

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

Porto Velho, RO, Brazil
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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> | OLONOROESTE | '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 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 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 PLANAFLORO, 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, ELETRONORTE 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, ELETRORÁS, 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

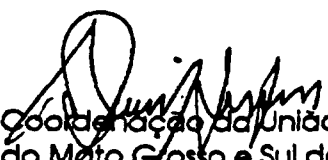

a) Matrix of Environmental Policies, Measures and Actions, Staff Appraisal Report (Report 8073-BR), World Bank, February 27, 1992 (Annex 1, Table 1.1, pp. 51-52);


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;

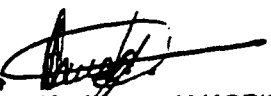
d) Office Memorandum, LA1CB, June 6, 1994;

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

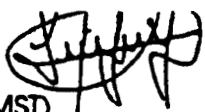
 
1. Coordenação da União das Nações e Povos Indígenas de Rondônia,
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(ACARAM)
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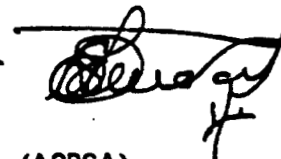
Adir Vicente 
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Nevaline dos Santos Dias
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Rua Dr. Leveger, s/nº, Triângulo, Guajará Mirim-RO

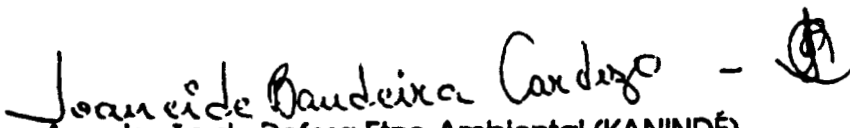
Guilherme Lúcio dos Santos 
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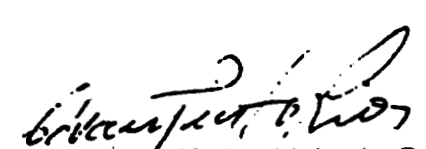

14. Conselho Indigenista Missionário (CIMI-RO)
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Willem P. Groenewald

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