were judged to be suitable for sustainable agricultural development, preferably under tree crops and other agro-forestry. Zone 3 (0.6 million ha) was considered suitable for riverine agriculture. Zones 4, 5 and 6 (14.5 million ha) were to remain under permanent forest cover in the form of reserves and Conservation Units.

3.47 A revised version of the zoning was discussed at an International Seminar in Brasilia in May 1988, after which Rondonia adopted the zoning in State Decree-Law 3,782 of 1988. The SGR was enthusiastic over the fact that the zoning provided a framework and rationale for decision-making (e.g., in what parts of the State to allow new settlement, where to concentrate public investments, which areas to conserve and under what type of management regime) which had a clear technical basis that could be explained to involved parties.

3.48 At the same time, it was recognized that the zoning, which was on a scale of 1:1,000,000, would need to be refined for detailed planning and implementation purposes. In particular, more information was needed about the status of occupation of each of the Zones to be protected (Zones 4, 5 and 6), and about land use capabilities in discrete areas within or on the borders of the major zones. The zoning was thus viewed as a "living" exercise, for which frequent refinements would be needed, with the Project to provide the financing for the initial refinements (referred to in the Project documents as the "Second Approximation" of the zoning).

3.49 Decree-Law 3,872 was followed by a letter of April 29, 1988 from the then Federal Minister of the Interior to the Bank's President, committing the Government to a series of actions to implement the zoning. The letter attached a Program of Actions signed by the Federal Ministries of Interior (to which FUNAI belonged) and Agriculture (to which INCRA and the Brazilian Forestry Development Institute -IBDF- belonged). With some minor revisions, this later became Rondonia's Reform Program under the Loan.

3.50 In 1989, the zoning was incorporated into Rondonia's new State Constitution, providing a firm basis for all future State legislation on related matters. This was a pathbreaking effort in Brazil at that time, and one which was clearly taken in the context of the Bank-supported Project. Rondonia is the only State in Brazil, with the exception of Mato Grosso (for which a similar exercise was later carried out, also in the context of a Bank project), which has conducted a comprehensive zoning, incorporated this into State law, and therefore has a clear framework against which compliance with environmental commitments can be measured on a statewide basis. The Request is critical concerning the absence of regulations for Decree Law 3,782. When the Bank decided to press for incorporation of the zoning into the new State Constitution, it was no longer a priority to regulate Decree Law 3,782, because it was agreed instead that a stronger Complementary Law would be passed afterwards, based on the new Constitution. Complementary Law 52 was passed in 1991. This Law had provisions similar to Decree 3,782 but, being complementary to the new State

Constitution, had a higher legal standing. Complementary Law 52 was presented to and approved by the State Congress in 1991, in the context of the negotiations of the Bank Loan, and is referred to in the Minutes of Negotiations. The Loan Agreement (Section 3.04) also committed the Federal Government (of which INCRA is an agency) to observe Rondonia's zoning.

3.51 Enabling regulations for Complementary Law 52 were approved as State Decree 6,316 in March 1994. This was a much longer interval than provided for in the Law and the regulations should have been issued sooner. The fact that they were not was partly due to the delay in Loan effectiveness and the actual start-up of implementation (until June 1993), and to the SGR's concern to complete the "Second Approximation" of the zoning before finalizing the Regulations. In the event, since the Second Approximation was also delayed because of procurement and financing problems, the Bank finally insisted on the issuance of the Regulations based on the initial version of the zoning, pointing out that these could always be modified later when improved information became available.

3.52 The first SIR the Bank's Board of Executive Directors mentioned that the enabling Regulations for Complementary Law 52 had just been received but had not yet been analyzed. They were subsequently reviewed and found to be adequate to implement the zoning. The attachment of a zoning map to the Regulations and the inclusion of geographic coordinates would have facilitated implementation. For that reason, the report of the Bank's August 1994 supervision mission called for a revision of Decree 6,316. Discussions to amend the regulations were initiated in September 1994, but were not concluded in the final months of the outgoing State Government (elections in October and November 1994 at Federal and State levels) or the initial months of the incoming Government. The March 1995 supervision mission decided to emphasize more aggressive promotion of the zoning, which will again involve a broad dissemination of the map. Hence, the immediate need to improve Decree 6,316 itself was minimized; this will be taken up again when the results of the Second Approximation of the zoning become available, for which studies will start soon.

3.53 In summary, the Bank: (a) supported the technical work to prepare the zoning for Rondonia; (b) was instrumental in getting the zoning reflected in State legislation and the State Constitution; and (c) was instrumental in obtaining the Federal Government's agreement to respect the zoning. This latter step was critical, because much of the land in Rondonia was (and is still) under Federal jurisdiction, dating back to the period when Rondonia was a Federal Territory. Not all steps occurred as quickly as might have been desirable, especially the issuance of enabling Regulations for Complementary Law 52, but the Bank considers that the main actions taken are leading to sound legal institutionalization of the zoning. Further, as mentioned by the Requesters, a Federal Judge in 1994 issued a restraining order against some proposed INCRA activities in Rondonia on the grounds that they were inconsistent with the State's zoning; this supports the view of the Bank that the zoning does, indeed, have a sufficient legal basis and is enforceable under Brazilian law to support the Project objectives. There are certainly issues of non-compliance, but not of inadequate legal institutionalization.

3.54 Lastly, from a practical standpoint, the Borrower and the SGR have behaved as though the zoning were legally valid, with or without enabling Regulations, both in the lead-up to Loan negotiations and during early implementation. This has undoubtedly had an important deterrent effect and has contributed to the marked decrease in the rate of deforestation in Rondonia in the late 1980s and early 1990s (although the rate of deforestation in Brazil has declined generally, the decrease in Rondonia has been even faster). From the very start of project identification and preparation, the Bank advised the then State Governor that it would not proceed if the State acted on plans to pave the road BR-429. A variety of Conservation Units were established in 1990 and 1991, as planned in the zoning; the SGR entered into a series of operating agreements among State agencies and with Federal entities to carry out or obey the zoning. Demarcation activities of Conservation Units and reserves have been undertaken. The State disseminated the zoning within Rondonia and elsewhere in Brazil, and obtained agreements on several occasions from INCRA to halt announced settlement activities that were inconsistent with zoning. The Bank obtained the SGR's agreement to withdraw from circulation a state road map which showed both current and planned roads, on the grounds that it was inconsistent with the zoning. In summary, there has been a large body of actions by the Borrower and the SGR which constitute evidence that they have behaved in the firm belief that the zoning is legally binding.

Claim:

3.55 The Bank failed to monitor Section 1 of the SAR Matrix, specifically the continuous enforcement of the Zoning Plan by ITERON and the Forest Police. [Matrix 2 (b)]

Comments:

3.56 There was no failure to monitor on the part of the Bank. The Project had a late start-up and slowness in implementation, partly the result of counterpart funding difficulties, upheavals associated with national and then state elections, and the weakness of the State and Federal implementing institutions. In particular, the Second Approximation of the zoning will start in the near future, after a delay of over two years. This has been the cause of problems, given that this Second Approximation would have been used to clarify some areas of dispute (mainly concerning occupations in Zones 4 and 5 which predate the zoning).

3.57 With respect to the State Forest Police, there have been improvements in terms of enforcement, particularly compared with the "before-project" situation. However, as described in the First SIR to the Board in 1994, serious problems still need to be addressed: illegal logging and invasions of Amerindian and other reserve areas are still not under control.

3.58 The Bank recognizes that ITERON is a weak institution and it is being strengthened through a technical assistance program. The SGR, with assistance from the United Nations Development Program (UNDP), is preparing a detailed institutional strengthening plan, and a Bank institutional specialist is to visit Rondonia in July 1995.

Claim:

3.59 The Bank failed to scrutinize legally-deficient SGR decrees concerning the Conservation Units and to monitor the drafting of legal instruments by the SGR for the effective establishment of State Conservation Units.
[Matrix 2 (c)]

Comments:

3.60 Decrees creating all the Conservation Units (CUs) mentioned in Section 2.10 and five of the Units mentioned in Section 2.11 of the Project Agreement were issued under the Transitory Dispositions of the State Constitution of 1988 (Articles 18, 20 and 21); they were found to be adequate by the Bank Management. Decrees for the remaining CUs will have to await completion of technical work financed under the Project; the Management recognizes that such work is behind schedule.

3.61 As a result of the zoning, it was decided during Project preparation that a variety of initiatives would be undertaken to preserve the majority of land in Rondonia under natural forest cover. Specifically, most land in Zones 4, 5 and 6 would be placed within biological reserves, ecological reserves, parks, state and federal forests, extractive reserves and Amerindian reserves. The kind of CU to be created derived from the results of the zoning, but all shared the common objective of keeping as large a part of Rondonia as possible under natural forest cover. It was recognized that, following more detailed studies of the areas, the classifications of specific areas might be changed.

3.62 **Obligations under the Loan.** In the years preceding project preparation, the Federal Government had already established four important CUs and two national forests, covering an area of about 1.7 million ha. However, these were not well-maintained and were not adequate to preserve fully the State's rich biodiversity. The SGR therefore established several additional CUs prior to Loan negotiations, and others were to be created according to a dated schedule.

- (a) Section 2.10 of the Project Agreement requires the SGR to maintain 11 CUs (*Guajará-Mirim*, *Candeias* and *Corumbiara* State Parks; *Serra dos Três Irmãos* State Ecological Station; *Rio Ouro Preto* and *Tracadal* State Biological Reserves; *Rio São Domingos*, *Rio Abunã*, *Rio Roosevelt* and *Rio Madeira*

State Forest Reserve; and *Rio Preto/Jacundá* Extractive Reserve). These CUs cover a total of 2.56 million ha.

- (b) Section 2.11 of the Project Agreement requires the SGR to create an additional 12 CUs (*Serra dos Parecis* and *Serra dos Reis* State Parks; *Pacaas Novos*, *Rio Novo*, *São Miguel*, *Pedras Negras*, *Jacy-Paraná* and *Rio Cautário* Extractive Reserves; and *Rio Guaporé*, *Rio Mequens*, *Rio Machado* and *Rio Vermelho* State Forests). These CUs cover a total area of 2.31 million ha.

In other words, the Project Agreement requires the SGR to establish and maintain 23 CUs, with a total area of 5.05 million ha. At the present time, the Loan is assisting Rondonia to establish a total of 54 CUs covering some 6.0 million ha.

3.63 As mentioned in para. 3.60 above, decrees for all CUs in Section 2.10, and five of the 12 CUs in Section 2.11 were issued in 1989-90 and were found to be adequate by the Bank. State decrees of interdiction were issued in 1991 for two others, and five have not yet been legally created. The interdiction decrees, valid for 180 days, authorized the State to carry out the necessary studies to create the CUs. As the preparation of this technical work was behind schedule, the interdiction period was extended, via decree, for another 180 days. The Bank has not insisted on further extensions of the interdiction date, or an interdiction decree for the remaining four CUs, but has focused with the SGR on expediting preparation of the technical reports and accompanying documentation to confirm the limits of the CUs through an additional legal act (either a decree or a State law) and to request the transfer of the lands from the Federal Government to the State.

3.64 For all but one of the CUs listed in Section 2.10 of the Project Agreement, socio-economic and land tenure studies have been carried out; ecological assessments have started in three areas and the rest are scheduled for 1995, in order to obtain the definitive transfer of the lands from Federal to State jurisdiction. For the remaining CU (*Candeias*, 8,985 ha), agreement in principle was reached with the Bank in 1993 to exchange this area for a larger and more biologically diverse one (*Samuel Ecological Station*, 76,698 ha) which is less vulnerable to encroachment; amendment of Section 2.10 of the Project Agreement to reflect this change will be done only after all the studies have been completed. Demarcations are completed or underway for six of the 11 CUs, plus the Samuel Station, covering in total 40% of the area of the CUs in Section 2.10.

3.65 For all 12 of the CUs listed in Section 2.11 of the Project Agreement, socio-economic and land tenure studies have been carried out and ecological assessments are scheduled for 1995. Demarcations have been completed for two of these CUs and are in progress for another three, covering in total 44% of the area of the 12 CUs.

3.66 **Transfer from the Federal Government.** The Request mentions that the SGR has issued decrees, conducted studies and carried out demarcation of lands which still belong to the Federal Government, and therefore asserts that these actions are legally

questionable. This is correct, but is not likely to pose serious risks to the Project. When the decision was taken during project preparation to establish the new State CUs, it was understood that most of the lands on which they were to be created were under Federal jurisdiction and certain procedures would have to be followed to obtain their transfer to the State. Federal legislation exists governing the transfer of Federal lands to the States (Decree Law 2,375 of November 24, 1987).

3.67 To comply with this law, Rondonia would need to complete socio-economic and land tenure studies, as well as ecological evaluations of each area, to constitute what is known as a "project" providing the technical justification for the transfer. It was never expected that this would be carried out before the creation of the CUs, but rather that these activities would be funded under the Bank loan and carried out in the course of Project implementation. By virtue of its participation in project preparation, and in assuming the role of Borrower of the Bank loan, the Federal Government also endorsed Rondonia's strategy and did not question the fact that the CUs were being established on land that was still Federal; it was understood that the transfers would take place once the technical "projects" had been completed.

3.68 The transfer process is behind schedule, although this is not due to lack of commitment on the part of the Federal Government but, rather, mainly to the delays in start-up of the Project and release of funds, which in turn caused delays in implementing the supporting studies needed to justify the transfers. Progress on some of the 23 CUs mentioned in the Loan and Project Agreements has also been affected by the State's decision to proceed, in parallel, with the creation/studies/transfer of a series of other CUs assisted by the Loan but not mentioned in Sections 2.10 and 2.11 of the Project Agreement. A number of these additional areas are designated as State Forests and Extractive Reserves, and have been requested by NGOs. Since the end result (the placing of a larger part of Zones 4, 5 and 6 under protection as CUs) will enhance the achievement of the Project's objectives, the Bank considers this to be a positive development and additional evidence of the SGR's commitment to zoning. In March 1994, the Governor of Rondonia formally initiated the transfer process by officially requesting the first set of 26 CUs. Currently the State Government is completing the "technical" projects needed to support the request.

Claim:

3.69 The Bank failed to report adequately to the Board via the SIR concerning irregularities in Decrees and legal instruments establishing CUs.
[Matrix 2 (d)]

Comments:

3.70 The SIR did not contain a reference to this matter because Management believes that the Borrower and the SGR have been following an agreed strategy which makes sense, namely to attempt where possible to secure the physical protection of the CU areas with demarcations, while completing the necessary legal steps which can be time-consuming.

Claim:

3.71 The Bank failed to monitor the irregular demarcation of Conservation Units.
[Matrix 2 (e)]

Comments:

3.72 Ideally, the State should have completed all the studies and technical reports before actual demarcation of the reserves was undertaken. However, it must be emphasized that if the State had waited until the land regularization had been completed, many of these areas would have been vulnerable to further encroachment. As it is, the demarcation of CUs, with posting of clear signs, has already decreased the level of invasions and facilitated their protection¹⁵.

3.73 During project preparation, when the decision was taken to create new CUs based on the zoning recommendations, it was well understood, that the land tenure situation in Rondonia was complex (e.g., usufruct laws, squatters rights, occupation licenses, conflicting titles) and that there were already varying kinds of occupation in parts of Zones 4, 5 and 6. The SGR made a decision from the start to proceed with establishment of the CUs, followed by a series of protective and enforcement actions, and to sort out the confused legal situation over time. Occupation was still relatively limited in relation to total areas. The alternative, to resolve all legal issues up-front, would have taken a number of years, during which it was feared that occupation and environmental damage would have worsened. In retrospect, this seems to have been a wise strategy because, despite the various specific cases cited by the Requesters, total occupation today is still relatively limited and much of it pre-dates the Project.

3.74 The Requesters are concerned also that the areas of some CUs have been reduced in the course of demarcation. This is true, in that the areas demarcated are less than

15. For some important CUs in Rondonia and in other States, it has taken many years to complete the full legalization process. If they had not been demarcated and protected during this interim process, there is a strong probability that in many cases they would no longer exist for all practical purposes.

the total areas specified in some original decrees establishing CUs (although the decrees themselves have not been altered and, therefore, the size of the CUs has not legally been reduced). As discussed above, many CUs had some occupation, both titled and untitled, pre-dating their creation, and in many cases also pre-dating the zoning. Again, the SGR had the choice of waiting to demarcate until it had first resolved all legal issues or of demarcating the vast majority of the areas which were free of legal claims and moving quickly to enforce borders. It chose the latter strategy; of 29 CUs with demarcations completed or in progress, six have had their area reduced (by 263,284 ha), one has been expanded (by 10,143 ha), and the areas of 22 have not been altered.

3.75 The facts concerning occupation of each CU have become clear only in the course of the socio-economic studies (i.e., during 1994-95). The Bank's August 1994 supervision mission reviewed the situation, and concurred with the decision to give immediate protection to the areas not under dispute. However, the mission also agreed with the SGR that ITERON would exclude from the demarcations only those areas with valid titles¹⁶. It was also agreed that ITERON would submit all future demarcation proposals and the results of the socio-economic and tenure studies of the CUs to the Technical Commission on Land Zoning and Policy (on which NGOs have a 50% participation). Failure to do so previously had clearly caused a great deal of misinformation to circulate among NGOs and other interested parties in Rondonia, including some NGOs which were participating in Project coordination and management.

3.76 To place this in perspective, the net reduction is equivalent to only 10% of the total area decreed under such units. On the other hand, the SGR is working to place 18% more land under CUs over and above that stipulated in Sections 2.10 and 2.11 of the Project Agreement.

3.77 As the Requesters mention in particular the Guajara-Mirim and Corumbiara State Parks, the following is a summary of the situation, to the best of the Bank's understanding.

3.78 **Guajara-Mirim State Park.** This Park was established in 1990 and covers an area of 258,813 ha. The Requesters are correct in stating that 53,601 ha were set aside during demarcation. In carrying out the socio-economic and tenure studies, the State discovered that seven final titles had been awarded by the neighboring State of Mato Grosso in 1925¹⁷ and recorded in the public land registry of Guajara-Mirim in 1960. These covered 101,376 ha, of which 53,601 were located inside the Park boundaries. During the demarcation, the State left these areas aside; it also excluded some 22,000 ha of land where

16. ITERON had been excluding both titled properties and occupied areas to which claimants did not yet have title.

17. At the time, Rondonia was part of the State of Mato Grosso, later became a Federal territory and only in December 1991 became a State in its own right.

squatters (*posseiros*) were found, albeit without title. In an effort to offset this, the State annexed an additional 23,000 ha of land to the Park on its northern side.¹⁸ The Decree establishing the Park has not been changed. In summary, the Park now includes a total of about 281,000 ha, within which there is a relatively undisturbed area of 207,000. The alternatives for dealing with the present occupants range from expropriation (in the case of the party with legal titles) to establishment of a "buffer zone" around the undisturbed nucleus and a concerted effort to engage those who remain within the Park in implementation of a management plan. This situation will be fully justified in the technical project now under preparation and which will be the basis for confirming the limits and the specific characteristics of the unit with a legal act (either a law or a Decree).

3.79 The Requesters mention plans to open the road BR-421 which would cut across the Park. On several occasions, the Bank has made it clear to the SGR that such an action would be a violation of the zoning, which could well result in the application of remedies by the Bank under the Loan and Project Agreements. Protection has been strengthened (including guard posts and trailers) along the Park border. An agreement has been reached that no further preparatory work will be undertaken for this road unless a satisfactory environmental impact assessment and mitigation plan is developed. The Bank has no plans itself to finance the road, but is following the situation closely as part of its general monitoring of compliance of public investment programs with Rondonia's zoning.

3.80 **Corumbiara State Park.** This Park was established in 1990 and covers 586,031 ha. The Requesters are correct that 159,215 ha were set aside during demarcation, but not because this area all corresponds to titles granted irregularly by INCRA in 1991-92. During the socio-economic and tenure study, it was learned that there were also three valid titles (totalling 2,348 ha) issued by the State of Mato Grosso and recorded in the land registry of Guajara-Mirim in 1967. The study team also found a total of 104 "properties", some with definitive titles. The average period of occupation ranged from 10-12 years (with the oldest alleged to be 32 years). Many of those without definitive titles had some form of documentation registered with INCRA in the pre-project period. Only nine documents had been issued during 1990-92, of which seven were to claimants who had occupied the land for periods ranging from 8-13 years. Some 45 occupants could not provide any documentation. In the circumstances, the State set aside the contested area and demarcated the remaining 426,818 ha. However, it did not legally reduce the size of the Park; a legally created CU can only be altered with a law. The SGR is considering alternatives for dealing with the occupants, with an apparent preference for a buffer zone approach, with an effort to engage occupants in and around the Park in the objectives and future management plan. As in the case of the Guajara-Mirim State Park, a SGR technical proposal to manage this issue will be reflected in the technical project now under preparation.

18. The Request mentions only the setting aside of the 53,601 ha; it does not mention either the exclusion of the 22,000 ha or the compensatory action of adding 23,000 ha.

Project Activity: 3. Environmental Licensing and Protection

Claim:

- 3.81 During preparation and initial execution of PLANAFLORO, the Bank was negligent concerning problems related to environmental licensing and protection activities, contradicting its determination to establish a policy framework to conserve and manage natural resources¹⁹.
[Matrix 3 (a)]

Comments:

3.82 The Bank has paid considerable attention to environmental protection issues, both in the design and early implementation of the Project. Although OP 4.36, the current policy on forestry, was not in effect at the time the project was prepared and appraised, the forestry sector aims expressed in it -- of reducing deforestation, enhancing the environmental contribution of forested areas, reducing poverty and encouraging sustainable development -- are all part of the Project²⁰.

3.83 The Bank recognized at the time of preparation that enforcement could not be the only tool used to achieve the environmental protection objectives of the Project, but that economic incentives (i.e, roads attracting populations to ecologically fragile areas) or disincentives (i.e., lack of public investments and services) are important elements to make policy a viable complement to enforcement. In the context of project preparation, construction of new roads into ecologically fragile areas (and paving of BR-429) were stopped. To ensure that up-front protection activities would begin before the project was even launched, the Bank restructured the last ongoing POLONOROESTE Project to finance exclusively such interventions. Finally, when issues arose, the Bank acted quickly and firmly. The most notable example of this was the fact that the Bank stopped negotiations of the Project (which started in January 1990 and was finally completed only in December 1991) until the Federal Government reviewed its decision to revoke a Presidential decree that proposed a reduction in the *Uru-eu-wau-wau*, the largest Amerindian reserve in Rondonia.

19. The allegation refers to the enforcement of the policy reforms under the Reform Program (the SAR Matrix) and the consistency of the Federal and State Governments' investment program in the State of Rondonia with the State's zoning. Alleged violation of OP 4.36 (paras. 1.d (i) and (v)) on Forestry and of OPN 11.02 on Wildlands is cited.

20. The OP distinguishes between "exclusively environmentally protective projects" and all other types of projects. For the latter type of projects there is no need to have all requirements of the OP fulfilled before starting project execution. This Project is not exclusively for the protection of forestry resources. Moreover, the general legal framework for the environment in Brazil and especially in the State of Rondonia has been recently assessed by the Bank Management and found to be adequate.

3.84 To improve environmental protection activities, which were being conducted in an inefficient manner, the Bank encouraged the formation of an environmental committee (which was created on September 20, 1993) to oversee policies and actions. The committee, coordinated by SEDAM, included representatives from the Ministry of Public Works, the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA), FUNAI, PLANAFLORO, and four representatives of the NGO Forum of Rondonia. In early 1994, the Committee approved a Five-Year Plan of Enforcement.

3.85 The plan was not fully implemented, because of a lack of cooperation by IBAMA and insufficient counterpart funding for salaries and travel expenses of the staff of all environmental institutions. Although there had been an agreement with IBAMA at the start of the Project, this had lapsed. An agreement with IBAMA to decentralize environmental activities and coordinate actions with SEDAM was not signed until late December 1994. In the meantime, however, there have been some coordinated, sporadic and emergency actions among the main environmental institutions. In addition, SEDAM, IBAMA and the Forest Military Police have carried out independent enforcement activities, in particular to supervise deforestation, burning of trees, and wood cutting, among others.

3.86 To overcome some of the problems, an improved Monitoring and Protection Strategy was discussed with the SGR, with the full participation of the NGO Forum, in mid-1994. The strategy: (a) aims to integrate enforcement activities with environmental education, remote sensing, monitoring and decentralizing responsibilities at the municipal level; (b) calls for substantial involvement of the local civil society and the prioritization of environmentally-sensitive areas based on remote sensing information, particularly in buffer zones of CUs; and (c) allows better use of scarce financial resources.

3.87 Since the start of the Project, the Bank has ensured an equilibrium in project expenditures on environmental components *vis-a-vis* those for other components through the application of a *pari passu* agreement administered by the Federal Coordination Unit. Nonetheless, between September 1994 and June 1995, resources available for environment monitoring and enforcement were limited due mainly to the electoral period in late 1994 and changes of Federal and State administrations at the beginning of 1995 which put on hold all project resources until late June 1995.

3.88 As agreed with the March 1995 mission, the SGR undertook a strong emergency enforcement program in the Indigenous Area (AI) *Mequens* in March 1995. In addition, SEDAM, the Forest Police, the Department of Roads and the Municipality of *Vila Nova do Mamore* and *Campo Novo* signed an agreement to coordinate enforcement along the highway BR-421 in April 1995. The environmental education program, approved by the Enforcement Committee in May, began in early June 1995. The latter emphasizes the involvement of communities in monitoring the use and conservation of natural resources. In mid-June, the Government initiated coordinated emergency enforcement activities in the AI *Uru-eu-wau-wau*, BR-421, and Buriti. Currently, all the agreements among the different institutions responsible for environmental enforcement/monitoring have been signed. The

agreement with IBAMA calls for the transfer of its responsibilities to SEDAM. These activities and an aggressive media program designed to disseminate the project objectives and activities are laying the basis for the implementation of a more efficient monitoring and enforcement program. The Bank recognizes, however, that activities agreed during the March 1995 mission on the topic are behind schedule.

3.89 With respect to licensing, Bank supervision has been less effective. Administrative procedures for licensing are more difficult to supervise. First, Complementary Law 52 allows the issuance of deforestation permits in Zones 4, 5 and 6 for up to five ha. of land for subsistence purposes (SEDAM's records do indicate that the average size of licenses granted has been relatively small). Second, the records of deforestation permits are organized by municipality, a number of which include parts of different zones (i.e., Zones 1 and 5), so that it is not easy to discern from this data alone the zone in which the permit will be used. Finally, the remote sensing capabilities that SEDAM was supposed to have at its disposition to monitor illegal deforestation are only now starting to operate. However, total levels of deforestation in Rondonia have been decreasing and, according to preliminary information from the National Institute for Space Research (INPE) are already lower than anticipated for the fourth and fifth years (even though the Project is now only in its second year of implementation).

3.90 The Request states that SEDAM provided licenses based on Decree 6,403 of June 10, 1994. However, it did not recognize that that Decree was revoked by Decree 6,485 of August 11, 1994, published on the same date in the official newspaper, as a result of mission discussions. During the August 1994 mission, it was agreed that the needed SEDAM/IBAMA agreement would have to include revisions to the licensing procedures. In December 1994, IBAMA signed a decentralization agreement with SEDAM. The Bank recognized that to implement the agreement it would be necessary to review and revise the licensing and enforcement strategy. The transfer of responsibilities to SEDAM will facilitate compatibility with the directives of the zoning. SEDAM has already started to use remote sensing information, although on a very limited scale, for licensing of land clearing of more than 50 ha.

Claim:

3.91 The SIR of March 25, 1994 submitted to the Board is misleading concerning environmental licensing.
[Matrix 3 (b)]

Comments:

3.92 The Report submitted to the Board is not misleading. It stated that: "During the first year of the Project, the emphasis in Rondonia has been on the removal of illegal transport of wood, and illicit fishing [and that] the State, in collaboration with FUNAI, the

Federal Military Police, IBAMA and in some cases with representatives of NGOs, has conducted 90 enforcement operations in 24 locations (2,200 days/equivalent of enforcement activities, in comparison with the original plan of 2,000 days/ equivalent)." This is correct; however, the SIR also stated that: "Despite this progress, serious problems still need to be addressed. Illegal logging in Amerindian and other reserve areas is still not under control. Moreover, owners of confiscated mining and forestry equipment are often able to recover their assets and illegally obtained wood and other products because of the State's inability to present its case properly and/or in a timely manner in the judicial system. Therefore, beginning in 1994, the Project will also finance equipment, training and transport for the State Public Attorney's Office, to improve the effectiveness of the enforcement program." Since then the State Public Attorney's office has been much more active in taking measures to enforce environmental laws in Rondonia.

Claim:

- 3.93 Inadequate monitoring of remote sensing interpretation of violations of zoning.
[Matrix 3 (c)]

Comments:

3.94 The implementation of satellite imagery interpretation as a means of monitoring forest cover and State investments has been slower than expected, because of the slow project start-up and funding issues, and the State is still relying on more traditional, and less reliable, methods of detecting illegal deforestation and encroachment. However, the Bank has monitored the implementation progress of this activity and has promoted its publication and use as a basic tool for the Environmental Monitoring and Enforcement strategy.

3.95 All State CUs are already mapped; in addition, areas of high environmental/social tension (e.g., BR-429, BR-421) and municipalities of *Ouro Preto D'Oeste*, *Guajará-Mirim*, *Ariquemes* and *Cacaulandia* have also been mapped. Most of the directed and inter-institutional enforcement activities are planned based on the satellite images. At least ten judicial actions for offenses against the environment have been assisted by satellite information (e.g., Extractive Reserve *Rio São Pedro, do Garimpo Bom Futuro* and Extractive Reserve *Rio Cautário*). Remote sensing information is also being used to identify forest burning and from August 1995 it will be articulated with the Forest Police, IBAMA and SEDAM. Since mid-1994, interpretation of geo-processing information as a tool of enforcement was included in the environmental education program; about 20 environmental personnel have already been trained on this subject. The budget of 1995 emphasizes complementary activities to accelerate implementation of this activity. In addition, key services will be privatized to accelerate implementation.

Project Activity: 4. Investment Programs and the Media Program

Claim:

- 3.96 Joint evaluations, by the Bank and the Government, of Federal and State governments' investment programs and economic incentives have not been done in a satisfactory manner²¹.
[Matrix 4(a)]

Comments:

3.97 The claim that joint evaluations have not been satisfactory on the basis of the examples provided is not justified. The evaluation carried out is of: (a) policies and framework; and (b) major investment activities, and is not an exhaustive treatment of all individual cases.

3.98 A Bank supervision mission of November 1992 reviewed documentation for 1993 on the draft State budget, Federal transfers and credit lines and found them to be generally consistent with the zoning. The September 1993 supervision mission reviewed the draft 1994 budget, with particular emphasis being placed on planned investments in roads in the State; it was agreed that the State would withdraw from circulation a state road map which had recently been printed (and which pre-dated the zoning) to avoid any confusion about the State's intentions not to carry out infrastructural investment in areas without sustainable development potential. During 1994, the Bank reviewed the Road Master Plan and the program of the Electricity Company of Northern Brazil (ELETRONORTE) in Rondonia and its consistency with the zoning law. The Bank did not carry out during 1994 a full analysis of the 1995 Investment Program because this would not have been very meaningful given the imminent change of Federal and State governments. However, in December 1994, the Bank discussed the matter and obtained assurances from the Governor-elect of Rondonia that the State's investment programs would be fully consistent with the Zoning Law. This was reconfirmed in the letter sent by the Secretary of Planning to the Bank on June 26, 1995.

3.99 With respect to credit, in September 1993, the Bank recommended to the SGR that a Decree be issued ensuring that credit lines in Rondonia be consistent with the zoning. A Decree was issued in October 1993, and thereafter letters attaching the Decree were sent to *Banco do Estado de Rondonia* (BERON), Banco do Brasil, and Banco da Amazonia, S.A. (BASA).

21. Three examples are cited of violations: in agricultural credit, fiscal incentives and electrical energy generation.

3.100 With respect to ELETRONORTE, in December 1994 the Bank was informed that the physical implementation of hydro-electric power plant at Ji-Paraná would not be initiated before December 1998, and then only provided that the feasibility study had been updated and environmental studies, with due consideration to the indigenous issues, had been carried out and approved.

3.101 With respect to fiscal incentives given by the Superintendency of the Free Zone of Manaus (SUFRAMA), it should be noted that in Federal Decree 101 of April 17, 1991, Article 15, paragraph two, clearly states that any incentive has to be consistent with the zoning. The analysis of the actual implementation of fiscal incentives and credit policy in Rondonia has been included in the Terms of Reference for the Independent Evaluation of the project to be carried out for CY1994 by the IEC.

Claim:

3.102 The Bank should have insisted on the preparation of a Master Road Plan for the State being a condition of disbursement of the road infrastructure sub-component of the Loan.
[Matrix 4 (b)]

Comments:

3.103 The preparation of a Master Road Plan for the State was not included as a condition of disbursement for the sub-component because no new roads are to be constructed under the Project. The Bank believes that the prior review of the annual budgetary provisions for roads within the Investment Program of the Federal and State governments, provided for in the Loan Agreement, provides sufficient scope to allow monitoring of compliance with zoning.

3.104 The Road Master Plan for the State was prepared by the Department of Roads of the SGR during 1994. In August 1994, with the full participation of the NGO Forum, the Bank agreed that the Master Plan would be presented to the Infrastructure Technical Commission (which has 50% NGO participation) for review and approval. After a number of meetings, the Plan was reviewed and approved by the Commission in November 1994. The Master Plan was printed but not distributed, and is expected to be distributed at the municipal level during the next months.

Claim:

- 3.105 The SIR of March, 1994 did not adequately inform the Board on problems concerning State and Federal investment programs.
[Matrix 4 (c)]

Comments:

3.106 State and Federal investment programs were generally complying with the zoning and the SIR was therefore not misleading on this issue. In cases where the Bank was aware of threatened deviations, it has been catalytic in stopping them (e.g., construction of the road BR-421 and the establishment of new INCRA settlements in ecologically fragile areas). With respect to BASA lending in Rondonia, cases of which the Bank was aware did not involve new lending but rather disbursement of tranches of loans committed before loan negotiations, although it is possible that there may have been some deviations in practice. The Request cites one case; the Bank does not believe the practice is widespread. We will follow up on the specific case cited. This is, of course, an area which needs to be monitored regularly and deserves special attention from the IEC.

Claim:

- 3.107 There is no evidence of the Bank insisting on the subject of the media program.
[Matrix 4 (d)]

Comments:

3.108 The Bank focused a great deal of attention on the media program during project preparation, in the interest of ensuring that Rondonia's agro-ecological zoning was widely disseminated both within the State and elsewhere in Brazil. During the last two years this has received less attention. However, even in the absence of a formal program, PLANAFLORO and the zoning are frequently discussed in the media and in public events, and were the subject of an intense political debate during the last electoral campaign. The Bank is paying particular attention to formal dissemination of PLANAFLORO during 1995.

3.109 Some examples of media dissemination of Rondonia's agro-ecological zoning in the period before project implementation started are:

- (a) The article in *Veja* (a magazine of wide circulation), entitled "*Rondonia Preservar, E Lei!*" included the agro-ecological zoning and warned that the best areas of Rondonia were already occupied, and that many of these were already producing low yields and returns. The objective was to discourage

new migration to the State; the article was sponsored by the Secretariat of Planning (SEPLAN) of Rondonia.

- (b) A special edition of *Jornal do Congresso Nacional*, "*PLANAFLORO: A Natureza E Prioritaria*". This eight-page report included positions by Government officials (both State and Federal) on the agro-ecological zoning of Rondonia and plans to control and discipline future occupation of the State.
- (c) *National Geographic* also carried Rondonia's agro-ecological zoning map and brief plans, although this was not a Government initiative.
- (d) There were also television and radio spots and various articles in the local newspapers in Rondonia about the zoning.

3.110 Subsequently, there have been numerous declarations and speeches by State officials (Governors, State Senators, etc.) and seminars on PLANAFLORO which, while not an organized media campaign in the strict sense, have served to inform and remind the public in Rondonia about the existence of the zoning and the implications. The widespread knowledge within Rondonia as to what PLANAFLORO means is evidence that dissemination, through various means, has been taking place.

3.111 During 1993, a coherent media dissemination program was discussed with the State. However, it was not fully implemented due to reduction in the amount of financial resources released to the Project. The Bank did not insist on the presentation of a media program by November 15, 1994, as the State was in the midst of elections. However, the need to prepare a dissemination strategy on the Project was discussed with the Government during the December 1994 mission; dissemination, in the form of seminars at the local level, has been initiated in areas with the highest level of environmental/social tension, in particular, in the buffer zone of the environmental units. In addition, as stated in the Secretary of Planning's letter of June 26, 1995, a public opinion poll will be conducted soon, the results of which will be used as the basis for designing a new media strategy and program.

Project Activity: 5. Support to Indigenous Communities

Claim:

- 3.112 The Bank failed: (i) to produce an Indigenous Peoples' Development Plan; and (ii) to guarantee consultation with or informed participation of indigenous people in the project.
[Matrix 5 (a)]

Comments:

3.113 An Indigenous Peoples Development Plan was not prepared because it was not, at that time, part of the Bank's requirements. The sub-component was designed in accordance with OMS 2.34 rather than OD 4.20, which was not issued until the Project was prepared and appraised. OMS 2.34 did outline certain prerequisites for the successful design and implementation of tribal components or programs. These included the recognition and demarcation of tribal lands, the providing of appropriate social services (including health programs), measures for protecting the cultural integrity of the tribes, and a forum for the participation of the tribal people in decisions affecting them and for adjudication and redress of grievances. The claim that indigenous people were not guaranteed consultation or informed participation in project preparation is incorrect. During project preparation, and previously during supervision of the last phases of the POLONOROESTE, Bank staff discussed project design with indigenous people in their villages. Bank staff also attended a meeting of indigenous peoples and Rubber Tappers in 1989 under NGO auspices to discuss the forthcoming project, and received numerous delegations of indigenous leaders and NGOs in Porto Velho. During all these visits, the aim of the indigenous sub-component was discussed in detail and the basic outline of the project as designed was supported by nearly all those present.

3.114 The Indigenous Communities sub-component of PLANAFLORO was designed and appraised with the experience of the POLONOROESTE project in mind. The principal considerations were as follows:

- (a) The project should be simple, addressing the most basic problems faced by indigenous people in the area and those affecting their survival, and agreed focus on the key issues that affect the physical and cultural survival of the approximately 4000 indigenous people living in the State of Rondonia.
- (b) The principal concerns were:
 - Land Security: secure, legally-ratified tenure of indigenous areas, achieved through the demarcation of indigenous areas already identified and the renewal of the boundaries of other reserves.
 - Monitoring and Enforcement of indigenous reserves, to prevent squatting, logging and other illegal encroachment.
 - Localization and protection of isolated indigenous groups and provision for their immediate survival needs in the face of the expanding agricultural frontier.
 - Provision of good quality medical care.

3.115 All these points were developed in the context of the emerging zoning plan, to serve as the master plan for development of the State's resources. The SGR would be the primary focus of project activities and responsible for project actions. Thus, instead of the preliminary recourse to Federal Agencies, the SGR would take the lead in adjudicating disputes and resolving questions.

3.116 A partial list of the areas visited by specialized Bank Staff during the years leading up to appraisal includes *Igarapé Lages*, *Igarapé Ribeirão*, *Pacaas Novas*, *Rio Negro Ocaia*, *Rio Guaporé*, *Sagarana*, *Igarapé Lourdes*, *Sete de Setembro*, *Uru-eu-wau-wau*, *Rio Branco*, *Mequens*. After implementation began in 1992, Bank missions visited Karitiana, and made several repeat visits to the areas mentioned above.

3.117 During these meetings, all of which were attended by Indians, FUNAI representatives and State officials, it was openly discussed that this Project would not attempt to resolve all the many serious problems confronted by indigenous people in the State of Rondonia but, rather, would help to create the minimum conditions necessary for indigenous survival. FUNAI and the SGR agreed that important activities would remain to be supported and implemented by other agencies, Federal, State and NGOs. The Bank repeatedly warned FUNAI and other Federal officials not to think that PLANAFLORO resources would be sufficient to resolve all the problems experienced by indigenous people in the State.

3.118 During project implementation, the problem of illegal timber sales by Indians arose and a number of indigenous leaders, mainly from the *Cinta Larga* and *Surui* tribes and supported by NGOs, approached a Bank mission with an idea for preventing this activity (see below). Although the Bank regarded the proposed solution with misgivings, the suggestion was accepted and implemented, illustrating the openness of the Bank to input from the project beneficiaries, the indigenous groups themselves.

Claim:

3.119 The costs of the Indigenous Communities sub-component were clearly underestimated; funds were never included for an indigenous education sub-project; and there was a lack of rigorous criteria used in selection and elaboration of indigenous community economic sub-projects.
[Matrix 5 (b), (c) and (d)]

Comments:

3.120 The indigenous sub-component of the Project was kept simple in order not to create difficulties in implementing a complex and unwieldy set of activities, as had occurred in the past. This decision was taken in view of the notorious weakness of FUNAI as an agency and the lack of alternative institutional resources in the State to supplement FUNAI's

capacity. The indigenous health, monitoring and enforcement, and isolated indigenous peoples activities to be carried out under the Project were based on detailed cost tables prepared with the best available data. Similarly, the cost tables for demarcation and boundary renewal were prepared with the best available data, taking into consideration differences between demarcating straight lines (*linhas secas*) and natural boundaries on the map. Since the implementation of the Brazilian stabilization plan (the *Plano Real*), these costs, like all other services, have risen significantly in real terms.

3.121 During project preparation and appraisal, consideration was given to an indigenous education sub-project. The Bank agrees that it is important for indigenous people to acquire literacy and numeracy in Portuguese while at the same time preserving their native language. However, the decision was taken not to include such a sub-project because of the absolute lack of implementation capacity, both in FUNAI and the State Education Department, and because of the generally negative experience with educational activities in indigenous areas under POLONOROESTE.

3.122 There is a common perception that indigenous people in Brazil are poor because they lack many goods that are considered necessities by others. However, among the relatively unacculturated indigenous people of Rondônia, these goods have little utility and, until recently, were of little interest. The reservations that have been delimited and demarcated are large enough to allow them to continue their subsistence pursuits of hunting, slash-and-burn agriculture, fishing and gathering. In most cases, the available resources are sufficient to permit continuation of an indigenous subsistence economy, which is the aim of the Brazilian reservation policy. Perhaps the only necessity that could not be produced by indigenous people are medicines needed for the treatment of introduced diseases, for which they have low natural immunity and no cultural familiarity.

3.123 This is not to deny the legitimacy of a demand for additional goods (e.g., steel tools for agriculture and food processing) which are much more efficient than their indigenous substitutes. Over time, additional goods including a few prestige goods were introduced and came to be regarded as necessities. Induced demand for these goods often leads to a "relative deprivation", and while this is a real problem in Rondonia, it is not one that should be addressed by World Bank investment financing. Stimulation of such demands can lead to competition, social dissolution and heightened dependency. Ultimately, the successful adaptation by indigenous people to life on reservations in the midst of a market economy will depend on their ability to interact successfully with that market. Unfortunately, tools available to FUNAI and other agencies for promoting that adjustment are very few and the few experiences to date have not been successful.

3.124 During the design phase, the Bank and the Government considered the experience of the economic development projects launched in indigenous communities by FUNAI. These projects consisted mainly of (a) the creation of native "canteens" or "trading posts" where indigenous people could exchange local produce for manufactured goods (e.g., sugar, kerosene, salt, cloth); and (b) the development of agricultural projects to

increase the scale and productivity of indigenous agriculture. The canteens had an average life of about six months, during which the capital of these small enterprises was run down by excessive credit buying, inadequate supervision, and accusations of stealing. The agricultural enterprises were characterized by the introduction of livestock, selected seeds, commercial farming and agricultural machinery. Unfortunately, these introductions were made without adequate technical assistance or understanding of indigenous subsistence systems. The result was the predation and death of most livestock and the failure of the large communal gardens. Most of the machinery that was acquired was inappropriate and broke down quickly due to lack of maintenance. In summary, these well-intentioned projects failed, mainly because they were not appropriate to the cultural context and there was a lack of technical assistance.

3.125 The exclusion of an indigenous economic development component from the original project design was the result of three major factors: (a) the failure of the experiments carried out under POLONOROESTE; (b) the lack of a qualified institution to help implement such projects; and (c) most of the indigenous communities had access to sufficient territory to permit indefinite pursuit of indigenous subsistence activities with reasonably good success and only small inputs of purchased goods.

3.126 During project implementation, it came to light that a number of indigenous communities in Rondonia were illegally negotiating timber rights with sawmills. There was no attempt to hide the extraction of timber in exchange for gifts and payments to the self-appointed leaders. The effect of this differentiation of a small elite on the original indigenous communities is likely to have a corrosive effect on indigenous social structure. In early 1994, a group of indigenous leaders appealed to the SGR for assistance with small-scale economic sub-projects, alleging that without them they had no alternative to selling timber. The March 1994 supervision mission agreed to include such activities under the Project, but only in areas where illegal timber extraction was a true threat. A document stipulating criteria for selection of communities' sub-projects was agreed between the State and the Bank. However, the State began to prepare sub-projects for all the indigenous villages in the State rather than just those where illegal sale of timber was a problem. The projects approved by the Bank in October 1994 followed the agreed criteria and left out some of the proposals.

3.127 During the December mission, the Bank was informed that the criteria used to approve the projects had not been discussed with the Indigenous Normative Commission, which has an equal participation of NGOs and Government officials. It was, therefore, agreed that the NGOs and the Government would submit revised criteria to the Bank. The revised criteria were finally submitted to the Bank during the March mission where it was agreed with full participation of NGOs, representatives of indigenous communities and government officials. The criteria include compatibility with the customs and culture of each group, low environmental impact, financial sustainability, etc. While the application of these criteria does involve some judgment, they are quite clear as a guide to action.

Claim:

- 3.128 Critical activities in the Indigenous Communities sub-component were not included as Government commitments in the Loan Agreement and/or the Project Agreement.
[Matrix 5 (e)]

Comments:

- 3.129 All activities included under the Project and considered to be the principal concerns of the indigenous communities are described in Schedule 2 of the Loan Agreement. The aspects considered to be most critical by the Bank (registration of indigenous reservations in the Department of Patrimony of the Federal Union, and health care for indigenous people) were included in one legal covenant of the Loan Agreement (Section 3.06). It should be noted that, when the Loan was negotiated, OD 4.20 was not applicable.

Claim:

- 3.130 The institutional capacity of executing agencies, especially FUNAI, was not ensured.
[Matrix 5 (f)]

Comments:

- 3.131 The Bank recognized the weakness of the State institutions and took this into consideration in the design of the Project. This is why a very comprehensive technical assistance and training component was incorporated into the Project, and also why the bulk of project activities were designed to be implemented, wherever possible, under contract with the private sector, including the NGOs. Nonetheless, the Bank shares the concern of the Requestors over the present weaknesses of some key institutions, such as ITERON and SEDAM, which will need to receive special attention under the technical assistance component of the Project over the next few years. They will also require an increased commitment on the part of the SGR to reduce the relatively high rate of turnover. The Bank has stressed these issues with the new State administration and will provide close follow-up.

- 3.132 A strong UNDP Technical Assistance (TA) Program has been in place since the beginning of the Project; many of the Project activities thus far are being done by the private sector. NGOs have been contracted to carry out socio-economic and tenure studies of Conservation Units and other activities, mainly related to the Project's environmental component; associations of small farmers have already started to implement projects of

communal interest (e.g., rice mills); and other activities under the socio-economic infrastructure component are also contracted out. The Second Approximation of the agro-ecological zoning of the State is about to be contracted with an international firm, which will not only execute the work, but will also train local staff to be able to interpret and utilize the information generated.

3.133 With respect to FUNAI itself, the Amerindian component was designed taking into account the agency's implementing capacity. It is noteworthy that, in spite of FUNAI's institutional weaknesses, the Requesters would have liked to see an even larger and more complex sub-component to be implemented by this agency.

Claim:

3.134 There is a lack of coherent strategy for guaranteeing the protection and enforcement of Indigenous Areas and other CUs.
[Matrix 5 (g)].

Comments:

3.135 The Bank Management does not agree with this contention, and believes the case is amply made in earlier sections of these comments.

Group of Actions: 6. Project Administration

Claim:

3.136 Preparation of the Project by the Government and the Bank was characterized by a lack of effective participation of organized civil society. In addition, a major reason for the SGR's failing in its commitments made to the NGOs was that the Bank did not include references to the Protocol of Understanding (between the Forum and the SGR) in the SAR and in the Loan and Project Agreements.
[Matrix 6 (a)(i), (ii) and (iii)]

Comments:

3.137 This criticism is not accepted. It is a matter of judgement how much participation is "enough", but the design of this Project envisaged a far greater role for NGOs in project coordination and administration than any other major investment program of its size in Brazil at that time. The Bank was catalytic in obtaining agreement on these features, including the June 1991 Protocol of Understanding between the SGR and the NGO

Forum. The Bank has no doubt that these arrangements are not yet working smoothly, any more than are other features of the Project after just two years of implementation. It will take time to develop the open communications and capacities necessary, but the framework is in place. Almost every Bank mission has held discussions with the NGO Forum or individual members. The Bank has also supported a variety of agreements reached between NGOs and the Government and has reflected such agreements in Aide-Memoires of supervision missions. In this regard, it is a matter of judgement whether a formal, legal treatment of the Protocol of Understanding would in fact have altered developments to date. In fact, it should be noted that the Protocol was discussed and referenced in the official Minutes of Negotiations of the Loan.

3.138 The Project has a management structure with substantial NGO participation formally established by State Decree. It has a State Deliberative Council and seven Program Normative Commissions (CNP) (Agriculture, Indigenous Affairs, Administration, Infrastructure, Environment, Social, and Zoning and Land Policy) each with equal participation from NGOs and the Government. CNPs are the technical commissions of the Council and they are responsible for the approval of policies, norms and annual budgets. During Bank visits, NGOs have participated not only in plenary sessions but also in the discussions of the individual project components and in field visits.

3.139 Of all NGOs represented in the CNPs, only three have an established system which, through elections, could allow the project beneficiaries to be represented in the commissions. During the August 1994 mission, the Bank agreed that project management needs to be improved to ensure more effective participation of grassroots representatives in the Project. The Bank has agreed to the Government-NGO request to decentralize project execution by permitting greater decision-making power and implementation responsibilities at the municipal level, working closely with communities, non-governmental organizations and the private sector, and has requested that all these steps are taken in close consultation with the NGOs through the CNPs. It was also agreed to review and revise the composition and operational directives of the Deliberative and Normative Committees to increase the effectiveness of civil society's role. A proposal to improve project management and civil society's participation is currently being discussed in the CNPs, however, activities are about one month behind schedule.

Claim:

- 3.140 In the supervision of the Project, the Bank:
- (a) did not ensure that the Borrower implements the Project with diligence to achieve its development objectives and in conformity with the Loan Agreement;
 - (b) did not identify problems promptly and help the Borrower resolve them; and
 - (c) did not monitor compliance with legal agreements and, where conditions were not being met, determine causes and best remedies.
[Matrix 6 (b)(i), (ii) and (iii)]

Comments:

3.141 As reflected in each mission's Aide Memoires, the Bank has helped identify problems and agreed on solutions not only with the SGR but in close consultation with the NGOs as has been shown in the comments elsewhere in this Chapter. In addition, the Bank's representative in Cuiaba has visited Rondonia almost every month since the beginning of project implementation to follow up on agreements reached in the course of supervision and resolve identified problems. In nearly all of these visits, he has had informal contacts with NGO representatives.

Claim:

- 3.142 Loan effectiveness was declared without the required agreement being signed between INCRA and the SGR.
[Matrix 6 (c)]

Comments:

- 3.143 This was responded to in paragraph 3.4 above.

Claim:

- 3.144 There were flaws in the Bank's internal reporting; incorrect assessments in a Form 590 (or Forms 590) led to misleading statements in the SIR of March 1994 sent to the Board.
[Matrix 6 (d)]

Comments:

3.145 Form 590s were produced in 6/92, 6/93, 12/93, 8/94 and 5/95. The Form 590 produced immediately before the 3/25/94 report to the Board was produced on 12/93. To the best of our knowledge, all information provided in that form was correct. At that time, the Project was rated "2", based on fairly good progress during the first six months from June 1993 to December 1994. The Forms 590 of 8/94 and 5/95 continued to rate Project Objectives as "satisfactory", but classified implementation progress as "unsatisfactory" because project momentum had begun to decrease from around April/May 1994 in the lead up to the Fall 1994 Federal and State elections and during the subsequent transitions between Government teams.

Claim:

3.146 Section 2.05 (b) of the Project Agreement concerning revisions of project performance indicators and operation of the Monitoring and Evaluation (M & E) Unit was not complied with, and mechanisms for NGO participation in M & E were not defined.
[Matrix 6 (e) and (f)]

Comments:

3.147 A project monitoring system exists. Reports are produced every three months by the Project Coordination Unit (PCU), summarized by SEPLAN and submitted to the Bank. In general, these reports are submitted in a timely manner. However, the system currently in place is deficient and does not permit fiscal and financial problems to be foreseen. This issue was discussed during the August 1994 mission and UNDP prepared a revised system. Development of a new system has been slower than expected. By end 1994, a new budgeting system was ready to be introduced but is still not properly linked to the monitoring system. The need to develop a planning and monitoring system to gauge and supervise the project's physical and financial progress, so as to help PLANAFLORO anticipate and resolve critical problems of counterpart funding and of distribution of financing, was accepted by the new administration. This activity is part of the UNDP work program to take place from July to December 1995. In addition, a Bank consultant has visited Rondonia recently to assist the State to develop and improve internal control and the auditing system.

Claim:

3.148 The final report of the IEC for CY1993 has not been officially submitted to the Bank because of blockage of support by PLANAFLORO and political pressure to "soften" the report's contents.
[Matrix 6 (g)]

Comments:

3.149 A final summary report was presented to the Bank in February 1994 by the Coordinator of the IEC. However, a final version of the full report was not presented to the Bank due to lack of agreement among members of the IEC, the State and the NGOs. In June 1994, the NGO Forum decided independently to send its extended summary of the entire report to the Bank's Executive Directors and to a number of international NGOs.

3.150 The Bank supervision mission of August 1994 had as a principal purpose discussing the content of the NGO letter (which was an extended summary of the NGO Forum's version of the IEC Report). The Bank played a catalytic role and conducted the discussions. It was agreed by all the parties involved that the discussions were to be centered on the recommendations and not on refuting each statement in the letter.

3.151 A work program reflecting the agreed measures was agreed among the NGOs and the SGR, and reflected in the August 1994 Aide-Memoires signed between the Bank and the Government, and the NGO Forum and the Government. Given the fact that the letter was an extended summary of the Forum's version of the report, in the Bank's view the report had fulfilled its objective -- to serve to identify ways of improving project implementation with full participation of civil society. A set of concrete measures to correct identified implementation problems was agreed between the Forum, the SGR and the Bank.

3.152 To avoid the problems encountered with the 1993 evaluation (which included the participation of NGOs, and representatives of the CNPs responsible for project implementation), during supervision in March 1995 agreement was reached on the process of the evaluation and on clear TOR for the 1994 report; these were also approved by the PLANAFLORO Administrative Commission. An independent institution will be contracted to carry out the evaluation and propose specific recommendations. The report and recommendations will then be reviewed and approved by the Administrative Commission of the IEC. As the report will not only evaluate the execution of the project but also the compatibility of State and Federal investments and policies with the agro-ecological zoning, the Government will also submit the results of the report and the recommendations to the State Zoning Commission as the State entity responsible for overall implementation of the AEZ. In this form, the project will help even further to institutionalize the zoning in the State of Rondonia.

Claim:

3.153 Evidence is presented of irregularities by the SGR in the pre-qualification of firms for the Second Approximation of the agro-ecological/socio-economic zoning.
[Matrix 6 (h)]

Comments:

3.154 In accordance with the Resolution, this matter is outside the mandate of the Panel.

Claim:

3.155 No independent audit of project accounts was made for CY1993.
[Matrix 6 (i)]

Comments:

3.156 It is true that, until now, there are no independent audit reports. Disbursements of Loan funds started in 1993 and the first audit report was due to be sent to the Bank by no later than June 30, 1994. This would also have covered some 1992 expenditures for which disbursements were made in 1993. Since the audit was not received, the August 1994 supervision mission requested the SGR to prepare and submit the reports and the Bank has worked with Federal and State officials to agree on the administrative procedures and the TOR to carry out the external audits. The TOR and a short list of firms to be invited to undertake the audits were agreed in March 1995. Unfortunately, due to lack of financial resources, the invitation to firms has not taken place. The letter of invitation was sent in early July 1995. A Bank financial management consultant visited Rondonia at the start-up of the project in June 1993 to help the State improve its financial management, accounting and auditing systems of project accounts. Another such specialist is in the field at this time providing similar assistance.

Claim:

3.157 In project preparation, there were irregularities in the contracting of consultants.
[Matrix 6 (j)]

Comments:

3.158 In accordance with the Resolution, this matter is outside the mandate of the Panel.

Claim:

- 3.159 The Bank did not respond to a series of failures by the Borrower and the SGR by initiating a process of successive actions on suspension of disbursements, as it was empowered to do by the Loan Agreement.
[Matrix 6 (k)]

Comments:

- 3.160 This matter is dealt with in these comments and in Chapter 4 on Supervision Strategy.

4. SUPERVISION STRATEGY

Supervision Strategy

4.1 In Management's judgment, the project objectives and strategy remain sound and should not be changed, but they will be assessed in detail during the upcoming Mid-Term Review. In broad strokes, our supervision efforts during the next 12 months will focus on seeking firmer commitments from the Federal and State Governments concerning adequate and timely funding for project activities; consistent enforcement of zoning policy; substantial forward movement in strengthening of key implementing institutions and NGOs; completion of supporting technical work for the full legal consolidation of CUs; and a special focus on getting Amerindian-related components off the ground. While the Borrower is in violation of a number of covenants, we would exercise our remedies only if active efforts to achieve compliance flag, or more generally, if the commitment of the Federal or State Government to project objectives appears to change in a fundamental way. Evidence of such failed commitment would include, *inter alia*, the following events: sustained failure to provide adequate counterpart funds on a timely basis; failure to transfer loan funds from the Federal to the State level; and reversals in zoning policy and practice. Specific examples of the latter would include, but are not limited to, INCRA's approval of new settlements in Zones 4, 5 and 6 or violation of zoning requisites on the part of Federal or State public investment programs.

4.2 The main features of the Federal and State Governments' project activities for the next 12 months, to be monitored closely by the Bank, are as follows:

Land Tenure Policy and Zoning

- (a) Immediate contracting for the Second Approximation of the agro-ecological zoning, with priority for several of the specific areas mentioned in the Request which, while not large in terms of the total area of Zones 4, 5 and 6, are nonetheless highly conflictive and will undermine Rondonia's reform program and zoning if not resolved successfully.
- (b) Preparation of the Work Program called for in the June 26, 1995 Operating Agreement between INCRA and the SGR, and thereafter its implementation; the Work Program will provide for INCRA's active cooperation in resolving issues in relation to early settlement either planned or implemented and titles given in Zones 4, 5 and 6, and the resolution of tenure conflict in proposed conservation and indigenous units.
- (c) Immediate hiring of essential technicians and/or services needed for ITERON to comply with the Work Program mentioned in (b) above, and completion of the detailed institutional strengthening plan by October 30, 1995, to be the basis of ITERON's future hiring of technical personnel and/or services needed to upgrade its institutional capacity.

Conservation Units, Environmental Monitoring and Enforcement

- (d) Complete the preparation of the "technical projects" of Conservation Units to justify transfer of Federal lands to the State, allow ratification of status by law (or create those not yet created) and record them in the State Land Registry, giving priority to those units mentioned in Sections 2.10 and 2.11 of the Loan Agreement.
- (e) Immediate hiring of essential technicians and/or services needed for SEDAM to comply with its work program, and completion of the detailed institutional strengthening plan by October 30, 1995 to be the basis of SEDAM's future hiring of technical personnel and/or services needed to upgrade its institutional capacity.
- (f) Ensure budgetary support for a strict implementation of the inter-institutional and decentralized environmental monitoring and enforcement strategy that prioritizes buffer zones of Conservation Units and indigenous reserves and areas of high social tension.

Indigenous Sub-Component

- (g) Completion of demarcation and rehabilitation of indigenous areas included under the Project and close monitoring of: (i) steps necessary to conclude registration of *Uru-eu-wau-wau*; (ii) identification of isolated indigenous communities; (iii) implementation of a sustainable health service program; and (iv) reserve enforcement. In addition, through UNDP technical assistance designed to improve the participation of civil society in the implementation of the Project, particular attention will be paid to the development of a direct input of indigenous people in the decision-making process of PLANAFLORO.

Project Administration

- (h) Decentralize project execution to permit greater decision-making at the local level, improve participation of civil society, and increase sustainability of project objectives.
- (i) Improve the monitoring system and internal financial control to better gauge and supervise physical and financial progress of the Project activities and monitor counterpart/project fund releases from the Federal Government.
- (j) The immediate contracting and execution of the external audit of the Project's accounts.
- (k) The immediate contracting of the Independent Evaluation called for in the Loan Agreement for 1994, ensure that the Report is discussed and agreed by the Independent Evaluation Committee, and that the findings and recommendations on policies and its implementation are referred to the State

Zoning Commission for follow-up action to support further institutionalization of zoning; the latter is the institution responsible for ensuring compliance with the Zoning Law.

4.3 This is not an exhaustive list of all activities on which the Bank will place priority with the Borrower and the SGR over the next year, but only a summary of the priority areas to which heavy attention will be paid. Slippage may occur; the supervision response to such slippage is reflected in para. 4.9.

4.4 In addition, a Mid-Term Review (MTR) will be carried out and a draft report submitted to the Bank's Board for review by June 1996.²²

22. Section 2.05 of the Project Agreement calls for preparation of the MTR by June 30, 1995; the delay of one year reflects the overall delay in project implementation.

**MATRIX SUMMARY OF THE REQUEST FOR INSPECTION
AND THE MANAGEMENT RESPONSE**

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLORO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: I. Land Tenure Policy			
(a) Agreement to be signed between INCRA and the State Government of Rondonia (SGR);	1 (a) Failure to insist on the signature of the INCRA/SGR agreement, and declaration of Loan Effectiveness without it.	Bank violations of Section 6.01 (b) of the Loan Agreement and 2.12 (a) of the Project Agreement; Therefore, the Bank was negligent in monitoring and insisting on compliance with Loan conditions.	The Agreement of November 1992 signed by INCRA and the SGR contains provisions that INCRA should not violate the provisions of the State of Rondonia's zoning and that it should receive approval for its settlement activities in the State from the State Commission on Land. It was considered fully to meet the condition of effectiveness as defined in the Loan Agreement.
(b) INCRA to support the SGR, in general, in land-related activities (e.g., suspension of plans for new settlement in appropriate areas, support the SGR in establishment of extractive reserves and in other critical land-related activities).	1 (b) Status of Implementation Report of March 25, 1994, sent to the Board by LAC, distorted the contents of the Independent Evaluation Committee (IEC) Report and misled the Board with respect to measures taken by Bank staff and government agencies. 1 (c) The Matrix of Environmental Policies, Measures and Actions (the SAR Matrix) in Annex 1 of the SAR is the basis of the institutional reform program supported by the Project. Item 2 of the SAR Matrix includes as a monitorable action the prohibition of new settlements and granting of titles in areas without sustainable development potential in accordance with zoning. INCRA did not respect this, and it was not monitored properly. Item 2 also includes, as an action to be taken, the "development of land tenure legislation and regulations, in conjunction with INCRA to ensure...consistency with zoning." The Bank did not enforce the implementation of this. The Bank ignored evidence contradicting the assertion made in item 4 of the Matrix concerning forest clearance and titling of land.	(N.B. The Request does not explicitly state which OD, etc. is supposedly being violated.)	There was no distortion of the IEC's Report in the preparation of the Status of Implementation Report and an inaccurate impression was not given concerning measures taken by Project implementing agencies or Bank staff. The Bank has closely supervised and taken action when INCRA proposed settlement activity inconsistent with zoning. None of the areas declared by INCRA to be of "social interest" between 1992-1995 in Zones 4 and 5 were expropriated by INCRA nor have they benefited from any investment by INCRA. During 1992-1995, INCRA issued about 2,474 titles mainly in settlement projects. About 5% of these titles were issued for holdings in Zones 4 and 5, and these were undetected by the Bank.

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLORO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: 2. Zoning and State Conservation			
(a) Institutionalization of AEZ;	2 (a) Timid efforts concerning institutionalization of agro-ecological/socio-economic zoning, and failure to insist on revision of Decree No. 6,316 of 3/2/94.	Bank violations of OP 4.36 on Forestry, and of OPN 11.02 on Wildlands.	We do not agree that the Bank's efforts concerning zoning were timid and, since the Bank's opinion is that Decree No. 6,316, which provides the Regulations for the Zoning Law, is adequate for the purposes of zoning based on the Zoning Law and the first stage of technical work, we do not agree on the need for its revision.
(b) Strengthening of State Land Institute (i.e., ITERON) to develop and administer land policy in accordance with AEZ;	2 (b) Failure to monitor Section 1 of the SAR Matrix, specifically the continuous enforcement of the Zoning Plan by ITERON and the Forest Police and negligence in assuring its implementation.		There was no failure to monitor on the part of the Bank. The Project had a late start-up and slowness in implementation, partly the result of counterpart funding difficulties, upheavals associated with national and then state elections, and the weakness of the State and Federal implementing institutions. In particular, the Second Approximation of the zoning will start in the near future, after a delay of over two years. This has been the cause of problems, given that this Second Approximation would have been used to clarify some areas of dispute (mainly concerning occupations in Zones 4 and 5 which predate the zoning).
(c) Establishment and maintenance of State Conservation Units (CUs).	2 (c) Failure to scrutinize legally-deficient SGR decrees concerning the CUs and to monitor the drafting of legal instruments by SGR for the effective establishment of State Conservation Units. 2 (d) Failure to report adequately on irregularities concerning Decrees and legal instruments via the SIR of March 1994. 2 (e) Failure to monitor the irregular demarcations of CUs.		Decrees creating all Conservation Units mentioned in Section 2.10 and five in Section 2.11 of the Project Agreement were issued under the Transitional Dispositions of the State Constitution of 1988 (Articles 18, 20 and 21) and are legally binding and were found to be adequate by the Bank. Decrees for the remaining CUs await completion of technical work financed under the Project; the Bank recognizes that such work is behind schedule. The SIR did not contain a reference to this matter as there are no irregularities. Ideally, the State should have completed all the studies and technical reports before actual demarcation of the reserves was undertaken. However, it must be emphasized that if the State had waited until the land regularization had been completed, many of these areas would be vulnerable to further encroachment. As it is, the demarcation of Conservation Units, with posting of clear signs, has already decreased the level of invasions and facilitated their protection.

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLORO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: 3. Environmental Licensing and Protection			
<p>(a) Strengthening of institutional capacity of governmental agencies (IBAMA, SEDAM, Forest Battalion of MP) in order to:</p> <p>(i) Protect and enforce boundaries of CUs and Indigenous Areas (AI);</p> <p>(ii) Control and prevent illegal acts;</p> <p>(iii) Promote sustainable forest management.</p>	<p>3 (a) During preparation and initial execution of PLANAFLORO, the Bank was negligent concerning environmental licensing and protection activities contradicting its determination to establish a policy framework to conserve and manage natural resources.</p> <p>3 (b) SIR to the Board of March 1994 is misleading concerning environmental licensing.</p>	<p>Bank violation of OP 4.36 (1.d (i) and (v)) on Forestry and OPN 11.02 on Wildlands.</p>	<p>The Bank has paid considerable attention to environmental protection issues, both in the design and early implementation of the Project. OP 4.36 was not in effect at the time the Project was prepared and appraised, and PLANAFLORO is not a forestry project <i>per se</i>. However, the forestry sector aims expressed in OP 4.36, of reducing deforestation, enhancing the environmental contribution of forested areas, reducing poverty and encouraging sustainable development are all part of the Rondonia Project.</p> <p>The Report submitted to the Board is not misleading. It stated that: "During the first year of the Project, the emphasis in Rondonia has been on the removal of illegal transport of wood and illicit fishing (and that) the State, in collaboration with FUNAI, the Federal Military Police, IBAMA and in some cases with representatives of NGOs, has conducted 90 enforcement operations in 24 locations (2,200 days/equivalent)." This is correct; however, the SIR also stated that: "Despite this progress, serious problems still need to be addressed. Illegal logging in Amerindian and other reserve areas is still not under control. Moreover, owners of confiscated mining and forestry equipment are often able to recover their assets and illegally obtained wood and other products, because of the States' inability to present their case properly and/or in a timely manner in the judicial system. Therefore, beginning in 1994, the Project will also finance equipment, training and transport for the State Public Attorney's Office, to improve the effectiveness of the enforcement program." In fact, since then the State Public Attorney's office has been much more active in taking measures to enforce environmental laws in Rondonia.</p> <p>The implementation of satellite imagery interpretation as a means of monitoring forest cover and State investments has been slower than expected due to slow project start-up and funding issues and the State is still relying on more traditional, and less reliable, methods of detecting illegal deforestation and encroachment. However, the Bank has monitored the implementation progress of this activity and has promoted its publication and use as a basic tool for the Environmental Monitoring and Enforcement strategy.</p>
	<p>3 (c) Inadequate monitoring of remote sensing interpretation violations of zoning.</p>		

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLORO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: 4. Investment Programs and the Media Program			
(a) The institutional reform program would include: (i) elimination of economic and fiscal incentives encouraging inefficient resource allocation, non-sustainable private investment, and environmental degradation; and (ii) revision of Federal and SCR investment programs.	4 (a) Joint evaluations by the Bank and the Government of Federal and State governments' investment programs and economic incentives have not been done in a satisfactory manner. 4 (b) The Bank should have insisted on preparation of a Master Road Plan for the State as being a disbursement condition of the Loan.	(N.B. The Request does not specifically cite ODs, OP, OPN or OP/BP or their supposed violation.)	<p>The claim that joint evaluations have not been satisfactory on the basis of the examples provided is not justified. The review carried out is of policies and framework, not an exhaustive treatment of individual cases.</p> <p>A State Road Plan was not included as a condition of disbursement of the sub-component because no new roads are to be constructed under the project, which includes only road rehabilitation. However, the Road Master Plan was prepared by the Department of Roads during 1994, and in August 1994, with the full participation of the NGO Forum, it was agreed that the Master Plan would be presented to the Infrastructure Technical Commission (which has 50% NGO participation) for review and approval, which was completed in January 1994.</p> <p>State and Federal investment programs were generally complying with the agro-ecological zoning. In cases where the Bank was aware of threatened deviations, it has been catalytic in stopping them. The credit cases of which the Bank was aware did not involve new lending but rather disbursement of loans committed before loan negotiations.</p> <p>The Bank focused a great deal of attention on the media program during project preparation, in the interest of ensuring that Rondonia's agro-ecological zoning was widely disseminated, both within the State and elsewhere in Brazil. However, during the last two years this has received less attention. On the other hand, even in the absence of a formal program, PLANAFLORO and the zoning are frequently discussed in the media and in public events, and were the subject of an intense political debate during the last electoral campaign. The Bank is paying particular attention to formal dissemination of PLANAFLORO during 1995.</p>
(b) An informative media program to reduce the rate of (spontaneous) migration to Rondonia.	4 (c) The SCR of March 1994 did not adequately inform the Board on problems concerning State and Federal investment programs. 4 (d) There is no evidence of the Bank insisting on the subject of the media program.		

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: 5. Support to Indigenous Communities			
(a) Demarcation of five indigenous reserves on a total area of 500,000 ha;	5 (a) Failure (i) to produce an Indigenous Peoples Development Plan; and (ii) to guarantee consultation or informed participation of indigenous people in project.	Bank violation of OD 4.20.	<p>An Indigenous Peoples Development Plan was not prepared because it was not, at that time, part of the Bank's requirements for appraisal. However, all of the concerns which were ultimately incorporated in OD 4.20 were carefully considered in project preparation. The claim that indigenous people were not guaranteed consultation or informed participation in project preparation is wholly unacceptable. During project preparation, and previously during supervision of the last phases of the POLONOROESTE, Bank staff discussed project design with indigenous people in their villages. Bank staff also attended a meeting of indigenous peoples and Rubber Tappers in 1989 under NGO auspices to discuss the forthcoming project, and received numerous delegations of indigenous leaders and NGOs in Porto Velho. During all these visits, the aim of the indigenous sub-component was discussed in detail and the basic outline of the project as designed was ratified and supported by nearly all those present.</p> <p>The indigenous sub-component was kept simple in order not to create difficulties in implementing a complex and unwieldy set of activities, as had occurred in the past. This decision was taken in view of the notorious weakness of FUNAI as an agency and the lack of alternative institutional resources in the State to supplement FUNAI's capacity. The indigenous health, monitoring, enforcement, and isolated indians activities and demarcation and boundary renewal were prepared with the best available data.</p> <p>During preparation and appraisal, serious consideration was given to an indigenous education sub-project. However, the decision was taken not to include such a sub-project because of the absolute lack of institutional capacity both in FUNAI and the State Education Department and because of the generally negative experience with educational activities in POLONOROESTE.</p> <p>During the design phase, the Bank considered the experience of the economic development projects launched in indigenous communities by FUNAI. In summary, these well-intentioned projects failed quickly because they were not appropriate to the cultural context and there was a lack of technical assistance. The exclusion of an indigenous economic development component from the original project design was the result of: (a) the failure of the experiments under POLONOROESTE, (b) the lack of a qualified institution to help implement such projects; and (c) most of the indigenous communities had access to territory sufficient to permit indefinite pursuit of indigenous subsistence activities. The Bank agreed to such projects but only in areas where illegal timber extraction was a true threat. A document stipulating criteria for selection of community projects was drawn up and agreed between the State and the Bank. Rigorous criteria were established for approval such as compatibility with the customs and culture of each group, low environmental impact, financial sustainability, etc. While the application of these criteria does involve some judgement, they are quite clear as a guide to action.</p>
(b) Renewal of boundaries in a further 12 reserves;			
(c) Identification of isolated groups, and "possible" demarcation of a further 14 reserves;			
(d) Improvements in health programs;			
(e) Protection of indigenous areas;	5 (b) The costs of the Indigenous Communities sub-component were clearly underestimated.		
(f) Creation of a joint SGR/FUNAI monitoring team;			
(g) Registration of 4 indigenous reserves; and			
(h) Transfer of health staff.	5 (c) Funds were not included for an indigenous education sub-project.		
	5 (d) Lack of rigorous criteria used in selection and elaboration of community projects.		

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
PROJECT ACTIVITY: 5. Support to Indigenous Communities (Continued)			
5 (e) Critical activities in the indigenous communities are not included as Government commitments in the Loan Agreement or the Project Agreement.		Bank violation of OD 4.20	<p>This statement is incorrect. All activities included under the Project and considered to be the principal concerns of the indigenous communities are described in Schedule 2 of the Loan Agreement. They are considered to be most critical by the Bank (registration of indigenous reservations in the Department of Patrimony of the Federal Union, and health care for Indigenous Population) were included in one legal covenant of the Loan Agreement (Section 3.06). It should be noted that when the Project was negotiated, OD 4.20 was not applicable.</p> <p>The Bank recognized the weakness of the State institutions and took this into consideration in the design of the Project. This is why a comprehensive technical assistance and training component was incorporated in the Project, and also why the bulk of the private sector, including the NGOs.</p> <p>Nonetheless, the Bank shares the concern of the Requestors over the present weaknesses of some key institutions, such as ITERON and SEDAM, which will need to receive special attention under the technical assistance component of the Project over the next few years. They will also require an increased commitment on the part of the SGR to reduce the relatively high rate of turnover. The Bank has stressed these issues with the new State administration and will provide close follow-up.</p> <p>We do not agree with this contention and believes the case is amply made in earlier sections of these comments.</p>
5 (f) The institutional capacity of executing agencies, especially FUNAI, was not ensured.		Bank violation of OD 4.20 and OD 13.05	
5 (g) Lack of a coherent strategy for guaranteeing the protection and enforcement of Indigenous Areas (AIs) and other CUs.			
PROJECT ACTIVITY: 6. Project Administration			
6 (a) Popular Participation	<p>6 (a) (i) Preparation of the Project by Government and the Bank was characterized by a lack of effective participation of organized civil society.</p> <p>(ii) In June 1991, a Protocol of Understanding (PU), was signed between the SGR and NGOs, guaranteeing the latter a significant role in the project. The SGR did not fulfill the majority of its commitments.</p> <p>(iii) A major reason for the SGR's failing in its commitments was that the Bank did not include references to the PU in the SAR and the Loan or Project Agreement.</p>	Bank violation of OD 14.70 "NGO Involvement in World Bank-Supported Activities".	<p>It is a matter of judgement how much participation is "enough", but the design of this Project envisaged a far greater role for NGOs in project coordination and administration than any other major investment program of its size in Brazil at that time. The Bank was catalytic in obtaining agreement on these features, including the June 1991 Protocol of Understanding between the SGR and the NGO Forum. The Bank has no doubt that these arrangements are not yet working smoothly, any more than are other features of the Project after just two years of implementation. It will take time to develop the open communications and capacities necessary, but the framework is in place. Almost every Bank mission has held discussions with the NGO Forum or individual members. The Bank has also supported a variety of agreements reached between NGOs and the Government and has reflected such agreements in Aide-Memoires of supervision missions. In this regard, it is a matter of judgement whether a formal, legal treatment of the Protocol of Understanding would in fact have altered developments to date. In fact, it should be noted that the Protocol was discussed and referenced in the official Minutes of Negotiations of the Loan.</p>

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
(b) Supervision	<p>6 (b) (i) The Bank did not ensure that the Borrower implements the Project with diligence to achieve the development objectives and in conformity with the LA;</p> <p>(ii) The Bank did not identify problems promptly and help the Borrower resolve them;</p> <p>(iii) The Bank did not monitor compliance with legal agreements and, where conditions were not being met, determine causes and best remedies.</p> <p>6 (c) Declaration of effectiveness without the required INCRA/SGR agreement.</p> <p>6 (d) There were flaws in the Bank's internal reporting: incorrect assessments in a Form 590 (or Forms 590) led to misleading statements in the Status of Implementation Report of March 1994.</p>	Bank violation of OD 13.05	<p>As reflected in the Aide Memoires left after each mission, the Bank has helped identify problems and agreed on solutions not only with the SGR but in close consultation with the NGOs. In addition, the Bank's representative in Cuiaba has visited Rondonia almost every month since the beginning of project implementation to follow up on agreements reached and resolve identified problems. In nearly all of these visits, he has had informal contacts with NGO representatives.</p> <p>Responded to in 1 (e) above.</p> <p>Form 590s were produced in 6/92, 6/93, 12/93, 8/94 and 5/95. The Form 590 produced immediately before the 3/25/94 Report to the Board was produced on 12/93. To the best of our knowledge, all information provided in that form was correct.</p>
(c) Monitoring	<p>6 (e) Project performance indicators were not revised, as required by Section 2.05 (b) of the Project Agreement, and the Monitoring and Evaluation (M&E) unit has operated in a deficient manner.</p> <p>6 (f) mechanisms for NGO participation in M & E were not defined.</p>	Bank violation of OD 10.70 Project Monitoring and Evaluation, and OD 14.70 Involvement of NGOs.	<p>A project monitoring system exists. Reports are produced every three months by the Project Coordination Unit (PCU), summarized by SEPLAN and submitted to the Bank. In general, these reports are submitted in a timely manner. However, the system currently in place is deficient and does not permit fiscal and financial problems to be foreseen. This issue was discussed during the August 1994 mission and UNDP prepared a revised system. Development of a new system has been slower than expected. By end 1994, a new budgeting system was ready to be introduced but is still not properly linked to the monitoring system. The need to develop a planning and monitoring system to gauge and supervise the project's physical and financial progress, so as to help PLANAFLO anticipate and resolve critical problems of counterpart funding and of distribution of financing, was accepted by the new administration. This activity is part of the UNDP work program to take place from July to December 1995. In addition, a Bank consultant has visited Rondonia recently to assist the State to develop and improve internal control and the auditing system.</p>
(d) Independent Evaluation Committee (IEC)	6 (g) The final report of the IEC for CY1993 has not been officially submitted to the Bank because of blockage of support by PLANAFLO and political pressure to "soften" the report's contents.	In not insisting on compliance with Section 2.08 of the PA, the Bank is in violation of OD 10.70 on Project Monitoring and Evaluation.	<p>A final summary report was presented to the Bank in February 1994 by the Coordinator of the IEC. However, a final version of the full report was not presented to the Bank due to lack of agreement among members of the IEC, the State and the NGOs. In June 1994, the NGO Forum decided independently to send an extended summary of the entire report to the Bank's Executive Directors and to a number of international NGOs.</p>

ATTACHMENT 2

REQUEST FOR INSPECTION			MANAGEMENT COMMENTS
Planned Action by PLANAFLO	Alleged Omissions of the Bank	Alleged Violations of Bank Procedures	
(c) Procurement	6 (b) Evidence is presented of irregularities by the SGR in pre-qualification of firms for the Second Approximation of the zoning.	The Bank's behavior was a violation of OD 11.0 on Procurement and of 13.05 on Project Supervision.	This matter is outside the mandate of the Panel.
(f) Audit	6 (f) No independent audit of project accounts was made for CY1993.	The Bank is failing to enforce Section 3.01 (a) of the PA.	It is true that, until now, there are no independent audit reports. However, disbursement of Loan funds started in June 1993 while the Loan Agreement allowed retroactive financing for expenditures incurred in 1992. Since August 1994, the Bank has requested the SGR to prepare and submit the reports and has worked with Federal and State officials to agree on the administrative procedures and the TOR to carry out the external audits. TOR and short list of firms to be invited to undertake the audits were agreed in March 1995. Unfortunately, due to lack of financial resources, the invitation to firms has not taken place. The letter of invitation to firms was sent in early July 1995. A Bank financial management consultant has visited Rondonia to help the State improve its financial management, accounting and auditing systems of project accounts.
(g) Use of Consultants	6 (g) In project preparation, there were irregularities in the contracting of consultants.	The Bank's collusion was a violation of OD 11.10 on the Use of Consultants.	This matter is outside the mandate of the Panel.
(h) Suspension of Disbursements	6 (h) The Bank did not respond to a series of failures by the Borrower and the SGR by activating mechanisms for the supervision of disbursements.	By not initiating a process of successive actions on suspension of disbursements, as it was empowered to do by the General Conditions (6.02), and the LA (Article V), the Bank violated OD 13.40 on Suspension of Disbursements.	Suspension of disbursements was felt to be an inappropriate reaction to the problems of the Project. An intensified effort in supervision and maintenance of the dialogue was preferred.

CHRONOLOGY OF PROJECT AND LOAN PROCESSING AND SUPERVISION MISSIONS

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| 1. Identification | September 1987 |
| 2. Preparation Initiated | November 1987 |
| 3. IEPS Review Meeting | July 28, 1988 |
| 4. Regional Loan Committee Meeting | November 2, 1988 |
| 5. FEPS | December 1, 1988 |
| 6. Authorization to Appraise | December 16, 1988 |
| 7. Appraisal | July 26, 1989 |
| 8. Post-Appraisal | June 15, 1991 |
| 9. Negotiations | Initiated January 1990
Concluded December 1991 |
| 10. Board Approval | March 17, 1992 |
| 11. Loan/Project Agreement Signed | September 19, 1992 |
| 12. Effectiveness | January 15, 1993 |
| 13. Supervision Missions | May 1992
November 1992
March 1993
June 1993
September 1993
February 1994
August 1994
October 1994
December 1994
March 1995
June 1995 |

OPERATIONAL POLICIES AND PROCEDURES^{1/}

Operational Directive or Policy Note	Date of Policy Applicability	Point in Project Cycle at which the Policy Becomes Applicable	Comments
OD 13.05 Project Supervision	March 1989	Appraisal July 26, 1989	
OP 4.36 Forestry Policy	September 1993	Effectiveness January 1993	OP based on "The Forest Sector: A World Bank Policy Paper", July 18, 1991. Preceding policy dated 1978.
OP 11.02 Wildlands Policy	June 2, 1986	Identification September 1987	Policy already in force prior to project identification.
OD 4.20 Indigenous Peoples	September 17, 1991	Negotiation phase, initiated January 1990 and concluded December 1991	Replaced OMS 2.34 "Tribal People in Bank-Financed Projects".
OD 14.70 Involvement of NGOs in Bank-Supported Activities	August 28, 1989	Post-Appraisal June 15, 1991	Revised OMS 5.30, "Collaboration with NGOs". Policy did not change.
OD 10.70 Project Monitoring and Evaluation	September 11, 1989	Post-Appraisal June 15, 1991	Replaced OMS 3.55. Contained several new emphases, e.g., MIS systems.
BP 10.00 Investment Lending: Identification to Board Presentation	June 1994	Not applicable as BP10.00. Previous directives applied.	Replaced OD9.00, OMS 3.04 and a long list of other documents pertaining to the project processing cycle.
OP 13.40 Suspension of Disbursements	March 1995	Supervision/Implementation	Replaced OD 13.40, OMS 3.52 and other OMSs dating back to April 1991.

1. The objective of this Matrix is to show at which stage of the Project processing cycle, the OD/OP/BP cited in the Request became applicable, and where known, what preceded it. For example, OD 14.70 on NGO Involvement in Bank-Supported Projects did not technically become applicable until after project appraisal, and so was applicable by the time of post-appraisal. In any case, project preparation was assisted by its predecessor OMS 5.30 and thus the Bank was following its own directive but not necessarily the one cited in the Request.

CORRESPONDENCE TO THE BANK

1. The Request in Chapter VIII-Conclusions, asserts that "almost all of the correspondence sent by NGOs from Rondônia never received a response from the World Bank." The Requesters refer to twenty-six items of correspondence. They refer in particular, to items in Annexes 1 (a), 1 (b), 1 (c), 3 (a), and 3 (c), and all items in Annexes 4 and 5 of the Request. Of these letters, only six were addressed directly to the Bank; one was forwarded to the Bank as a copy of correspondence to INCRA, and the rest were copies of correspondence to other third parties.
2. In fact, the record shows a consistent effort to respond to incoming correspondence from NGOs and to do so in a comprehensive manner, whether by letter or follow-up meetings, in Washington, Brasília or Porto Velho, during supervision missions or other occasions. It is true that the Bank normally did not respond in writing to copied correspondence actually addressed to other entities, although, once again, the Bank frequently followed up on the subject of the letter during the next supervision mission. As Attachment B indicates, these missions were frequent and were supplemented by nearly monthly visits to Porto Velho of the Bank's field representative in Cuiabá, so there was ample opportunity for exchange of views about NGO concerns. The Bank appreciated being copied these letters and receiving phone calls, visits and other messages from NGOs, as they frequently helped to orient supervision missions to address issues about which they might not otherwise have been aware.
3. As to the specific items cited in the Request:
 - (a) Annex 1 (a) was a letter in October 1988 from Chico Mendes of the National Council of Rubber Tappers. Unfortunately, Mr. Mendes had been killed by the time the letter was received by the Bank; the subject matter was, however, discussed during project preparation.
 - (b) Annex 1 (b) was a letter in December 11, 1989 from Mr. Osmarino Amâncio Rodrigues and Mr. Ailton Krenak of the Union of Indigenous Nations. We do not have a record of this letter and believe that it may have been a communication to the Bank in December of 1988. On December 12, 1988, Bank staff met at Bank headquarters with representatives of an international NGO and Mr. Osmarino Amâncio Rodrigues to discuss issues raised by the National Council of Rubber Tappers.
 - (c) Annex 1 (c) was a letter from a group of local and international NGOs to the US Executive Director of the Bank, on January 9, 1990. Management does not normally answer correspondence to Executive Directors, but did reply to similar concerns in another letter sent on January 10 to the President of the

Bank and in other letters exchanged during this period with the Vice-President for Latin America at that time.

- (d) Annex 3 (a) was an open letter to the Board of Directors of the World Bank from a group of NGOs in March 1992. It was sent on the occasion of the presentation of the project to the Board and contained advice on issues the Executive Directors should consider in their review of the project. In the various pre-Board briefing sessions and the Board meeting itself, many Executive Directors did discuss such issues.
- (e) Annex 3 (c) concerns a May 16, 1994 letter to the Central Forestry Unit of the World Bank. We do not have a record of reply to this letter, although the main concerns appear again in a June 15, 1994 letter to the President of the Bank, which was answered.
- (f) Annexes 4 and 5. All but 2 of the 16 items referred to in these annexes were letters copied to the [redacted] but actually addressed to other entities. Of the 2 addressed to the [redacted] Annex 4 (d) (a May 1993 letter to the Bank representative [redacted]) was replied to in verbal discussions by the representative. The item in 5 (e) (a letter to the President of the World Bank, transmitting a copy of correspondence to the President of INCRA concerning proposed settlement activities) was discussed during a June 1993 supervision mission, followed by a June 22, 1993 letter from the Bank's Department Director for [redacted] to the President of INCRA.