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LAND REGULARIZATION IN SPECIAL AMERINDIAN COMPONENTS
OF BANK-FUNDED PROJECTS IN LOWLAND SOUTH AMERICA

by

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EXECUTIVE SUMMARY

1. Much attention in recent years has focussed on the role of indigenous peoples in the conservation and development of fragile habitats such as tropical rainforests, mountainous and desert environments. The World Bank has played an important role in this growing international awareness through the formulation of its indigenous peoples policy (formerly Operational Manual Statement 2.34, now updated and revised as Operational Directive 4.20) and its financing of several projects which contain special components or measures protecting the land rights and cultural integrity of indigenous peoples.

2. This report reviews the achievements and operational problems of land regularization programs in Bank-funded Amerindian special projects in lowland South America. The report centers on this region because of the unintended consequences that Bank-funded road construction, land settlement and resource extraction activities have had on the cultures and lands of indigenous people. It does not treat the highland areas of South America where there have been several Bank-financed rural developments projects whose intended beneficiaries were the indigenous peasant population.

3. To counteract the negative consequences of development in lowland South America, borrowers incorporated special Amerindian components into Bank-funded projects, all of which included land-regularization programs. The purpose of the review is to determine the reasons for success or failure of these programs with the view towards improving performance in future projects. This is important because the Bank's recently issued Operational Directive on Indigenous Peoples (see Annex 5) emphasizes the significance of land tenure security to the development of indigenous communities and the protection of their natural resources.

4. The report is based on a desk review by a consultant anthropologist of available information in published reports and regional project files. It includes a discussion of 13 past, current and pipeline projects in the LAC portfolio which contain Amerindian components. Past projects considered in the review are in Brazil, the Northwest Regional Development Project and the Carajas Iron Ore Project; and, in Peru, the Alto-Mayo and Chanchamayo-Satipo Projects. Current projects are in Brazil, the Maranhão Rural Development Project; in Paraguay, the Caazapa Area Development Project; and, in Bolivia, the Eastern Lowlands Natural Resource Management and Agricultural Development Project. Pipeline projects are in Brazil, the Rondonia and Mato Grosso Natural Resources Management Projects; in Paraguay, the Environmental Technical Assistance Project and the Alta Parana-Itapua Agricultural Development Project; in Ecuador, the Environmental Management and Technical Assistance Project; and, in Colombia, the Forestry and Environmental Management Project.

5. The report contains three major findings. First, the special Amerindian projects implemented since OMS 2.34 was introduced in 1982 were instrumental

in the demarcation and regularization of lands for lowland, forest-dwelling indigenous people. If these Amerindian Components had not been implemented, indigenous people would have suffered more trauma as a result of the development and exploitation of the tropical forests. Nowhere is this clearer than in Brazil, where even in the controversial and problematic POLONOROESTE project, some 5.4 million hectares of land was fully regularized as Indian Reserves. Nevertheless, there remain numerous outstanding problems related to land regularization in these Bank-financed projects, and large areas of indigenous lands which need to be secured. Annex 3 contains the available data on the progress made in land regularization and details are provided in the substance of the report.

6. Second, the primary obstacles which delay or impede successful land regularization are the legal frameworks in the relevant countries and the procedural problems encountered by the Bank. On the legal side, problems exist in the ambiguous reference to indigenous land tenure and occupancy rights in domestic laws; the lack of strong enforcement by governments of those laws which do exist; and delays encountered in land titling due to complicated administrative procedures.

7. Procedurally, the review indicates that there are problems related to inadequate preparation of the Amerindian components early in the project cycle. These problems include the lack of detailed socio-economic baseline studies, failure to assess the financial costs of land demarcation and regularization, and loan agreements which do not clearly specify implementation timetables and procedures. Where successful land regularization occurs, it is the result of systematic supervision by Bank staff and/or consultant anthropologists.

8. As a result of these problems experienced in the early projects, LAC staff is changing procedures for current projects under preparation to pay more attention to Amerindian components earlier in the project cycle. These changes include conducting more detailed baseline studies, and setting more explicit conditions for implementation prior to the signing of the Loan Agreement. In recent projects, the Bank has also sought out non-governmental organizations and indigenous communities as active participants in the design of Amerindian programs, and it is believed that such participation will improve project implementation. These new projects are experimental in nature and will require close supervision to ensure their success.

9. Finally, the experience gained in these projects indicates that land regularization *in and of itself* will not be sufficient to protect indigenous peoples' land security. Even in those projects where large amounts of land are set aside, indigenous people remain vulnerable to the destruction of their resource base and cultural integrity. To be successful, land regularization must be linked, through research, technical assistance and training programs, to the promotion of sustainable development activities that incorporate indigenous peoples' knowledge with modern forms of natural resource management and environmental conservation. The Bank's new Global Environment Facility (GEF) provides an excellent opportunity for such linkage by promoting co-management arrangements between indigenous peoples, conservationists and land-use planners for the protection of biodiversity.

10. The report concludes that the objective of future Amerindian land regularization programs financed by the Bank should not be merely to protect indigenous people from the potential harm caused by development projects. Instead, land regularization should be accompanied by technical assistance and institutional strengthening programs designed to build upon indigenous knowledge systems. This conclusion is consistent with the objectives and measures described in OD 4.20. It is also an objective for projects in the LAC region where Amerindian components are incorporated into environmental technical assistance plans. As governments become more aware of the global importance of protecting tropical forests and the significance of indigenous peoples and their traditional land use knowledge, these Bank-financed environmental projects could contribute to the formulation of a more rational and sustainable approach to the development of the South American lowlands.

These [indigenous] communities are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. It is a terrible irony that as formal development reaches more deeply into rainforests, deserts, and other isolated environments, it tends to destroy the only cultures that have proved able to thrive in these environments.

The starting point for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life-- rights they may define in terms that do not fit into standard legal systems. These groups' own institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional way of life. Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in the decisions about resource use in their area.

The World Commission on Environment and
Development, Our Common Future, 1987.

1. Introduction:

Tropical Forest Development and Indigenous Peoples

1.01 In the late 1960s, the resources of the lowland tropical forest regions, such as those of the vast Amazon Basin of South America, became the target of national development plans. Development planners perceived these lowland tropical regions as suitable for large-scale colonization and settlement schemes. These schemes were promoted by governments as an answer to the problems of landlessness, rural poverty, and urban migration that characterized other regions (e.g., the Andean Sierra, the Northeast of Brazil, and the central plateau of Paraguay). In order to encourage settlement in the lowland forests, governments invested in road building and rural agricultural development programs.

1.02 Throughout the 1970s and early 1980s, these lowland settlement schemes proliferated. The schemes also had the increasing support of international financial institutions, including the World Bank. In the 1970s, for example, the Bank funded two land settlement projects in the Caqueta region of the Colombian Amazon. In the early 1980s, the Bank enlarged its role in the financing of lowland tropical forest development projects as indicated in its support of the Northwest Regional Development Project and the Carajas Iron Ore Project in Brazil, and similar road building and rural settlement projects in Paraguay and Peru.

1.03 As the settlement programs progressed, it became clear to governments and funding agencies that the central flaw in these schemes was the failure to investigate their potential impacts on the ecological and social conditions of the lowland forests, and the assumption that no special care needed to be taken of the specific environmental conditions. As a result, settlers continued agricultural and ranching practices from their home regions which led to wide-scale ecological destruction.

1.04 The link between development and deforestation has now been clearly established through sociological and ecological research. According to FAO data, deforestation in the Amazon is estimated at 79.6 million ha. (up to 1985) and has increased by 4.1 million ha. annually since 1980. This deforestation has led to serious environmental imbalance including changes in the hydrological cycle, soil erosion, loss of biodiversity, and changes in water quality.

1.05 As equally flawed as the ecological assumption was the assumption that lowland forest dwellers, of which there are an estimated 1 million in the Amazon region alone, could be easily integrated into and not harmed by the economic development process. The Caqueta project, for example, had no Amerindian component or forest management plan. The projects in Brazil, Paraguay and Peru did contain protective measures for indigenous people (especially land regularization plans) and for the environment. But these were still secondary

to the road-building and colonization efforts and added on late in the project preparation cycle.

1.06 As the ecological consequences of these early road construction and settlement schemes began to be felt and as they in turn generated widespread social consequences, not only for the indigenous inhabitants but also for the settlers, Latin American governments and international financial agencies realized that alternatives had to be found if economic development of this region was to continue. Currently, some of these institutions are beginning to consider new models for the conservation and sustainable development of tropical forest regions. These new models take environmental considerations as the starting point for the design of regional land use and conservation programs. They also incorporate indigenous peoples, who often possess sophisticated environmental and resource management knowledge, as central actors in project design.

1.07 An example of this more recent trend is the Colombian government's program to title large areas of its Amazon territory in the name of indigenous communities and work with these communities in the search for the conservation and development of the region. Over the past decade, the Colombian government has titled over 18 million hectares or nearly 50 percent of the land area of its Amazon region in the name of indigenous communities. It has also created a regional system of national parks and protected areas, as well as a regional science and technology program, in which indigenous peoples play an important part. Together, these programs contain an alternative strategy for the conservation and development of the Amazon and other tropical forest regions. Increasingly, other Amazonian countries are looking toward the Colombian example as a possible model for their own initiatives in the tropical lowlands.¹

Scope and Structure of Review

1.08 Because of the search for new alternatives, it is important to understand the procedural context in which new types of development projects for the lowland forest regions can be designed and implemented. To this end, this review considers 13 past, current and pipeline projects in the LAC portfolio which contain Amerindian components. Past projects considered in the review are the Northwest Regional Development Project--POLONOROESTE (Brazil), the Carajas Iron Ore Project (Brazil), the Alto Mayo Project (Peru), and the Chanchamayo-Satipo Project (Peru). Current projects are the Maranhão Rural Development Project (Brazil), the Caazapa Area Development Project (Paraguay), and the Eastern Lowlands Natural Resources and Agricultural Development Project (Bolivia).

¹ For a more detailed description of the Colombian program, see: Republic of Colombia, Policy of the National Government in Defense of the Rights of Indigenous Peoples and the Ecological Conservation of the Amazon Basin, Bogota, 1989.

1.09 These projects reflect the early attempt by the Bank, following the release of its Operational Manual Statement 2.34 ("Tribal Peoples in Bank-funded Projects" 1982), to protect the lands and cultures of indigenous peoples. The Bank initiated most of these projects prior to the environmental reforms instituted in 1987.

1.10 A second group of projects considered in the review are currently in identification, preparation or appraisal stages. They are the Rondonia Natural Resources Management Project and the Mato Grosso National Resources Management Project (Brazil), the Paraguay Environmental Technical Assistance Project, and the Alta Parana-Itapua Agricultural Development Project (Paraguay), the Ecuador Environmental Management and Technical Assistance Project, and the Colombia Forestry and Environmental Management Project. These projects contain the viewpoint that the participation of forest-dwelling Indian populations is integral to regional natural resources management strategies in fragile ecosystems. The lessons learned from the earlier set of projects and the challenges of the new projects are considered in the review. All the projects are described in greater detail in Annex 1.

1.11 The review is divided into five parts: (1) an analysis of the legal frameworks for Indian land rights in the relevant countries; (2) a comparative analysis of the procedural aspects and constraints of securing land tenure under the Amerindian special projects, including examining the role of Bank staff, consultants, Non Governmental Organizations (NGOs) and government agencies; (3) a quantitative assessment of the amount of indigenous land regularized under the earlier Bank-financed projects; (4) a discussion of the major characteristics of the new Amerindian projects; and, (5) a concluding section which summarizes the findings of the review.

1.12 In September 1991, the Bank issued a new Operational Directive 4.20 (Indigenous Peoples) to guide its operational work in this area. While the review itself was done prior to the release of this OD, its findings provide lessons and insights that will be useful to the implementation of this new Bank policy. Several of these lessons and insights are described in the conclusion to this report, and a copy of the new OD is included as Annex 5.

2. The Legal Framework for Land Tenure

2.01 All of the South American countries which possess lowland tropical forest zones have laws relating to the land rights of indigenous populations, although some of these laws are incorporated in broader agrarian legislation. Annex 2 briefly describes the national laws and regulations that govern indigenous peoples rights to land for the countries covered by this review. It also provides a brief description of the two International Labor Organization (ILO) Conventions-- Convention 107 (1957) and Convention 169 (1989)-- which are currently the only international instruments dealing with indigenous populations.

The ILO Conventions

2.02 All the countries examined are signatories to the first ILO Convention (107) which stipulates international measures for the protection of indigenous peoples' rights. Article 11 of this Convention declares that "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized." The Article implies that aboriginal ownership rights already exist and do not have to be ceded to Indians by nation-states. Article 12 prohibits the removal of indigenous peoples from their traditional lands without their consent, except under exceptional circumstances; while other articles recognize the rights of indigenous peoples to transmit property according to their own customs and call for their inclusion on equal footing with other sectors of the population in national agrarian reform programs.²

2.03 Bolivia and Colombia have already ratified the revised ILO Convention (169), and it is anticipated that other South American countries will follow their example. The revised Convention strengthens the original document by emphasizing the social and cultural integrity of indigenous and tribal peoples and their co-participation rather than integration into national society. In relation to land, it highlights the broader territorial aspects of indigenous land claims, defines the conditions for compensating indigenous peoples for the exploitation of subsoil wealth contained on their lands, and calls for the participation of indigenous peoples in the utilization, administration and conservation of natural resources.

Domestic Law

2.04 The land tenure patterns of indigenous people are affected by the general laws governing property and property exchange set forth in the civil code of each country. Without enumerating in detail the specifics of property law, it is sufficient to state here that the standard ways of acquiring property pose difficulty for lowland Indians. For example, the most common method of acquisition --purchase--is for Indians the most difficult because as subsistence-oriented producers, they are not fully integrated into the market economy. Other means for property acquisition, such as prescriptive ownership, accession and succession also do not generally apply to indigenous forest dwellers. Furthermore, the civil codes by and large treat ownership of property as the domain of individuals and are weak on specifying the means for communal acquisition and ownership of property. This puts indigenous people at a disadvantage.³

² Background on the land rights sections of ILO Convention 107 is contained in Lee Swepston and Roger Plant, "International Standards and the Protection of the Land Rights of Indigenous and Tribal Populations," International Labour Review, Volume 124, No. 1, January-February 1985.

³ For general background, see: Joseph C. Grasmick, "Land and the Forest-Dwelling South American Indian: The Role of National Law," in Buffalo Law Review, Volume 27, Number 4, 1978.

2.05 In recognition of the special circumstances of indigenous people, South American countries have adopted a wide and diverse body of law specific to their needs. In Brazil, Colombia and Peru, guarantees and protection for indigenous people are enshrined in the constitution. Even where this is not the case, there are special laws that offer protection for indigenous people and stipulate procedures for gaining access to territory.

2.06 In most instances, indigenous people are legally defined as those groups found occupying land prior to Spanish conquest. Mention is frequently made of distinctive customs and language as features which differentiate indigenous people from the majority of the national population. Their land area is considered as that land which they traditionally occupy or are currently using or have used at some time in the recent past.

2.07 However, the issue of occupancy is ambiguous in the laws, and the procedures by which it should be determined are left unspecified. In Brazil, the determination of the amount of land "occupied" by a particular ethnic group is supposed to be the result of a technical review by anthropologists and other experts. But, it is more often a matter of informal negotiation between agents of the National Indian Foundation (FUNAI) and the native people and influenced by the claims of ranch owners and colonists. Similarly, in Paraguay, the amount of land designated under the Law 1372 (see Annex 2) for indigenous communities affected by the Caazapa Area Project is minimal--1,000 to 1,500 hectares per community-- and was based not on firm evidence from anthropological or ecological studies about the actual extent of occupancy, but rather on political criteria that juggled the competing claims of private landowners with those of the Indians.

2.08 A further problem is that indigenous people have different conceptions of occupancy and ownership than those written in the laws. Traditionally, land was not conceived by lowland Indians as a "commodity" that could be individually owned, rented or sold; and, while they may have perceived themselves as "occupying" large tracts of land, they did not regard this as "ownership" in the Western sense of exclusive use. For the colonists, and representatives of the national society, on the other hand, land is a commodity and individual occupation is seen as entitlement to exclusive use.

2.09 Even where indigenous rights to land are recognized, the states rarely provide for the direct titling to the Indians. Instead, land which the Indians occupy is considered "public land" or tierras baldias to which the state cedes use rights to Indian occupants. So for example, under the 1967 Brazilian Constitution (in effect during implementation of the early projects), the state while it ensured Indians' rights to live on the lands also provided for guardianship over them through FUNAI. Brazilian Indians were provided with "permanent possession" and "exclusive use" of their lands, but title rested with the federal government represented by the Indian bureau.⁴

⁴ The legal situation of Brazilian Indians is described in Silvio Coelho dos Santos (editor), O Indio Perante o Direito, Florianopolis, Universidad Federal de Santa Catarina, 1982; and, Manuela Carneiro da Cunha, Os Direitos do Indio: Ensaio e Documentos, Sao Paulo, Editora Brasiliense, 1987.

2.10 In declaring Indian land to be public land, governments retain control of the natural resources, and in particular the sub-surface mineral wealth. This means that even when reserves are demarcated, the state can permit the extraction of natural resources (through mining, logging, etc.), and can facilitate exploitation through infrastructural construction (roads, dams, etc.). This has happened in Brazil, Ecuador and Paraguay. In Bolivia, even where Native communities have title to the land, the government forestry agency retains the right to give concessions for logging.

2.11 Finally, while the laws mention the need to preserve indigenous culture and heritage, they generally do not recognize the specific indigenous forms of social and political organization. This is the case in the agrarian reform laws of Bolivia, Ecuador and Peru. Because of this, indigenous people have more difficulties obtaining recognition of their land rights since they are unable to demonstrate legally-recognized administrative structures.

Recent Legal Changes

2.12 The current legal situation is changing, however, and governments are in the process of reforming the laws. The new Brazilian Constitution (ratified in 1988) explicitly recognizes for the first time indigenous social organization, in Article 231. In the same Article, lands occupied by Indians are defined as "those inhabited by them permanently; those used for their productive activities; those indispensable for the preservation of the environmental resources necessary for their physical and cultural reproduction, according to their uses and customs and traditions." The Article also stipulates that any exploitation of sub-surface resources must have the authorization of the National Congress, which must first consult the affected Indian communities.

2.13 The most dramatic example of change is occurring in Colombia where the government has embarked on a new course by reinterpreting Colonial-era laws which recognized aboriginal title to unconquered Indian lands (resguardos). It has decreed indigenous reserves in the Amazon and other lowland areas as resguardos; and it has recognized the Indian cabildos, or local indigenous councils, as a native form of political organization.⁵ Some of these legal changes concerning indigenous land are incorporated into the new Colombian Constitution which was ratified in 1991.

Land Tenure Arrangements

2.14 Another aspect of the legal framework is the nature of land tenure arrangements established under the laws. Two different systems exist, each of which is problematic. The first (which pertains largely to Brazil) is the creation of large reserves, as specified in special Indian laws; and, the second is the granting of communal title to individual indigenous communities through procedures contained in agrarian reform codes.

⁵ The new Colombian legislation, as well as the historical background to Colombian Indian law, is described in Roque Roldan Ortega, Fuero Indigena, Bogota, Ministerio de Gobierno, 1990, 2nd edition.

2.15 The Brazilian method of creating large reserves (see Annex 2 for description of the procedure) is particularly beneficial to forest-dwelling groups. It provides large tracts of land that better fit the subsistence mode of production of these groups. Yet, precisely because of the large amounts of land involved, it is difficult and time-consuming to implement. The size of the reserve is often contested, and depends upon a negotiated compromise between indigenous groups and/or their representatives and other vested interests.

2.16 There are, for instance, 14 Indigenous Areas which have been demarcated as part of the POLONOROESTE project, yet remain to be fully regularized (see Annex 3). The Aripuana Indigenous Park was demarcated in 1986 but the boundary lines were contested by private land owners in the vicinity who filed suit in court. As a result of this litigation, no progress was made in the registration of the park for five years. In another case, that of the Pacaa Novas reserve, no legal progress was made for 15 years following demarcation in 1976 because of the presence of colonists within the reserve. Both these Indigenous Areas were finally legalized by Presidential decrees in 1991.

2.17 In contrast to the Brazilian strategy, other countries such as Peru, Bolivia and Ecuador rely on laws incorporated into the agrarian reform codes under which land titles are granted to separate Indian communities. In these countries, the majority of indigenous people live in the highland Andean plateaus. Over time, these highland peoples were settled into bounded communities and integrated into the rural market economy. National policy then treated these indigenous communities as peasant communities, subject to the same procedures as non-Indian peasants. Under these provisions, each community must on its own follow the relevant legal procedures to receive title to the land. This leads to the creation of smaller parcels of land, which are usually determined by the total size of the population rather than cultural or ecological considerations.

2.18 The definition of what constitutes an Indian community also depends on the legally recognized organizational form, rather than the specific indigenous form of political organization. Thus, in Ecuador, indigenous communities formed cooperatives to gain title, although the cooperative here is not the native political structure. In Peru, similarly, local communal governments must be installed. In these instances, indigenous communities are treated as if they were the same as non-indigenous communities, leading to the assimilation of Indians into national political structures.

2.19 This procedure poses a significant problem for the forest-dwelling lowland indigenous groups who are a minority population in these countries. They are not necessarily organized into bounded communities and their subsistence practices require access to larger tracts of land. If land is titled in these regions to small, fragmented communities it is problematic for the formulation of a sustainable resource management strategy.

2.20 Again, it should be stressed that some countries are in the process of changing these laws. In Ecuador, the Huaorani obtained the concession of a large territorial area for the entire group, rather than fragmented parcels for small communities. In Bolivia, a new law is currently under study which would define the specific land and resource rights of lowland indigenous groups.

Administrative Obstacles to Land Regularization

2.21 Further obstacles to guaranteeing land tenure arise from the complex and time-consuming administrative procedures that indigenous communities or groups must follow. In Brazil, there is a six-step process, which begins with FUNAI identifying an area as being traditionally occupied by Indians and only ends with a Presidential decree confirming the land demarcation and the registry of the title in the local and federal property registries. In Bolivia, the process may take an equal number or more steps, some at the regional and others at the national levels; in Peru and Ecuador, there are also regional and national actions that have to be undertaken in order for indigenous communities to receive land titles.

2.22 The net effect of these complicated procedures is the overall inability of indigenous people to title land. In some parts of northeastern Ecuador, only 25 percent of the indigenous communities (especially among the majority Quichua-speaking population) who are entitled to land actually possess titles. In Bolivia, communities find that it may take upwards of five years or more to get title. In the meantime, they are vulnerable to invasion or encroachment by non-Indians.

Other Obstacles

2.23 Lack of enforcement and related delays in the titling process are also due to opposition to indigenous land regularization from people with entrenched political and economic interests in competing land use strategies; conflict among different government agencies; and the unfamiliarity of indigenous people with their legal rights. Over the last 20 years, entrepreneurs, commercial farmers and others have taken advantage of the road building and colonization programs to acquire large tracts of land in the Amazon. As a result, these people now see the granting of indigenous land rights as a direct threat to their economic enterprises. Because of their political and economic power, they can place formidable obstacles in the way of land regularization.

2.24 In Brazil, landowners are contesting the boundaries of the reserve currently being demarcated for the Guaja (Awa) Indians in the state of Maranhão, affected by the Maranhão Rural Development Project. Here, despite the fact that ample evidence exists that the landowners/entrepreneurs have no legal claim to the land contemplated for the Guaja, the government has-- until recently-- been unwilling to settle the dispute in favor of the Indians.

2.25 Another political problem is intra-governmental conflict. As agencies responsible for indigenous affairs attempt to regularize land, they must contend with other agencies whose purposes are to regulate and exploit natural resources, such as the forestry and mining agencies. In Bolivia, it is the forestry agency that holds and grants concessions for timber extraction. Generally, these concessions are granted to lumber companies rather than to the Indians who actually occupy the land. Disputes then arise between the lumber company and the indigenous community which is in the process of obtaining title.

2.26 Agencies responsible for promoting colonization also can be problematic by failing to strictly regulate colonization, ignoring indigenous territorial boundaries, and not educating colonists as to their responsibilities vis-a-vis the Indians. In Brazil, INCRA, the government colonization agency, has claimed land in several Indigenous Areas affected by the POLONOROESTE project.

2.27 Finally, the indigenous people's unfamiliarity with their legal rights and the correct administrative procedures is part of the overall neglect of indigenous peoples' education. Without adequate literacy and training, indigenous people need qualified representation to ensure smoother passage through the administrative procedures. This points to the continued need to use anthropological and legal expertise to facilitate indigenous participation in the land regularization process.

3. Procedural Aspects of Land Regularization

3.01 Given the legal issues and administrative and political obstacles described above, it is hardly surprising that the Bank has encountered difficulties in implementing its tribal peoples' policy in lowland South America. Nevertheless, there are also special operational or procedural difficulties which characterized the early Bank-funded projects with Amerindian land regularization programs and these difficulties need to be taken into account if the newer Bank projects are to be more successful.

Amerindian Components and the Project Cycle

3.02 The project review revealed that in the early projects the incorporation of the Amerindian component occurred late in the project cycle. The Bank and Borrowers did relatively little work on the Amerindian component during the project preparation stage and, in many cases, the presence of indigenous peoples was only identified during appraisal. As a result, the bulk of the work in designing the Amerindian components was relegated to the supervision phase, after implementation, leading to procedural difficulties which hampered the smooth operation of the projects.

3.03 Like other aspects of project design, Amerindian components must be prepared early in the project cycle. OMS 2.34 provided some guidelines on this matter. It stated that the presence of indigenous peoples should be considered in country sector work and that during project identification the general information on the socio-economic and legal status of indigenous people in the project area should be ascertained. At the preparation stage, the Amerindian component should be designed in consultation with indigenous peoples and specialists. These steps are more clearly spelled out in the new OD on Indigenous Peoples.

Sociological and Environmental Baseline Studies

3.04 A key element in the preparation of Amerindian components is the carrying out of systematic sociological and environmental baseline studies. These studies should be carried out by anthropologists who are familiar with the language, cultures and histories of the indigenous communities affected by the project. Unfortunately, this was not the case in most of the early Bank-financed

projects and this, in part, explains some of the problems which the Amerindian components encountered during implementation.

3.05 The Staff Appraisal Reports for the POLONOROESTE and Carajas projects, for example, contain only sketchy information about the baseline socio-cultural and environmental conditions of the Amerindian tribes in the project areas. The information was based on FUNAI's data which, in many instances, proved to be inadequate and incorrect. FUNAI relied heavily on censuses by Indian post agents who were untrained in ethnographic data collection. Therefore, the Indian agency was unable to provide the Bank with necessary data on indigenous social organization, ecological adaptations and cultural practices.

3.06 In the Caazapa project in Paraguay, neither the FAO preparation team nor the Bank preparation missions identified the existence of indigenous groups in the project area. It was only after contact with several NGOs and subsequent consultant visits that the government and the Bank acknowledged the presence of Amerindians and discussed the inclusion of an Amerindian component in the project. During preparation, the government Indian agency did no base line studies, and the rural development agency responsible for the project did not contract anthropologists or local NGOs with knowledge of the area. Although the Loan Agreement was signed in 1983, consultants only completed the required study of the Amerindian population in 1988.

3.07 Similarly, in the two Amerindian projects in Peru, the project preparation agency collected insufficient baseline socio-economic data in the preparation phase. The Bank contracted anthropological consultants late at the appraisal phase, and they were only able to provide cursory data on the Aguaruna and Ashinanka communities affected by the projects.

3.08 This project review demonstrates that in the early projects the method for collecting baseline data for the project preparation and appraisal was flawed. Bank consultants conducted short field trips to sites, did no geographical mapping or census data collection and were not given adequate time to analyze significant aspects of the cultural ecology of the indigenous people.

3.09 This lack of detailed baseline data on the indigenous communities had serious consequences for project design and implementation. The Bank, as a result, had to invest much greater time and resources during implementation in supervision of these projects and in correcting errors in the design of the Amerindian components.

Financial Costs

3.10 One of the consequences of inadequate baseline studies is that the Bank and Borrowers are unable to fully assess the financial costs of land regularization. None of the early projects contained detailed itemization in their budgets of the costs of land demarcation, acquisition, compensation, boundary marking and registration. In each instance, the government or the executing agency allocated a lump sum for the Amerindian component in its counterpart funding which only indicated the percentage of component costs which would go toward land regularization, but no detailed breakdown of expected land regularization costs.

3.11 The Carajas Iron Ore Project provides a clear example of some of the problems which emerged from this lack of attention to financial matters in Amerindian component preparation. The initial budget of \$US 13.6 million for the component only earmarked two percent for land regularization. This budget assumed a population of 4,500 Indians living in 11 indigenous areas. By the end of the project, the anthropological consultants had identified 24 indigenous areas encompassing 14,000 people. The consultants argued that FUNAI was spending too much money on its own administrative costs and infrastructure and not giving adequate attention to land regularization. With this information from the consultants, and under pressure from the Bank, CVRD stopped disbursements to FUNAI and finally convinced the agency to increase significantly the percentage of funds used for land regularization. By the end of the project, this amounted to over \$US 2 million or 16.8 percent of the total cost of the component.

3.12 In the Caazapa project, the Loan Agreement obligated the government to designate funds for land purchase upon completion of the indigenous study. Since the study was not completed until 1988, neither the Borrower nor the Bank could determine the cost of the land and how it compared with the overall cost of the Amerindian component and the project. Once the land study was completed, the Bank did convince the government to put a special allocation for land purchase in the national budget. However, the cost inflated once private owners realized the government's interest in acquiring the land and the original budgetary allocations proved insufficient.

3.13 In general, the Bank and its Borrowers lack adequate guidelines on the costing of land regularization programs. OMS 2.34 provided no guidance in this area and, for this reason, it was of limited use in the design of the financial aspects of the early Amerindian components. The importance of these financial issues is highlighted in OD 4.20, but much more empirical work in this area needs to be done by the Bank and its Borrowers in order to design more financially sound Amerindian components.

Legal Covenants

3.14 All of the Loan Agreements contain specific clauses relating to Borrower responsibilities in relation to the Amerindian components, but these clauses are extremely general and are not accompanied by fixed time tables. The exceptions to this come in later projects such as the Maranhão Rural Development Project and the Bolivia Eastern Lowlands Project, where the executing agency was obligated to carry out certain actions as a condition of Loan effectiveness (see Annex 1).

3.15 In the case of the POLONOROESTE project, the Loan Agreement states that FUNAI would implement a special project for the Amerindians. The land regularization that FUNAI agreed to in the special project involved only seven areas in Mato Grosso which it had identified as being affected directly by the project. The government agreed to enforce its policy of protection of Amerindian communities as stated in the Federal Constitution. However, there were no specific dates for the completion of land regularization and other aspects of the Amerindian special project in the Loan Agreement.

3.16 At the mid-project evaluation, Bank staff documented that progress in land regularization was slow. The government agreed to speed up the process and give special attention to the demarcation of a reserve for the Uru-eu-wau-wau, a recently contacted group in Rondonia. In 1985, when supervision missions revealed that the government still had not taken action on the Uru-eu-wau-wau reserve, the Bank temporarily suspended loan disbursements. The reserve was then demarcated and fully regularized. However, in January 1990, just before he left office, President Sarney revoked the demarcation decree, leaving the highly vulnerable Uru-eu-wau-wau without a secure land base. There has since been a reinterdiction of the reserve.

3.17 The Loan Agreement for the Caazapa Project did indicate a date by which the indigenous study was to be completed, but there was no agreed upon timetable for the land regularization process. The Bank and the government only agreed upon such a timetable during the negotiation of an extension for the loan. At the time of the extension, the Bank successfully convinced the government to act upon its obligations to regularize indigenous lands, which it did through the promotion of a special decree before the Congress.

3.18 These cases demonstrate that highly generalized covenants in Loan Agreements are poor substitutes for adequate project design and preparation. Much of the basic work of land regularization (identification of indigenous groups and their territories, terms-of-reference for anthropological and legal consultants, determination of financial costs and institutional responsibilities, etc.) needs to be carried out during project preparation and should be done prior to Loan effectiveness. The Loan Agreement then becomes a way of ensuring that actions already agreed upon by the Borrower and the Bank are fulfilled during project implementation.

Government Agency Performance

3.19 Another procedural obstacle has been the weak performance of the government agencies in charge of indigenous affairs. Typically, these agencies are located in ministries with interests that conflict with the charge to protect Indian rights. For example, the Brazilian Indian agency FUNAI was located until recently in the Ministry of the Interior, which was also responsible for frontier development programs and the exploitation of some natural resources. In other countries, such as Ecuador, the titling of indigenous lands is in the same agency that titles and regulates land for the non-Indian colonist populations, again posing conflict of interest problems.

3.20 The indigenous agencies have sometimes abused their role as guardians of indigenous property and resources. In Brazil, until recent changes, FUNAI was responsible for not only protecting the rights of Indians but also for developing the natural resources on their lands. Bank missions and consultant studies have documented instances where personal interests have led to abuses by local and regional Indian agents. Some agents have given entrepreneurs concessions in Indian lands for lumbering or mining without any direct benefits going to the Indians. And, in some instances, local Indian agents have forced Indians to sell their artisan and other products to them with little knowledge of their resale value, or compelled Indians to work for the Indian post without adequate remuneration.

3.21 Coordination between agencies has also been problematic in Bank-financed projects with Amerindian components. The executing agency for the project usually subcontracts the Amerindian component to the Indian agency. Thus, while the Indian agency is nominally in charge, the work must be coordinated with the executing agency of the main project. The interests of the Indian groups, especially in terms of financial disbursements and timing of activities, are often secondary to the implementation of the main components of the project.

3.22 In some instances, however, the project executing agency has been able to exert pressure on the Indian agency to expedite land tenure processes. This was the case in the Carajas Iron Ore Project where the state-owned mining company (CVRD), the main executing agency, discovered that FUNAI was spending most of the special project funds on its own institution-building activities rather than on land demarcation activities. In this case, as mentioned previously, CVRD temporarily suspended disbursements and convinced FUNAI to perform its role more efficiently (see para.3.11 and Annex 1).

3.23 The Caazapa Area Development Project also provides a case where the main executing agency for the project, the National Rural Development Coordinating Office (ONCAP), promoted indigenous land regularization and obtained consultants to design and implement indigenous technical assistance services, because of a weak and sometimes corrupt indigenous agency.

3.24 Indigenous affairs agencies often lack personnel with expertise in such important matters as agricultural extension, forestry and natural resource management. In Peru and Paraguay this especially became problematic as indigenous people attempted to use the land regularization process to gain control of and manage their resources. Amerindian special projects are often inadequately implemented, because Indian agencies are unable to offer the proper technical assistance to the indigenous beneficiary populations. Brazil has recently responded to this dilemma, by placing all responsibilities for the management of natural resources on Indian lands in the Environment Secretariat and National Environment Institute and transferring responsibilities for agricultural extension for Indians to the Agricultural Ministry.

Participation by Indigenous Peoples and NGOs

3.25 Another problem revealed by the review has been the nature of participation of the indigenous people in the design and implementation of the project and the Amerindian components. With rare exceptions, the agencies preparing Bank projects have not provided the indigenous communities with a systematic opportunity to voice their concerns, or to make modifications in the project design. Denied this systematic input, the indigenous peoples' voice is most often heard as resistance or protest against the project and their place in it. There are numerous examples in the Bank files where indigenous communities or their defenders protested Bank-funded projects, because of delays experienced in land regularization and the absence or lack of alternative communication channels.

3.26 In the early projects which contained Amerindian components, lack of systematic participation by indigenous people was due in part to the absence of

representative organizations and the extreme isolation of some of the groups. This was particularly the case in Brazil where, at the time of project preparation and appraisal, some of the groups affected by the development projects were still uncontacted.

3.27 In other instances, however, participation has been denied because of neglect on the part of project implementing agencies to search out adequate means of communication (see the previously cited example of the early stages of the Caazapa Area Development Project). Non-Governmental Organizations (NGOs) who are familiar with indigenous communities (such as Church-based groups or associations of professional anthropologists) have not, until recently, been routinely consulted by government agencies or have been viewed as hostile instead of as valuable sources of information.

3.28 NGOs that are constituted by indigenous people or that work with them are well situated to provide data and perspective on indigenous concerns. Information not readily available to government agencies can often be obtained from NGO sources who have a local base of operations. NGOs also operate as effective monitors, providing early warning signals when problems arise in implementation. In almost every instance with respect to the early projects, NGOs were present who could have facilitated the early project preparation and participated in project implementation. Again, the "informed participation" of indigenous peoples and the vital role of NGOs in project preparation, execution and monitoring are key elements of the new Indigenous Peoples OD.

Supervision

3.29 As previously mentioned, the lack of specification of procedural guidelines and poor preparation of the Amerindian component have meant that Bank staff and consultants have played a heavier role in supervision in order to ensure compliance with the stipulations of the Loan Agreement. The review revealed that the failure to prepare Amerindian components adequately has led to unnecessary implementation delays and other procedural problems.

3.30 Supervision by Bank staff and consultants was instrumental in the implementation of the Amerindian Component of the Carajas Iron Ore Project. Because Bank staff worked closely with CVRD, pressure was successfully applied on FUNAI to demarcate reserves. Similarly, supervision in the Caazapa project continues to play an important role in the final determination of the land areas to be appropriated for the indigenous groups.

3.31 In some instances, government authorities have accepted recommendations made by Bank supervision missions that indigenous land areas be regularized or expanded so that viable natural resource management strategies can be pursued; recommendations, it should be noted, which might not have been accepted by the government if they came solely from the indigenous agency or some other institution.

3.32 The need to devote more resources and time to supervision as a result of lack of initial baseline data has sometimes forced the Bank to temporarily suspend disbursement on a loan, a costly and risky step as demonstrated by the temporary suspension in 1985 of loan disbursements for the POLONOROESTE project

. This last-resort measure might have been avoided if the Bank and the government had allocated more resources for baseline and other studies and came to more clear agreements in the preparation phase of the project.

Monitoring and Evaluation

3.33 While Bank supervision missions have played an important role in the implementation of correctional measures, monitoring and evaluation of projects--especially by groups which are independent of the executing or indigenous agency-- have been less successful (see Annex 4 for a list of indigenous specialists and NGOs used as monitors). Out of the six completed, current, or inactive projects, only the two in Peru had no monitoring and evaluation programs. In the case of the three projects in Brazil, and the Paraguay Caazapa project, monitoring and evaluation took place, but was not standardized or systematic.

3.34 A major problem has been conflict between the executing agencies and consultants or subcontractors who monitor the implementation of the project. Again, the Brazil projects provide the most revealing examples. In the POLONOROESTE project, the managing agency, the Superintendency for the Development of the Center-West (SUDECO), contracted the Sao Paulo-based Foundation for Economic Research (FIPE) to carry out the monitoring of the Amerindian component. FIPE anthropologists were responsible for the collection of data on Amerindians in the project area. In some instances, it was only due to their work that various indigenous groups, previously unidentified by FUNAI, were brought to light and incorporated into the project. Although the work of the FIPE anthropologists was important, they were not always effective in communicating their concerns to the executing agency. Their reports were not written in a style that was accessible to agency officials, and their findings and recommendations were often quite controversial. Hence, agency officials tended to ignore what they found, rather than take their recommendations seriously into account.

3.35 Problems also arose in the Carajas Iron Ore Project, where CVRD contracted several anthropologists through the Brazilian Anthropological Association (ABA) to monitor the effects of FUNAI programs on the indigenous population. In this case, CVRD defended the work of the anthropologists but FUNAI refused to provide some of them with permission to visit the Indian areas. At one point, the anthropologists also refused to continue to fulfill the terms of the monitoring and evaluation agreement unless a greater percentage of the Amerindian Special Project funds was devoted to land regularization issues.

3.36 In large measure, these problems arose because of a lack of definition of the role of the monitoring and evaluation teams at the early stages of the project. Monitoring with respect to land regularization took on the role of documenting what areas needed to be demarcated, but did not focus on the actual process of demarcation itself. Monitoring was also made difficult by the lack of specified dates as to when aspects of the land regularization program were to be completed.

3.37 The consequences of weak monitoring have been delays in implementation, lack of correctional action, and resulting conflict for the

indigenous groups. In the Maranhão Rural Development Project, for example, while supervision missions have documented obstacles to land regularization, lack of monitoring and evaluation has hampered resolution of the problems. It must be noted here that in the absence of effective local monitoring, the Bank supervision missions have sometimes taken on a monitoring role, something they are not really equipped to do and which is extremely costly for the Bank.

3.38 In general, much more attention needs to be given to monitoring and evaluation in Amerindian components than was the case in these projects. The Bank can play a role in this by both sharing with its Borrowers what it has learned about monitoring and evaluation in other project contexts, and by adapting monitoring and evaluation strategies to the specific cultural and ecological settings of indigenous populations.⁶

4. Progress in Land Regularization

4.01 Having assessed the legal, political and procedural problems, we can now describe the actual accomplishments in land regularization of the early Bank-financed projects with special Amerindian components. In 4 of the 6 projects, despite the severity of the obstacles, there was a significant amount of land secured for the Amerindian populations (see Annex 3 for statistical data on land acquisition in these projects). In the POLONOROESTE project in Brazil, for example, between 1982 and 1988, the government demarcated a total of almost 7 million ha. of land as Indigenous Reserves (a total of 34 Indigenous Areas, of which 20 are fully regularized). An additional 2.9 million ha. of land have been officially identified by the government but not regularized. However, there are still 16 Indigenous Areas with about 1.9 million ha. where no action has been taken by the government.

4.02 Between 1983 and 1989, FUNAI identified, demarcated and regularized 3.4 million ha. of land in 24 indigenous areas in the area of influence of the Carajas Iron Ore Mining Project. Of the 24 areas, FUNAI identified and interdicted but did not demarcate 2 areas, demarcated but did not fully regularize 6 areas and fully regularized 12 areas (50 percent of the total). Some of these areas were demarcated or regularized prior to their incorporation into the Carajas Amerindian component. This is a significant achievement when compared to the rest of Brazil, where it is estimated that of 400 indigenous areas, only 10 percent were fully regularized during this time period. Nevertheless, two years after the completion of the main project, funds earmarked for land regularization still remain in the Amerindian Special Program account and several key indigenous areas, such as the Guaja and Krikati, still need to be demarcated and regularized.

⁶ The key references for such monitoring and evaluation tasks in the context of rural development projects are: Dennis J. Casley and Krishna Kumar, Project Monitoring and Evaluation in Agriculture, Baltimore, John Hopkins Press, 1987; and, by the same authors, The Collection, Analysis and Use of Monitoring and Evaluation Data, Baltimore, John Hopkins University Press, 1988. Many of the principles and methodologies discussed in these volumes could be adapted, with slight modifications, to monitoring and evaluation tasks in indigenous areas.

4.03 In the Alto Mayo Development Project in Peru, the 9 Aguaruna Indian communities involved in the Amerindian Special Project had already received community titles to their land, but had not formally registered the titles prior to the project. The registration was accomplished under the project, and amounted to a total of 57,000 ha. of land for about 137 families.

4.04 In the Chanchamayo-Satipo Project, between 1983 and 1985, 50 Indian communities (approximately 2,000 families) received title to about 290,000 ha. of land. By 1987, when the project was suspended, about 90 percent of the communities inscribed in the project had either completed or nearly completed the process of receiving title to the land. Again, in this case, the pace and amount of land titled exceeded that titled for Indians in other parts of Peru. The project thus made a clear difference in the acquisition of land for indigenous people.

4.05 In two projects currently under supervision, however, the record is less clear. In the Maranhão Rural Development Project, for example, there have been delays in implementing an action plan agreed to as a condition of Board Presentation. The delay has seriously endangered the creation of a reserve for the vulnerable Awa-Guaja Indians, one of the last isolated hunter-gatherer tribes in Brazil.

4.06 Similarly, in the Caazapa Area Development project, delays have hampered the demarcation of lands for the affected indigenous communities. Even after the passage of a law in 1989 that permitted the government to acquire land for the Indian communities, as of late 1990, only 4 of a total of 11 community clusters mentioned in the law had full title to their land; the others remained in various stages of negotiation or litigation. In both of these cases, persistent Bank supervision missions and requests for immediate government action have been unable to speed up the indigenous land regularization process, thus posing grave threats to the integrity and perhaps survival of the affected indigenous populations.

Land Security

4.07 Even in those instances where significant amounts of land have been legally demarcated this has not been accompanied by the enforcement of the boundaries. The violation of boundaries ranges from official acts (such as the revocation of decrees and the building of roads through reserves) to incursions into Indian lands by poor colonists, themselves without alternatives for access to resources. In Brazil, perhaps the majority of reserves identified or demarcated in the POLONOROESTE, Carajas Iron Ore, and Maranhão Rural Development project areas have been subject to illegal invasions by settlers and cattle ranchers, mining activities, or logging. They have also been affected by road and rail construction, and hydroelectric and electrical transmission line programs (see Annex 3).

4.08 In Paraguay, Peru, Ecuador, and Bolivia, the communal title to land granted on a village by village basis leaves communities vulnerable to encroachment and land theft. It is interesting to note that one of the major aspects of the Alto Mayo Amerindian component in Peru was the development of Native boundary markers

which would have visibly demarcated community lands, and presumably prevented invasion. This task remained unfinished when the project was suspended.

4.09 The violation of boundaries can lead to conflicts between non-Indians and Indians. In the case of the Urucu-Jurua reserve, demarcated as part of the Maranhão Rural Development Project, there were several violent attacks by Indians against colonists settled inside the reserve. There has been similar violence in Peru in the Chanchamayo-Satipo Project where neither the titling of Indian lands nor the titling of peasant lands moved as quickly as planned, and so significant amounts of land were contested. Similar types of invasions of titled Indian lands have recently been reported for the Caazapa Project in Paraguay.

Contested Land Use Strategies

4.10 The review revealed that one reason for the lack of respect of legal boundaries of Indian lands is the perception on the part of the non-Indians (from colonists to government officials) that the Indians don't "deserve" the land because they are not using it productively. For these people, seeing large tracts of standing forest indicates non-use. Colonists especially have the perception (sometimes backed up by national laws or government rural credit programs) that they can use the land better, by clearing and either planting cash crops or converting it to pasture. Few of them recognize the role which traditional indigenous land use strategies play in the preservation of the rainforest.

4.11 A consequence of this difference in perception about land use is the deforestation and ecological destruction caused by land invasions. Certainly, in the cases of the POLONOROESTE, Carajas, Maranhão, and Caazapa projects, the reports of monitors and supervision missions reveal widespread deforestation when indigenous lands are invaded by colonists, loggers or miners. This is also true when the government builds roads or transmission line corridors through the indigenous area.

4.12 The reverse side of this problem is that even when Indians do secure title to land, either as communities or reserves, they are still unable to economically sustain themselves. Because of immediate economic needs, lack of information and the greed of individual leaders, Indian communities are often forced to give concessions to logging companies, mining companies, and other entrepreneurs within reserve boundaries, thus permitting destruction of their resource base. Certainly, this is one of the most serious problems facing the indigenous groups whose lands have been regularized under Bank-financed projects. Thus, the challenge is not only to regularize Indian lands, but also to provide indigenous communities with the necessary technical assistance, information and legal protection so they can continue to manage and use their natural resources.

5. Recent Projects

5.01 As the Bank began to accumulate information about the implementation problems experienced in the early projects with Amerindian components, corrective measures were designed for a series of new projects then in the pipeline. This

is reflected in six projects-- the Rondonia and Mato Grosso Natural Resources Management Projects in Brazil, the Colombia Forestry and Environmental Protection Project, the Ecuador Environmental Management and Technical Assistance Project, and the Paraguay Environmental Technical Assistance and Alta Parana-Itapua Agricultural Development Projects-- which are currently being identified or are under preparation or appraisal. It is also reflected in the Eastern Lowlands Natural Resources Management and Agricultural Development Project in Bolivia which was approved in 1990 and declared effective in early 1991.

5.02 Although the Eastern Lowlands project was originally conceived as a conventional lowlands agricultural development project, certain revisions were made in the project concept and design at the late preparation and appraisal stages which converted it into an agricultural development project with strong natural resource management and Amerindian components. The Amerindian component was the first one in the Bank's portfolio in which a lowland Indian federation in cooperation with an NGO technical assistance group designed and was to be responsible for implementing indigenous community development, health, agricultural extension, and land regularization activities. As a condition of effectiveness, a Regional Commission which represented the Government signed a contract with CIDOB (the regional indigenous federation) to carry out the Amerindian component.

5.03 Despite this strong participatory framework, the Amerindian component faced problems from its initiation. Soon after effectiveness, the Regional Commission suspended CIDOB's contract and the Bank was informed that the Regional Commission was not willing to have the Indian federation as the executor of the Amerindian component. Apparently, this decision was made on political rather than technical grounds, as CIDOB had already fulfilled some of the conditions of its contract. Groups with powerful regional interests expressed their opposition to such participation, because of the organization by CIDOB of a march in favor of indigenous land and territorial rights.

5.04 The Government and the Bank sought a compromise solution to the conflict, which led to the establishment of a 6 member Directive Council-- one of whom represents CIDOB, two of whom are from affiliated indigenous organizations, two from regional government agencies and one from the national Environment Secretary. This Directive Council has, in turn, nominated a Project Coordinator, who will be responsible for organizing and executing the Amerindian component.

5.05 Although indigenous peoples are represented on the Directive Council, this arrangement is a setback for direct participation by indigenous peoples and their organizations in the design and execution of Amerindian special projects. These events demonstrate the complex political context in which lowland Indian groups are struggling to assert their right to participate in development projects. In the Bolivian case, we can expect these political issues to arise again, especially as the indigenous communities and their organizations seek secure land titles and rights to control the forest, wildlife and other resources on their lands. However, the Bolivian national government has pledged itself to recognizing and protecting the lands and resources of lowland indigenous groups; and, the Bank should take advantage of this national interest to counter-balance the power of regional interest groups who may be opposed to such indigenous land

regularization.

5.06 The other six projects, all of which are at various stages of preparation, contain several criteria which distinguish them from the earlier generation of projects with Amerindian components. These criteria include:

(a) early baseline studies of the socio-cultural, ecological and land tenure conditions of indigenous groups in the areas covered by the projects; (b) legal analysis of administrative and other obstacles to indigenous land regularization; (c) consultation with and participation of indigenous organizations and NGOs in project design, implementation, and monitoring; (d) strong technical assistance in social forestry and other types of natural resource management provided to indigenous communities; (e) strengthening of government agencies responsible for land regularization and other aspects of project implementation; and, (f) adequate attention to the financial aspects of the indigenous component, including allocation of Bank funds for some aspects of the land regularization process.

5.07 The Ecuador Environmental Management and Technical Assistance Project is the first effort to test out these new criteria. This project will contain a special Amerindian Land Regularization and Natural Resource Management Component as part of a broader program directed at institutionally strengthening the environmental protection and natural resource management capabilities of the government. Preparation missions for this project included qualified anthropological and legal consultants, established contacts with relevant indigenous organizations and NGOs, and conducted pertinent baseline and project design studies. This component will incorporate local indigenous federations in land surveying activities and provide a special fund for the design and implementation of natural resource management training programs and conservation pilot projects by these organizations.

5.08 These recent projects also take advantage of new Geographical Information Systems (GIS) and remote sensing technologies which can modernize the process of Indian land demarcation, border patrolling and natural resource protection. In the proposed Rondonia and Mato Grosso Natural Resource Management projects, Indian Reserves form a special land-use category in the agro-ecological zoning exercise which forms the central element of these projects. The satellite and other data which will be made available about these reserves could, if properly used, provide the basis for the policing of Indian areas and the controlling of deforestation and other forms of environmental degradation.

5.09 These projects also attempt, wherever feasible, to incorporate indigenous land regularization and natural resource management programs with the conservation and protection of areas of high biodiversity. This is the case in the proposed Paraguay Environmental Technical Assistance Project where a special pilot program will be designed for the use and management of the Caaguazu National Park by neighboring Indian communities; and, in the Ecuador Environmental Management and Technical Assistance Project where special programs will be designed for Indian participation in the management of the Cuyabeno Wildlife Reserve and the Huaorani Indian reserve, which is now an indigenous buffer zone surrounding the Yasuni National Park. These projects contain a much more integrated approach to indigenous and biodiversity protection. They have the capacity of drawing upon the combined resources, skills and experiences of

government indigenous and environment agencies, NGOs involved with conservation and protected area management, and indigenous communities and their organizations.⁷

5.10 Finally, the LAC Region has been working with other multilateral institutions, such as the United Nations Development Program, and the International Labor Organization, to promote and disseminate the ideas behind these new approaches to indigenous land regularization and natural resource management. One example of this cooperative approach was the March 1991 conference which the Colombian government's Subsecretary of Frontier Affairs sponsored on "Indigenous Land Tenure and Natural Resource Management in Lowland South America." This conference brought together a number of legal experts, scientists, indigenous and government representatives from several Latin American countries to discuss ways of improving the legislative and policy frameworks and designs of projects which include indigenous land regularization and natural resource management components.

6. Conclusions

6.01 This review demonstrates that Bank-funded projects which contain special Amerindian components have been instrumental in the process of land regularization for indigenous peoples. Large amounts of territory, sometimes measuring in hundreds of thousands and millions of hectares of land in the case of the Brazilian Amazon projects, have been legally demarcated and regularized in the names of indigenous tribes and communities. It is safe to say, given historical evidence, that had there been no special Amerindian components in these projects, this land would not today be in the hands of its indigenous occupants.

6.02 Anthropologists and other specialists have long recognized the importance of a secure land base for indigenous people, especially those who have traditionally occupied lowland forest areas. A secure land base is necessary to the socio-cultural reproduction, health and economic survival of indigenous people. Land also has important religious and spiritual significance to indigenous peoples; when indigenous peoples are robbed of their traditional lands, or otherwise lose them through development projects which do not take their needs into account, they often lose their social and cultural identities.⁸

⁷ For further background on these types of joint use and management arrangements, see: Peter Poole, Developing a Partnership of Indigenous Peoples, Conservationists and Land Use Planners in Latin America, Washington, The World Bank, 1988. This report has recently been translated into Spanish as a joint project of the World Bank, the World Wildlife Fund and the Center for Agronomic Training and Investigation (CATIE) in Costa Rica.

⁸ See, Shelton H. Davis, Land Rights and Indigenous Peoples: The Role of the Inter-American Commission on Human Rights, Cambridge, Cultural Survival, Inc., 1988.

6.03 A secure land base is also essential for the preservation of indigenous land use and resource management strategies. Increasing scientific evidence indicates that indigenous resource management strategies hold potential for sustainable development alternatives in fragile ecosystems. Sustainability signifies that resources are used and managed for productive purposes without significant degradation of the environment. Indigenous people in lowland South America through subsistence production using extraction, horticulture based on small clearings, intercropping and cultivation of a large variety of crops maintain economic self-reliance. Recent research by social scientists and ecologists demonstrates that these subsistence systems are capable of producing or extracting surpluses, that they are complex and highly sophisticated and that they incorporate extensive knowledge about the ecosystem.⁹

6.04 Likewise, the safeguarding of the land tenure and natural resource management strategies of indigenous people are crucial to the preservation of the tropical forests. Continued deforestation of the tropical rainforest poses a threat to the global environment, through loss of biodiversity, climate change and general ecological degradation. Indigenous peoples' subsistence strategies depend upon the continued preservation of the forest and its resources. When provided with control of their traditional habitats and resources, indigenous people are often protectors of species biodiversity; they also practice sound watershed management, protecting riverain habitats; and through preservation of the forest, they help stabilize climate.¹⁰

6.05 For all of these reasons, national governments and international development agencies should recognize and protect indigenous land rights and incorporate indigenous peoples and their cultural knowledge into tropical forest conservation and development programs.

⁹ For background on these indigenous land and resource management strategies, see: D.A.Posey and W. Balee (editors), Resource Management in Amazonia: Indigenous and Folk Strategies, Bronx, The New York Botanical Garden, 1989; and, Susanna B. Hecht, "Indigenous Soil Management in the Latin American Tropics: Neglected Knowledge of Native Peoples," in Agroecology and Small Farm Development, M. Altieri and S. Hecht, eds. Ann Arbor, CRC Press, 1990, pp. 151-158.

¹⁰ The role of indigenous peoples and traditional environmental knowledge in protecting the global environment is highlighted in the report of the World Commission on Environment and Development, Our Common Future, Oxford, Oxford University Press, 1987. There are obviously complex aspects of the relation of indigenous peoples to fragile environments, including the degree of integration of these peoples in the surrounding market economy, levels of acculturation, and the size of population in relation to resources. For a discussion of some of these issues, see: Comisión Económica Para América Latina y El Caribe, El Desarrollo Sustentable: Transformación Productiva, Equidad y Medio Ambiente; United Nations, 1991, pp. 83-84.

6.06 This review has indicated several of the procedural or operational problems that the Bank has encountered in the design and implementation of these programs. It has also documented the process by which the implementation of the Amerindian special projects can be improved. Specifically, in projects currently under preparation, the Amerindian components are being considered much earlier in the project cycle, and they are being incorporated into environmental technical assistance plans. These new projects include more detailed socio-economic baseline studies and financial analysis of land regularization costs. They also draw much more heavily upon indigenous peoples' and NGO participation, and they clarify the links between indigenous rights to land and sustainable natural resource management and development strategies. These procedures for improving the design of special Amerindian components have been incorporated into the Bank's new Operational Directive (OD 4.20) on Indigenous Peoples.

6.07 There are, however, several issues and areas which need more attention, particularly as the Bank proceeds in the implementation of OD 4.20. Of primary importance is the need to strengthen the institutional capacity of indigenous agencies, through appropriate staffing including the incorporation of lawyers expert in Indian law, training programs, and support for greater autonomy. These indigenous agencies, in turn, must be prepared to delegate authority and responsibility for indigenous development to the indigenous communities whom they serve.

6.08 In order to support this endeavor and to meet the recommendations contained in OD 4.20, the Bank and its Borrowers need to develop more formal procedures for bringing indigenous communities and non-governmental organizations into the project planning and implementation process. As events surrounding the Eastern Lowlands Project in Bolivia demonstrate, the Bank and its Borrowers have yet to agree upon adequate procedures for ensuring the direct participation of indigenous peoples in development projects. By closely monitoring the performance of its recent projects, the Bank should be able to gain more experience in this difficult but challenging area.

6.09 The evidence in this report also supports the conclusions reached by indigenous organizations, conservationists and social scientists that there is a need to incorporate Amerindian land regularization and natural resource management programs with other protected area management programs. The Global Environment Facility (GEF) which supports several initiatives in biodiversity protection and protected area management in lowland tropical countries provides an excellent opportunity for promoting such co-management arrangements among indigenous peoples, conservationists and land-use planners. LATEN and the Country Departments should investigate with Borrowers some pilot projects where the GEF could be used for funding such joint indigenous reserve and protected area management schemes.

6.10 Lastly, more attention needs to be given to ways of linking the legal recognition and protection of indigenous lands with strategies that both preserve the fragile ecosystems in which indigenous people live and provide for economic development. Future Amerindian programs financed by the Bank should regard land regularization programs as not only compensatory or mitigation measures that protect indigenous people from potential harm caused by the major development project. Rather, land regularization should be accompanied by technical

assistance and institutional strengthening programs designed to build on indigenous knowledge systems. This is the model currently being pursued in projects such as those in Ecuador and Paraguay, where Amerindian natural resource management components are being incorporated into environmental technical assistance plans. As governments become aware of the global importance of conserving tropical forests and the significance of indigenous peoples and their traditional land use knowledge in such efforts, these Bank-financed projects could become models for a more rational and sustainable approach to the development of the South America lowlands.

Annex 1Description of Amerindian Components in Bank-Financed Projects Considered
in the ReviewBoliviaA.. Eastern Lowlands Natural Resource Management and Agricultural Development
Project -- Loan #2119-BO (Supervision)

1. The project supports the government's efforts to increase the production of soybeans and other agricultural commodities through the extension of credit and improved agricultural policies. It also will develop a land use plan for the fragile Eastern Lowlands and provide protection for an estimated 2,000 Ayoreo and Chiquitano Indians within the zone of influence of the project.

2. Missionaries sedentarized the formerly hunter-and-gatherer Ayoreo tribe in the 1950s. The Ayoreo, because of the process of sedentarization and acculturation, are today poor, disorganized and in extremely bad health. They live from a combination of wage labor, foraging and agriculture. The Chiquitanos, on the other hand, have a better socio-economic status, and depend primarily on subsistence agriculture combined with wage labor.

3. The Amerindian component was the first in the Bank's portfolio to be designed by a lowland Indian federation, the Central de Pueblos y Comunidades Indigenas del Oriente Boliviano (CIDOB). As a condition of loan effectiveness, the Regional Commission (which is the government's representative for the project) signed a contract with CIDOB to implement the component. However, problems of a political nature arose between CIDOB and the Regional Commission soon after effectiveness, and the latter suspended the Indian federation's contract.

4. The government and the Bank sought a compromise solution to this conflict which led to the establishment of a 6-member Directive Council for the component. The Directive Council is comprised of one representative of CIDOB, one Ayoreo representative, one Chiquitano representative, two representatives of regional government agencies, and one representative of the National Environment Secretary. The Directive Council, in turn, has nominated a Project Coordinator, who is now responsible for organizing and executing the various community development, health, agricultural assistance and land demarcation activities financed under the component.

5. The current land tenure situation of the indigenous groups is varied. Most of the Ayoreo land is held by religious missions, while among the Chiquitanos, nominal title is held by the communities, but full legalization has yet to occur. In the first year of the project, a socio-economic survey of the Ayoreo and Chiquitano communities will be conducted in order to initiate land demarcation proceedings. Its activities will focus on those communities

directly affected by the development of agro-export activities under the project's auspices.

6. In addition to the land demarcation for Ayoreo and Chiquitano communities in the project area, a departmental land-use plan will examine indigenous lands to determine which are occupied or used by indigenous peoples. These areas would then be zoned for use compatible with indigenous people's life styles. The study would also determine which lands should be declared indigenous reserves and review the adequacy of existing laws with respect to land and natural resource rights.

Brazil

B. Northwest Regional Development Program-- Loan 2060-BR (Completed in 1988)

7. The main objective of the program was to pave the BR-364 highway through Northwest Mato Grosso and Rondonia. Additionally, the project provided rural credit, land titles and technical assistance to colonists who had migrated to the Amazonian territory. At appraisal, the Bank estimated that there were 8,000 Amerindians in the project area, occupying 28 indigenous areas at various stages of official recognition. The indigenous people comprised 15 distinct ethnic groups; most were hunters, fishermen, gatherers and horticulturalists in various stages of contact with the national society. Some groups, such as the Uru-eu-wau wau in Rondonia, had only limited or no previous contact with Brazilians.

8. The Amerindian component was designed to support the indigenous communities through a land demarcation program and the provision of basic social services (particularly health care). It was funded entirely from Brazilian Government funds at a cost of approximately \$36 million.

9. Under the loan agreement, FUNAI agreed to implement a special project for protecting the interests of the Amerindians in the program area, which included all of Rondonia and northwestern Mato Grosso. The government also pledged to enforce its policy of protection and support for the Amerindian communities in the POLONOROESTE area. Article 198 of the 1968 Brazilian Constitution, which was in effect during the course of the loan, states that "lands inhabited by Amerindian communities are inalienable under the terms that federal law may establish; they shall have permanent possession of them, and their right to the exclusive usufruct of the natural resources."

10. Between 1981 and 1984, FUNAI demarcated the land of the Nambiquara Indians in the Guapore Valley of Mato Grosso and eastern Rondonia. However, the government was slow to finalize the process through presidential decrees officially recognizing the reserves. A mid-term evaluation carried out by the Bank in 1984 revealed that the process of indigenous land demarcation was slower than agreed upon. In response, the government agreed to implement an action plan that would speed up demarcation and full regularization. FUNAI was to give special attention to the demarcation of the reserve for the Uru-eu-wau wau, because of their vulnerability and previous isolation.

11. In 1985, the Bank temporarily suspended loan disbursements because of the lack of action on the regularization of the Uru-eu-wau wau reserve. The government subsequently demarcated and fully regularized the reserve and the Bank resumed disbursements.

12. By 1988, when the project was completed, FUNAI had demarcated a total of 11.8 million ha., 4.6 million of which (excluding the Uru-eu-wau wau reserve) it had demarcated during the course of the project. In total, this comprises 34 indigenous reserves, 20 of which are fully regularized. In addition, FUNAI identified 17 other indigenous areas, but there are still 16 areas where no action has been taken (see Annex 3, Table 1 for a statistical assessment of indigenous lands demarcated under the POLONOROESTE Program).

13. Many of the reserves demarcated under the program have been invaded by settlers, placer miners and logging companies. In addition, after the completion of the program and just before leaving office, President Sarney revoked the decree establishing the Uru-eu-wau wau reserve. FUNAI has since re-interdicted the area, and reinitiated the regularization process.

C. Carajas Iron Ore Project-- Loan 2196-BR (Completed in 1988)

14. This project was designed to increase Brazil's export of iron ore from the Carajas region through the development of a mine, ore processing plant and transport system. The executing agency was the state-owned Companhia Vale do Rio Doce (CVRD). The total Bank loan of \$304.5 million was 7 percent of total project costs (\$ 4.5 billion); additional funds came from Japanese, European and American lenders as well as other Brazilian sources.

15. The Amerindian component was specified in the Loan Agreement, although funding was entirely from the Brazilian government. The Loan Agreement provided for regular supervision by the Bank of the Amerindian Special Project and review of FUNAI's annual work program for the region.

16. The Amerindian Special Project was formulated relatively late in the design of the project, after CVRD had already designed the mine and railway components. At appraisal, CVRD agreed to contract FUNAI to implement the Special Project for an estimated 4,500 Amerindians living in 14 different reserves within a 100 km. radius of the Carajas mine and railroad. CVRD budgeted \$13.6 million for the project. Its principle objectives were to protect Indian lands through demarcation and regularization, and provide basic services such as health and education to the affected Indian communities. Through the Special Project, FUNAI planned to strengthen its administrative structure in the Carajas area.

17. Shortly after the project was initiated, anthropological consultants contracted by CVRD through the Brazilian Anthropological Association (ABA) persuaded the company that the Amerindian project should extend to a 150 Km radius of the railway and incorporate some 14,000 Indians in 24 reserves.

18. Between 1982 and 1986, FUNAI spent most of its contract funds on building its own administrative infrastructure. Only 10 percent of the disbursed funds went to land demarcation activities. Therefore, in March 1986, with 61 percent of the Special Project funds expended, CVRD suspended disbursements to FUNAI. After that, between 1987 and 1989, the funds were increasingly directed towards land protection activities and the provision of health care. At the end of 1988, a total of 17 percent of project funds had been spent on land protection.

19. The Carajas Amerindian Special Project registers some significant achievements in land protection. As a result of the project, more land was

demarcated and regularized in the Carajas area than in many other parts of northern Brazil. Of a total of 24 indigenous areas, FUNAI fully regularized 12, demarcated 6 and interdicted but had yet to demarcate 2 indigenous areas. 20. Nevertheless, problems remain in the Carajas area. Despite the existence of funds for land regularization in the Amerindian Special Project account, two years after the completion of the Carajas Iron Ore Project, the Awa-Guaja indigenous area--home to the still nomadic and highly vulnerable Guaja Indians-- and the Krikati indigenous area remain undemarcated. Many of the demarcated reserves have also been the sites of environmentally destructive activities by miners and timber companies. Within 4 of the reserves, there are problems with illegal settlers, and in 5 of the areas, Indians have petitioned for redemarcation (see Annex 3, Table 2 for details).

D. Maranhão Rural Development Project --Loan 2862-BR (Supervision)

21. This project, part of the set of Northeast Rural Development Projects, provides assistance for integrated rural development to small farmers. The Amerindian Component is an action plan submitted by the Brazilian Government as a condition for Board Presentation of the loan. The action plan calls for the regularization of four indigenous areas (AI) not completed under the Carajas Iron Ore Project: AI Awa, AI Cañabrava-Guajajara, AI Urucu-Jurua, and AI Geralda de Toco Preto. Special arrangements exist in the action plan for cooperative actions between FUNAI and the state land agency and for the provision of funds for the resettlement of non-Indian populations which exist in the proposed Indian reserves.

22. The action plan stated that FUNAI would demarcate the AI Awa by July 1988; that in AI Cañabrava, it and the Maranhão state government would develop a plan to resolve the conflict between the Indians and the non-Indians living in the settlement of Sao Pedro dos Cacetes; that FUNAI would fully regularize land belonging to the Urucu-Jurua reserve by August 1988 and that the non-Indians living within the reserve would be compensated and resettled; and, finally, that the government would fully regularize the Geraldo de Toca Prieto reserve, which was demarcated as a condition of loan effectiveness.

23. Since effectiveness, delays and conflicts have hampered the implementation of the action plan. There have been conflicts between FUNAI and the IBDF (the former forestry agency) over the overlapping boundaries of the Awa reserve and the Gurupi National Forest. There have also been conflicts between FUNAI and a private landowner who claims land within the proposed reserve and has prevented its demarcation.

24. At AI Cañabrava, FUNAI and the state government have been unable to resolve the situation of the non-Indians in the town of Sao Pedro dos Cacetes and periodic conflicts have broken out between Indians and the non-Indian town residents. At AI Urucu-Jurua, the land conflicts between settlers and Indians were finally resolved in late 1989, and resettlement of non-Indians began. At AI Geralda do Toco Preto, FUNAI demarcated the land as agreed upon under the Terms of Commitment, but a small 2,000 ha area is disputed by three landowners who have brought suit against FUNAI.

E. Rondonia Natural Resources Management Project (Negotiation)

25. The Rondonia Natural Resources Management Project, which has been appraised and negotiated but is being reviewed by the Brazilian government, would involve the financing of a long-term strategy for sustained land-use in the state of Rondonia, as a continuation of the POLONOROESTE projects. The Amerindian component of the project contemplates support for demarcation of Indian lands not accomplished under previous Polonoroeste projects, identification of more isolated Indian groups in the state by special FUNAI teams, improved security and enforcement measures in Indian areas, and improvement in Indian health programs

26. There are 5 indigenous areas that have been identified in Rondonia by FUNAI but still need to be demarcated (a total land area of 433,796 ha.). Another 18 areas have been investigated by FUNAI as possibly needing protection or identification. All of these lands, as well as those demarcated and regularized under the previous POLONOROESTE program, are or will be included in the state's agro-ecological plan and land-use and natural resources management program.

F. Mato Grosso Natural Resources Management Project (Appraisal)

27. The Mato Grosso Natural Resources Management Project, like its Rondonia counterpart, would develop land and resource use programs for Mato Grosso in order to avoid ecological degradation. Preparation studies indicate that there are about 15,000 Amerindians who would benefit from the project's environmental conservation and management activities. Along with an agro-ecological zoning plan, the project will include a component to assist Amerindians to manage existing reserves and facilitate the creation and policing of new reserves. There will also be a special Amerindian health program as part of the component.

Colombia

G. Forestry and Environmental Protection Project (Identification)

28. This project, which resulted from the Colombian Tropical Forest Action Plan, is designed to improve tropical forest management and protection and strengthen the government's institutional capacity to manage and conserve natural resources. A proposed Amerindian component will provide technical assistance to develop strategies for indigenous communities in forest areas and national parks. The indigenous population involved mainly inhabits the Pacific Coast and Choco regions, where most of the Indian resguardos are recognized and demarcated by the government but subject to exploitation by illegal settlers and logging operations.

Ecuador

H. Ecuador Environment Management and Technical Assistance Project (Appraisal)

29. This project, which contains an indigenous land regularization and natural resources management component, is designed to provide technical assistance in the environmental area to the new Subsecretary of the Environment in the Ministry of Mines and Energy and several other government

agencies. The Amerindian component will lead to a natural resources management project which will involve indigenous federations and the resident indigenous population in two Amazonian provinces.

30. In preparing the project, the Bank funded the production of two special reports on the Amerindian population of the Ecuadorean Amazon. The first report, by a Colombian lawyer, analyzes the current legal situation of Amerindians and the possibilities for regularization of their land tenure system. The second report, by an Ecuadorean anthropologist, describes the current settlement patterns and socio-economic status of Amazonian indigenous groups. It includes a detailed map of the location of all the Indian communities in the region.

31. The indigenous component will be carried out cooperatively by several regional Indian organizations, the Institute of Agrarian Reform and Colonization (IERAC), and the Ministry of Social Welfare's Rural Development Office. It will include the demarcation and regularization of the lands of 87 indigenous communities; the design and implementation of a natural resource management training program and several pilot conservation projects; and, a monitoring and evaluation sub-component which will document progress being made in the land regularization and natural resource management training activities.

Paraguay

I. Caazapa Area Development Project --Loan #2087-PA (Supervision)

32. The Caazapa Area development project is designed to increase agricultural production activities in the Department of Caazapa through extension of credit to small farmers, improved transportation, and improved health and rural employment opportunities. Although the Bank and the Government did not identify a significant indigenous population in the area during project preparation, subsequent research by Bank consultants and NGOs indicated that a sizeable population of M'bya and Ache indians would be affected by the project.

33. The M'bya, who are sedentary horticulturalists and are scattered in small family clusters throughout the project area, have experienced the detrimental and often traumatic effects of contact and have been displaced from their original homelands. Because they were never officially recognized and had no legal title to any land, their status is more ambiguous than that of other indigenous groups.

34. The Ache Indians are hunter-and-gatherers who traditionally lived in small dispersed settlements throughout the forests of Eastern Paraguay, but who recently have been settled on mission stations and government Indian reserves. One Ache community of about 100 people has settled on a large private estate which is inside the project area.

35. The Amerindian component, the conditions of which are described in Section 3.16 of the Loan Agreement, included a study of the Indians to analyze their situation, identify and regularize their lands, and prepare a program of social and technical services. For a number of years, the study experienced delays and, finally in 1988, it was completed by a consultant contracted by

the project executing agency. This study indicated that there were 22 indigenous communities in the project area, only 4 of which have land title.

36. Based on the finding of the study, in 1989, the Paraguayan Congress passed Law 1372 which was designed to speed up the process of indigenous land regularization in Caazapa and other parts of eastern Paraguay. This law was intended to prevent private landowners from deforesting or clearing lands occupied by Indians. It also enabled the government to acquire land for Indian communities and described a program for the implementation of indigenous land titling in the Caazapa area. Since the passage of the law, some indigenous land demarcation and titling has taken place but the process has been slow and conflict ridden.

37. Along with the land regularization effort, the project also includes a social and technical assistance program for the indigenous communities which is under the direction of the National Indian Institute (INDI).

J. Paraguay Environmental Technical Assistance Project (Preparation)

38. The Paraguay Environmental Technical Assistance Project is designed to improve the environmental protection and natural resources management capabilities of the newly established Subsecretary for Environment and Natural Resources in the Agricultural Ministry. It will include an aerial photographic survey, which should provide information for the more rational planning of agricultural and forestry activities in eastern Paraguay. There is also a protected area component which may be financed under the Bank's new Global Environment Facility.

39. The Amerindian component of the project is designed to reinforce the actions of the national government with respect to better integration of the protection of indigenous rights and the conservation of natural resources. The component will focus on revision of the legal framework and policies towards environmental conservation and indigenous communities; technical assistance and training for indigenous community leaders in natural resource management; the identification and implementation of a pilot project in a protected area; and studies of the actual state of forest resources in Indian areas.

40. A legal study on the relations between indigenous and environmental legislation has been carried out by a Paraguayan NGO and the Subsecretary for the Environment and Natural Resources as part of the preparation for the component.

K. Alta Parana-Itapua Development Project (Preparation).

41. This project is designed to promote ecologically-sound agricultural development for small-holder farmers in the Alta Parana- Northern Itapua region of eastern Paraguay. It is estimated that 1,000 indigenous families live in the project area, pertaining to three ethnic groups: the Chiripa-Guarani (512 families), the M'bya Guarani (316 families), and the Ache (17 families). At present, the situation of the indigenous people is precarious. They have no firm title to land; they have lost access to much of their traditional territory; they must engage in wage labor to survive; and, their health situation is bad.

42. The project envisions three activities with respect to indigenous land regularization. First, existing indigenous colonies (10 Chiripa communities, 4 M'bya communities and 1 Ache community) will be enlarged to meet the minimum land requirements set forth under Law 1372. Second, those M'bya communities that do not have any title to their lands will be assisted in gaining secure title. And, third, the project will facilitate the creation of two ecological reserves-- one of 4,500 ha in the Yuqueri vicinity (already contemplated in the Caazapa project) and one of 3-4,000 ha in the vicinity of Itakyry. While indigenous groups would not hold title to the reserves, they would be allowed to use them for traditional hunting and gathering activities.

Peru

L. Alto-Mayo Rural Development Project --Loan 2219-PE (Suspended)

43. The main objective of this project was to promote integrated rural development for the Alto-Mayo region of Peru. There are ten Aguaruna communities in the project area. The Aguaruna settled in this region in the 1940s, although they had previously used it as a hunting ground. They pursued a mixture of subsistence activities such as root-crop agriculture, hunting, fishing and gathering.

44. The Amerindian component, the land titling sections of which are described in the project Loan Agreement, was designed to facilitate land titling and boundary marking procedures for the Indian communities. Until it was suspended, the project was succeeding in its stated objectives. All ten communities were titled, and the process of finding suitable boundary markers for land was underway.

45. In addition to the land regularization program, the project provided for the construction of schools and health posts and a native marketing center in the indigenous communities. The project also provided some technical assistance for health and agriculture. The Office of Native and Campesino Communities (DCCN) of the Ministry of Agriculture began a detailed study of socio-economic conditions in the Aguaruna communities and hired a social scientist to assist with this study.

M. Chanchamayo-Satipo Rural Development Project --Loan 2396--PE (Suspended)

46. This project also centered on integrated rural development through credit extension programs for small farmers. The land regularization procedures are inscribed in the loan agreement. The project area contains 150 communities of Ashinanka Indians numbering approximately 13,000 people. By 1985, about 90 percent of these communities had either received firm title or were in the process of receiving title. However, there were still outstanding problems in three zones: Ere, Tambo, and the Gran Pajonal. In these areas, settlers had encroached on indigenous people's land and there were numerous inter-ethnic disputes. Escalating guerrilla violence and a suspension of the loan have delayed further supervision of this project.

Annex 2
The Legal Framework for Indigenous Land Regularization

Bolivia

1. The legal situation of indigenous peoples in Bolivia is governed by the 1953 Agrarian Reform Law. Provisions exist under this law for communal property allocation to Indian groups. These communal properties are protected under additional special laws. However, most of the lowland Indian groups in eastern Bolivia do not yet qualify as holders of indigenous communal property. In order to get collective title to their lands, the indigenous communities must go through a series of complicated administrative steps at the local and national levels. These involve measurement of the land, pronouncement of legal boundaries by local judges, processing of the title through the National Council of Agrarian Reform and the Ministry of Agriculture and confirmation by the President of the legal resolution granting title.

2. Currently, the land tenure situation of the Eastern Lowland Indian groups is variable and changing. Several recent decrees have provided larger territories and forest concessions to indigenous groups in the Beni region and a new law may soon be passed defining the land and resource rights of all the indigenous groups in the lowland region.

Brazil

3. In Brazil, three laws regulate the situation of Amerindians: the 1967 law that established the National Indian Agency (FUNAI), the 1973 Indian Statute, and the provisions with respect to Indians in the 1988 Federal Constitution. Until late 1989, the basic process for regularizing Indian lands was as follows:

4. The process of regularization begins with formal identification by FUNAI of an area with an indigenous population. Usually, when an indigenous area is identified, it is also interdicted; a process which affords some measure of legal protection for Indians from outside incursions. FUNAI then carries out a set of studies aimed at delimitation of the specific boundaries of a potential reserve.

5. In the pre-1990 system, FUNAI would then convene an Interministerial Work Group (known as the Grupao) which considers the proposed Reserve and makes a recommendation on the delimitation. If the proposed boundaries are approved, FUNAI secures an interministerial order (portaria) authorizing the demarcation of the Reserve, surveying and marking the boundaries. The final steps for full regularization are confirmation by decree of the President of the Republic and registration in the local land registry office and the Federal Property Registry. For purposes of protection, demarcation is the single most important step but an area is considered fully regularized only if it has been demarcated with full Presidential ratification, and registration in the local land registry (CRI) and the federal property registry (SPU).

6. A recent Presidential decree (Decree No. 22 of February 4, 1991) establishes new regulations for the demarcation of Indian reserves. The new decree streamlines the demarcation process, eliminates the Interministerial Work Group, and provides (during a period of one year) for the revision of reserve boundaries. Another decree (Decree No. 24) of the same date transfers responsibility for the protection of the environment and natural resources on Indian reserves to the Environment Secretariat and the Brazilian Environment Institute (IBAMA).

7. Finally, the new Brazilian Constitution has several important provisions concerning Indian lands. Article 268, Chapter VIII recognizes Indians' social organization and customs and their original rights over the lands they have traditionally occupied. It states that the use of water resources (such as hydroelectric capacity), and the exploration or utilization of mineral wealth on Indian lands requires authorization by the National Congress. The Congress must consult with the affected communities and the communities are guaranteed a share of revenues generated by such activity. Article 269 states that lands traditionally occupied by Indians are those that they inhabit permanently, "those utilized for their productivity-including those indispensable to the preservation of the environmental resources necessary for their well being- and those necessary for their physical and cultural reproduction according to their uses, customs and traditions."

Colombia

8. Colombia's laws with respect to indigenous peoples and their lands date back to the colonial era. The colonial authorities enacted a series of laws which recognized the existence of Indian reserves (Indians were entitled to all lands that had never been conquered) and established Indian cabildos (local politico-juridical governance structures). The Indian reserves (or resguardos) were deemed inalienable and to be held by the Indians in perpetuity. The local cabildos or councils had the authority to regulate Indian affairs inside the reserves.

9. Between 1890 and 1958, Indian affairs were governed by Law 89 of 1890 which authorized the governance of so-called "uncivilized" peoples in the lowlands and other isolated areas by Catholic Missions. The passage of Law 81 in 1958 (subsequently modified in 1960) and the passage of Law 135 in 1961, both concerning agrarian reform and rural development, signified a change in Colombian policy towards indigenous people. These laws removed some of the pejorative language and measures of the colonial laws and began to promote the concept of "development" for Indian communities. However, these laws continued to emphasize the integration of indigenous people into national life.

10. Since 1983, Colombian policy towards indigenous people has been changing towards a more cooperative model that encourages the maintenance of traditional indigenous forms of governance and secures the rights of Indian communities to land. The changes in policy reflect the success of indigenous organizations in Colombia who have actively sought protection for land and other rights. In the last ten years, the government has ceded to the Indians rights to land that covers over 69,000 square miles in the Amazon (about 50 percent of the total Colombian Amazon territory). The new policy relies on protection to land guaranteed under the old colonial laws. Decree No. 2001 of 1988 modifies Law 135 and strengthens the protection of indigenous reserves, facilitating implementation of the new policy. Several articles pertaining to Indians have also been incorporated into the new Colombian Constitution.

Ecuador

11. Three laws regulate indigenous land rights in Ecuador: the "Ley de Reforma Agraria" of 1964 (modified in 1982), the "Ley de Tierras Baldias y Colonización" of 1964, and the "Ley de Colonización de la Región Amazonica" of 1978. The Instituto Ecuatoriano de Reforma Agraria y Colonización (IERAC) is responsible for the processing of land titles for indigenous communities and the non-Indian settlers in the lowland region. It is important to note that this agency is responsible not only for indigenous land regularization but the regularization of any land that is considered "unoccupied" or in the public domain. In fact, the process by which indian communities acquire title to land is not very different from the process used by colonist-peasants, although this is changing.

12. Until 1985, indigenous people were encouraged by IERAC to obtain title to land as individual families. Gradually, IERAC began titling land to indigenous communities as whole entities, and more recently (in 1990) land concessions have been made to a whole indigenous group-- notably the Huaorani. This latest development is very promising for indigenous communities who will be able to better manage natural resources with larger land parcels.

13. In the meantime, indigenous groups have pursued alternative strategies. The most common pattern is for the Indians to form associations (a legal category which requires a minimum of 51 people) who then petition for land. However, the approval process is lengthy and cumbersome, so currently indigenous communities are opting for a quicker route through the formation of "centers", requiring only 14 members. Non-Indian colonists, on the other hand, generally form pre-cooperatives. The land titling process is the same in either case; however, whereas colonists must pay for the measurement and transmittal procedures, the Indians receive these services free of charge.

14. After formation of the relevant group, the Indians must go through a series of steps to get firm title. These steps are: petition to the regional IERAC office; verification of the group's standing and qualifications; measurement of lands; final formulation of the amount of land and title in Quito; approval from various offices in IERAC; inscription of the land in the provincial office; and, payment of the service fee. The process is lengthy and subject to frequent delays. A common cause of delay is the extensive time required to measure the land (including conducting topographic surveys) because of poor equipment and facilities.

Paraguay

15. Two laws govern the rights and treatment of indigenous people in Paraguay. The first is Law 904, the Estatuto de las Comunidades Indigenas, passed in 1981. Under this law, indigenous people are recognized as entitled to the protection of their cultural identities and traditional lands. The Indian communities are enabled to apply for personeria juridica through the Paraguayan Indian Institute (INDI). The INDI must process the request expeditiously and then register the community in the National Register of Indigenous Communities. Indian property is recognized as being land that Indians traditionally or actually possess. The Institute for Rural Welfare

(IBR) is responsible for measuring and demarcation Indian lands. Such lands, if privately held, can be obtained through either purchase or expropriation.

16. The second Law 1372, passed in December of 1988 and modified in 1989 and 1990. It establishes a procedure for the regularization of indigenous communities' properties and enables the government to acquire land for Indian communities. Lands to be acquired for this purpose are declared of social utility and subject to expropriation. This legislation has had a direct impact on the Caazapa Rural Development Project. In an annex to the law, specific reference is made to private estates that the government agreed to buy for the indigenous people affected by the project. In fact, the project stimulated the formulation of the legislation (see Annex 1).

Peru

17. The principal law affecting the land rights of indigenous communities in Peru is the Ley de Comunidades Nativas y de Promocion Agropecuaria de las Regiones de Selva y Ceja de la Selva first passed in 1974 (Decree Law 20653) and modified in 1978 (Decree Law 22175). Under this law, indigenous communities are recognized as legal entities and can follow a legal process to get communal title to land. Once land is titled to the community, it is inalienable. The procedure that communities follow involves the solicitation for land titling by the community to the Ministry of Agriculture-- Division of Agrarian Reform; the land is then inscribed, titled and finally registered in the Public Register.

18. As of 1985, when the Alto Mayo and Chanchamayo-Satipo projects were active, the land regularization process was slow and cumbersome. The Ministry of Agriculture, the responsible agency, was also in charge of authorizing possession certificates to colonists, and expedited exploitative activities (such as lumbering) on native lands, presenting a conflict of interest situation.

International Labor Organization Conventions

19. Two International Labor Organization (ILO) conventions are important to the protection and regularization of indigenous land rights. ILO Convention No. 107 of 1957 was the first international convention to recognize the rights of indigenous and tribal people. It has been ratified by 14 Latin American countries, including all of those discussed here. The convention provides that "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized." The Convention also states that indigenous people should not be removed from their traditional lands without their consent.

20. While this Convention has played a historically important role in the formulation of an international framework for indigenous and tribal peoples' rights, it came under criticism by indigenous organizations who reacted to its integrationist or assimilationist bias.

21. As a result, a second conference was convened and in June 1989, the ILO passed Convention No. 169. The new Convention emphasizes respect for the social and cultural integrity of indigenous and tribal peoples and their co-participation rather than integration or assimilation, with the national

society. The Convention also emphasizes the importance of land rights to indigenous people and states that the term "lands" should be conceived of as the total environment of the areas which indigenous people occupy or use. It has already been ratified by three Latin American countries (Bolivia, Colombia and Mexico) and it is expected that other countries will follow.

Annex 2

Table 1
Steps in Land Regularization

Country	National Level	Regional Level
Bolivia	Consideration by National Council of Agrarian Reform; Resolution by Min. of Agricultural and Peasant Affairs; Confirmation by President	Presentation of demand by Regional Agrarian Reform Commission; Assignment of Judge and Topographer; Audience, survey, probationary period, sentence (2-3 months)
Brazil	Interdiction, identification, delimitation; Consideration by Inter-Ministerial Work Group; Demarcation decree issued; Confirmation by President; Registration in Federal Property Register	Registration in municipal land office
Ecuador	Obtain title; National approval by IERAC	Indigenous community forms association and petitions to IERAC; Verification of authenticity; Measurement of lands; Final determination of land; Inscription in provincial office
Paraguay	Indian community applies to INDI for juridical personality; IBR determines quantity of land; Registration in National Registry of Indian Communities; Government can purchase approved land under law 1372	Justification of land claim
Peru	Community solicits title from Min. of Agric., Div. of Agrarian Reform; Measurement; Inscription; Titling; Registration in the Public Register	

Annex 2Table 2Government Agencies For Indian Affairs and Land Regularization

Country	Indian Agency	Land Regularization Agency
Bolivia	Bolivian Indigenist Agency	Ministry of Agrarian Reform
Brazil	National Indian Foundation (FUNAI)	FUNAI
Colombia	Department of Indian Affairs, Min. of Government	Colombian Institute of Agrarian Reform (INCORA)
Ecuador	None	Ecuadorean Institute of Agrarian Reform and Colonization (IERAC)
Paraguay	National Indian Institute (INDI)	Institute of Rural Welfare (IBR)
Peru	Department of Native Communities	Ministry of Agrarian Reform

Annex 3

Statistical Tables on Amerindian Land Regularization

Table 1: Amerindian Land Regularization in the Northwest Regional Development Program (Brazil)

Table 2: Amerindian Land Regularization in the Carajas Iron Ore Project (Brazil)

Table 3: Land Status of Indian Communities in the Caazapa Area Development Project (Paraguay)

Table 4: Land Regularization in the Chanchamayo-Satipo Project (Peru)

Table 5: Amerindian Land Regularization in the Eastern Lowlands Agricultural and Natural Resources Development Project (Bolivia)

TABLE 1¹AMERINDIAN LAND REGULARIZATION IN THE NORTHWEST REGIONAL DEVELOPMENT PROGRAMBrazil

Table 1-A

Fully Regularized Areas

INDIGENOUS AREA	POPULATION	LAND AREA (hec)	INVASIONS/ILLEGAL ACTIVITIES
APIAKA/KAIABI	248	109,245	None
ARIPUANA	360	1,609,700	Illegal logging
BAKAIRI	399	61,405	None
IGARAPE LAGE	252	107,321	Invaded '85-'86; currently clear
IGARAPE LOURDES	450	185,534	Invaded twice; currently clear ²
IGARAPE RIBEIRAO	110	47,863	Unknown
KARITIANA	129	89,862	Unknown
MENKU	46	47,095	Unknown
NAMBIKWARA	302	1,011,961	None
PARECI	315	563,587	Three ranches within reserve
PIRINEUS DE SOUZA	103	28,212	None
RIKBATSA	550	79,935	Unknown
RIO BRANCO	206	236,147	Illegal logging in '86; invasion threat
RIO FORMOSO	84	19,700	None
RIO NEGRO-OCAIA	272	104,064	None
SARARE	55	67,420	None
SETE DE SETEMBRO	395	247,870	None
TUBARAO LATUNDE	153	116,613	Unknown
UTIARITI	290	412,304	Unknown
VALE DO GUAPORE	344	242,593	Colonists inside reserve
Totals:	5,063	5,388,431	

¹ In addition to the areas mentioned here, there are 16 additional Indigenous Areas where no action has been taken. They incorporate an estimated 917 people and 1,930,000 hectares of land. Also not included in the tables is the Area of the Uru-eu-wau wau, whose status remains uncertain after revocation of the demarcation decree. The Uru-eu-wau wau number approximately 700 people and were previously accorded 1,867,117 hectares of land.

² Eletronorte is constructing a dam north of the reservation which will inundate an estimated 7 - 10 percent of the reservation. The Indians have requested compensation.

Table 1-B

Demarcated Areas Not Yet Regularized

INDIGENOUS AREA	LAND AREA (hec)	POPULATION	YEAR ³	CURRENT STATUS
ARIPUANA	75,649	95	85	No progress since '86; boundaries disputed
IRANTXE	45,555	165	86	Demarcation suspended, 1987
JAPUIRA	152,509	90	88	Ranchers present; episodic violence
KAXARARI	127,540	130	87	No information available
PACAA NOVAS	279,906	491	76	Colonists within reserve
PERIGARA	10,740	98	NA	No information available
ROOSEVELT	233,056	288	86	Squatters and illegal logging
SANTANA	34,471	153	84	No progress since 1984; needs registration
SERRA MORENA	148,300	107	85	Boundary problems; logging activities
TADARIMANA	9,785	90	85	No information available
TEREZA CRISTINA	26,237	182	85	Illegal ranching; planned railway threat
TIRECATINGA	130,575	92	83	No information available
UMUTINA	28,120	205	84	Lacks decree and registration
ZORO	355,789	208	87	500-800 squatter families on reserve
Totals:	<u>1,658,232</u>	<u>2,394</u>		

³ "Year" refers to the year that the reserve was demarcated.

Table 1-C

Identified Areas Not Yet Demarcated

INDIGENOUS AREA	POPULATION	LAND AREA (hec)	YEAR ⁴	STATUS
ARARA BEIRADAO	160	242,776	87	Awaits demarcation
ESCONDIDO	30	275,100	85	Ranching, mining; boundaries disputed
ESTACAO RONDON	18	500	86	No progress since 1986
ESTIVADINHO	13	1,970	82	Area inside private ranch; indians expelled
FIGUEIRAS	19	10,000	82	Awaits interministerial decree; Ranching
IPIXUNA	NA	179,640	85	Awaits further action by FUNAI
KARIPUNA	20	195,000	77	Awaits demarcation; road, invasion threats
NOVE DE JANEIRO	NA	220,600	85	Awaits further action by FUNAI
PEQUIZAL	NA	3,186	87	Awaits further action by FUNAI; invasion threat
PIRAHA	NA	389,000	85	Awaits further action by FUNAI
RIO GUAPORE	238	128,196	86	Awaits demarcation
RIO MEQUENS	51	105,250	85	Awaits interministerial decree; logging
SAGARANA	135	8,400	85	Awaits demarcation
SALUMA	185	533,940	84	Awaits demarcation; ranching, logging
IGARAPE PRETO ⁵	56	79,500	85	Awaits further action by FUNAI
TRANSAMAZONICA	280	488,550	85	Awaits demarcation; dam planned
TORA	NA	24,600	85	Awaits further action by FUNAI
Totals:	1205	2,886,208		

⁴ "Year" refers to the year area was identified.

⁵ This area and the Tranzamazonica area listed below are in the TENHARIM region.

Table 2

AMERINDIAN LAND REGULARIZATION IN THE CARAJAS IRON ORE PROJECT

Brazil

Table 2-A

Fully Regularized Areas

INDIGENOUS AREA	LAND AREA (hec)	YEAR¹	CURRENT STATUS
Alto Tariacu	530,524	1983	Mineral investigations
Bacurizinho	82,432	1984	Mineral investigations request
Canela	125,212	1983	N/A
Caru	172,667	1983	Carajas railway, mineral investigations requested
Governador	41,644	1983	Revision of demarcation to include 'Cunha Mda Faveira', municipal road
Mae Maria	62,927	1986	Roads, railway, transmission lines, invasions, deforestation
Morro Blanco	49	1984	State road, transmission line
Parakana	324,350	1985	Trans-Amazon hwy., hydroelectric, mineral investigations, logging
Pindare	15,002	1983	Federal highway
Porquinhos	79,520	1986	Settler invasions, presence of colony between this reserve and Bacurizinho
Rodeador	2,319	1984	N/A
Sororo	26,258	1983	Logging, road, invasions, deforestation, Gov. colonization site, revision of area
Trocara	21,722	1983	State road
	<hr/>		
	1,484,626		

¹ "Year" refers to the year that the reserve was regularized.
The Trocara and Canela Indigenous Areas entered the project after they were regularized.

Table 2-B

Demarcated Areas Not Yet Regularized

INDIGENOUS AREA	LAND AREA (hec)	YEAR ²	CURRENT STATUS
Apinaje	141,904	1985	Trans-Amazon Highway, roads, transmission lines, railway, invasions
Arariboia	413,288	1977	State road, logging, medicinal plants, regularization will change status to "Indian Colony"
Bacaya	192,126	1984	Placer mining, state road planed, hydroelectric complex
Cañabrava	131,868	1984	State road, invasions, logging, transmission line, proposed relocation of Sao Pedro dos Cacetes
Catete	439,151	1977	Placer mining, logging, mineral investigations planed, cattle ranching
Geralda TocoPreto	16,588	1987	Invasions, needs demarcation correction and settler compensation
Lagoa	13,198	1983	Waiting correction of western boundary
Uracu Jurua	2,319	1984	N/A
	<hr/>		
	1,350,442		

² "Year" refers to the year that the reserve was demarcated. The Arariboia and Catete Indigenous Areas entered the project after they were demarcated.

Area Interdicted or Identified

Table 2-C

INDIGENOUS AREA	LAND AREA (hec)	YEAR³	CURRENT STATUS
Apyterawa	244,050	1987	Mining, logging, medicinal plants, hydroelectric complex, awaiting demarcation
Awa	65,700	1987	Mineral investigations, biological reserve, logging, cattle, reduced area by 60%, 1988
Krikati	85,500	1980	State road, transmission line, cattle, mineral investigations, awaiting demarcation, pending litigation and anthropological survey
Total:	395,250		

³ "Year" refers to the year that the reserve was interdicted or identified.
The Krikati Indigenous Area entered the project after it was interdicted.

TABLE 3

Land Status of Indian Communities in the Caazapa Area Development Project
Paraguay

Table 3-A

Communities Included in Law 1372 Settlement

NAME OF COMMUNITY	POPULATION	LAND AREA (hec)	ACTION TAKEN
Arroyo Moroti, Tuna'i, Yuqueri	500	5,500	INDI purchased 4000 ha. ¹
Karumbey - Karanda	250	1,200	Measured, but not yet purchased.
Yñaro - Arroyo Ka'a	300	1,400	Purchased, INDI holds title.
Ranchito - Ypeti	350	1,500	Purchased, INDI holds title.
Ypetimi - Tuparenda	130	1,500	Purchased, INDI holds title.
Mbarigui - Catorce	220	1,000	Owners contesting claim.
Maracana - Arroyo Guazu	300	1,000	Measured, but not yet purchased.
Tangui - Isla Yobai	250	1,400	Owner contesting purchase.
Kurupicua - Kapi'i	250	1,000	Owner contesting purchase.
Senorita - Ypa'u	250	1,100	Owner contesting purchase.
Kangue Kua - Arroyo Moroti	250	1,000	No resolution.
Totals:	3,050	17,600	

¹ Law 1372 only designated 2,000 hectares for each of these communities. The three have joined together and filed a lawsuit to claim a total of 7,500 hectares that they feel they are entitled to. The community of Kangue Kua is awaiting the outcome of this litigation as it wishes to integrate into the cluster if the larger amount of land is appropriated.

Table 3-B

Native Communities Not Included in Law 1372 Settlement

NAME OF COMMUNITY	POPULATION	LAND AREA (hec)	LAND/TITLE STATUS
Pakuri Castor Kue	100	298	Fully Regularized
Ka'a Yobai	150	543	IBR ² measured land area in '87; to be titled.
Lima Guazu	155	731	German Mission bought land, owns title.
Yvytymiri-Km 18	NA	461	The AIP ³ owns title.
Ovenia	75	74	Requires study; status in dispute.
Isla Hu	100	90	Community has title; wants expansion.
Ka'amindy	110	1,300	Paraguay Episcopal Conference has title.
Yryvukua - Sanja Pyta	135	371	Acquired by INDI ⁴ ; to be titled.
Torres Kue - Piquete Kue	175	267	Acquired by INDI; to be titled.
	<u>Totals:</u>	<u>1,000</u>	<u>4,135</u>

² IBR= Institute for Rural Welfare.

³ AIP= The Paraguayan Indian Association.

⁴ INDI= The National Indian Institute.

TABLE 4

LAND REGULARIZATION IN THE CHANCHAMAYO-SATIPO PROJECT
Peru

Table 4-A¹

Native Communities Titled

Year	Number
1983	15
1984	19
1985	13
1986	4
TOTAL:	51

Table 4-B

Native Community Title Status in 1986²

Number	Status
8	Under Consideration before Agrarian Reform Agency
4	Plans Approved at Regional Level
3	Under Study for Land Measurement
13	Still Needed Recognition
8	Communities Needed to Petition for Title

¹ The project files contain no data which breaks down the amount of land titled to each community. However, according to the Native Affairs Agency, between 1983-1985 a total of 290,300 hectares was titled to 47 Native Communities, benefiting 2,132 families.

² 1986 was the last year of active disbursement in the project.

Table 5

AMERINDIAN LAND REGULARIZATION IN THE EASTERN LOWLANDS AGRICULTURAL AND
NATURAL RESOURCES DEVELOPMENT PROJECT
Bolivia

Ayoreo Communities Affected by Project¹

Village	Population	Land area (hec)	Title Status
Poza Verde	335	2,500	S. American Mission
Guidaichai	40	25,000	has been solicited
Santa Cruz	125	unknown	has been solicited
Puesto Paz	400	5,000	New Tribes Mission
Zapoco	200	11,400	S. American Mission
Jinca	unknown	15,500	solicited by APCOB ²
Tobite	100	10,000	titled to community
Urucu	95	100	Vicariate of Chiquitos
Sta. Teresita	110	5,000	various missions
Rincon del Tigre	525	15,116	solicited by Baptist Mission
Kilometro 48	50	17,500	solicited by community
Motacu	35	10	titled to community
Santiago de Chiquitos	20	no land --live in urban area	none
TOTALS:	2,035	107,126	

¹ Data is only available for the Ayoreo communities in the project. While it is estimated that Chiquitano communities in the project area, data on their population and land area are not available.

² APCOB = A Bolivian NGO that provides technical assistance to lowland Bolivian indigenous people.

Annex 4
Indigenous Specialists and NGOs Involved
in Amerindian Components

PROJECT NAME	PREP/APPRAISAL	M & E	SUPERVISION
Northwest Regional Development (Brazil)	M. Koch-Weser/ D. Price	FIPE ¹	D. Gross/ M. Koch Weser
Carajas Iron Ore (Brazil)	M. Koch-Weser	ABA ²	D. Gross/ M. Koch-Weser S. Davis(PCR)
Maranhão Rural Development (Brazil)	M. Gomes	none	D. Gross
Rondonia & Mato Grosso Natural Resources (Brazil)	M. Leonel/ B. Mindlin/ D.Gross	To be determined (TBD)	(TBD)
Caazapa Area Development (Paraguay)	none	CENDER/ Proyecto Guarani/ C. Ortiz	M. Koch-Weser B. Mindlin-M. Leonel/ S.Davis/ J. Renshaw
Paraguay Environment	S. Davis/CEDHU ³	TBD	TBD
Alta-Parana-Itapua	J. Renshaw	TBD	TBD
Bolivia Eastern Lowlands	CIDOB/APCOB ⁴	TBD	C. Tavera
Ecuador Environment	S. Davis/ J. Uquillas/ R. Roldan	TBD	TBD
Alto-Mayo	S. Romanoff/ L. Brownrigg	DCCN ⁵	M. Brown
Chanchamayo-Satipo	S. Romanoff/ L. Brownrigg	DCCN	M. Brown

¹ FIPE = The Economic Research Foundation, Saõ Paulo

² ABA= Brazilian Anthropology Association

³ CEDHU = Center for Humanitarian Documentation, Asunción

⁴ APCOB is based in Santa Cruz and is a technical assistance organization for lowland indigenous groups. CIDOB is the Lowland Bolivia Indigenous Federation.

⁵ DCCN= Peruvian Department of Native Affairs

Operational Directive

Annex 5

Indigenous Peoples

Introduction

1. This directive describes Bank¹ policies and processing procedures for projects that affect indigenous peoples. It sets out basic definitions, policy objectives, guidelines for the design and implementation of project provisions or components for indigenous peoples, and processing and documentation requirements.

2. The directive provides policy guidance to (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities. Special action is required where Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.

Definitions

3. The terms "indigenous peoples," "indigenous ethnic minorities," "tribal groups," and "scheduled tribes" describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, "indigenous peoples" is the term that will be used to refer to these groups.

4. Within their national constitutions, statutes, and relevant legislation, many of the Bank's borrower countries include specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples.

5. Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- (a) a close attachment to ancestral territories and to the natural resources in these areas;
- (b) self-identification and identification by others as members of a distinct cultural group;
- (c) an indigenous language, often different from the national language;
- (d) presence of customary social and political institutions; and
- (e) primarily subsistence-oriented production.

Task managers (TMs) must exercise judgment in determining the populations to which this directive applies and should make use of specialized anthropological and sociological experts throughout the project cycle.

Objective and Policy

6. The Bank's broad objective towards indigenous people, as for all the people in its member

1. "Bank" includes IDA, and "loans" include credits.

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countries, is to ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness. More specifically, the objective at the center of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.

7. How to approach indigenous peoples affected by development projects is a controversial issue. Debate is often phrased as a choice between two opposed positions. One pole is to insulate indigenous populations whose cultural and economic practices make it difficult for them to deal with powerful outside groups. The advantages of this approach are the special protections that are provided and the preservation of cultural distinctiveness; the costs are the benefits foregone from development programs. The other pole argues that indigenous people must be acculturated to dominant society values and economic activities so that they can participate in national development. Here the benefits can include improved social and economic opportunities, but the cost is often the gradual loss of cultural differences.

8. The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the *informed participation* of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.

9. Cases will occur, especially when dealing with the most isolated groups, where adverse impacts are unavoidable and adequate mitigation plans have not been developed. In such situations, the Bank will not appraise projects until suitable plans are developed by the borrower

and reviewed by the Bank. In other cases, indigenous people may wish to be and can be incorporated into the development process. In sum, a full range of positive actions by the borrower must ensure that indigenous people benefit from development investments.

Bank Role

10. The Bank addresses issues on indigenous peoples through (a) country economic and sector work, (b) technical assistance, and (c) investment project components or provisions. Issues concerning indigenous peoples can arise in a variety of sectors that concern the Bank; those involving, for example, agriculture, road construction, forestry, hydropower, mining, tourism, education, and the environment should be carefully screened.² Issues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes, and appropriate measures should be taken under environmental mitigation actions (see OD 4.01, *Environmental Assessment*, to be issued).

11. *Country Economic and Sector Work.* Country departments should maintain information on trends in government policies and institutions that deal with indigenous peoples. Issues concerning indigenous peoples should be addressed explicitly in sector and subsector work and brought into the Bank-country dialogue. National development policy frameworks and institutions for indigenous peoples often need to be strengthened in order to create a stronger basis for designing and processing projects with components dealing with indigenous peoples.

12. *Technical Assistance.* Technical assistance to develop the borrower's abilities to address issues on indigenous peoples can be provided by the Bank. Technical assistance is normally given within the context of project preparation, but technical assistance may also be needed to strengthen the relevant government institutions or

2. Displacement of indigenous people can be particularly damaging, and special efforts should be made to avoid it. See OD 4.30, *Involuntary Resettlement*, for additional policy guidance on resettlement issues involving indigenous people.

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to support development initiatives taken by indigenous people themselves.

13. *Investment Projects.* For an investment project that affects indigenous peoples, the borrower should prepare an indigenous peoples development plan that is consistent with the Bank's policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan. When the bulk of the direct project beneficiaries are indigenous people, the Bank's concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety.

Indigenous Peoples Development Plan³

Prerequisites

14. Prerequisites of a successful development plan for indigenous peoples are as follows:

- (a) The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.
- (b) Studies should make all efforts to *anticipate adverse trends* likely to be induced by the project and develop the means to avoid or mitigate harm.⁴
- (c) The institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities. Implementation arrangements should be kept simple. They should normally involve appropriate existing

institutions, local organizations, and nongovernmental organizations (NGOs) with expertise in matters relating to indigenous peoples.

- (d) Local patterns of social organization, religious beliefs, and resource use should be taken into account in the plan's design.
- (e) Development activities should support production systems that are well adapted to the needs and environment of indigenous peoples, and should help production systems under stress to attain sustainable levels.
- (f) The 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.
- (g) Successful planning for indigenous peoples frequently requires long lead times, as well as arrangements for extended follow-up. Remote or neglected areas where little previous experience is available often require additional research and pilot programs to fine-tune development proposals.
- (h) Where effective programs are already functioning, Bank support can take the form of incremental funding to strengthen them rather than the development of entirely new programs.

3. Regionally specific technical guidelines for preparing indigenous peoples components, and case studies of best practices, are available from the Regional environment divisions (REDs).

4. For guidance on indigenous peoples and environmental assessment procedures, see OD 4.01, *Environmental Assessment*, and Chapter 7 of World Bank, *Environmental Assessment Sourcebook*, Technical Paper No. 139 (Washington, D.C., 1991).

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15. The development plan should be prepared in tandem with the preparation of the main investment. In many cases, proper protection of the rights of indigenous people will require the implementation of special project components that may lie outside the primary project's objectives. These components can include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, entitlement to natural resources, and education. The project component for indigenous peoples development should include the following elements, as needed:

- (a) **Legal Framework.** The plan should contain an assessment of (i) the legal status of the groups covered by this OD, as reflected in the country's constitution, legislation, and subsidiary legislation (regulations, administrative orders, etc.); and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights. Particular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.
- (b) **Baseline Data.** Baseline data should include (i) accurate, up-to-date maps and aerial photographs of the area of project influence and the areas inhabited by indigenous peoples; (ii) analysis of the social structure and income sources of the population; (iii) inventories of the resources that indigenous people use and technical data on their production systems; and (iv) the relationship of indigenous peoples to other local and national groups. It is particularly

important that baseline studies capture the full range of production and marketing activities in which indigenous people are engaged. Site visits by qualified social and technical experts should verify and update secondary sources.

- (c) **Land Tenure.** When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is inappropriate to convert traditional rights into those of legal ownership, alternative arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.
- (d) **Strategy for Local Participation.** Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation. Many of the larger groups of indigenous people have their own representative organizations that provide effective channels for communicating local preferences. Traditional leaders occupy pivotal positions for mobilizing people and should be brought into the planning process, with due concern for ensuring genuine representation of the indigenous population.⁵ No foolproof methods exist, however, to guarantee full local-level participation. Sociological and technical advice provided through the Regional environment divisions (REDs) is often

5. See also "Community Involvement and the Role of Nongovernmental Organizations in Environmental Assessment" in World Bank, *Environmental Sourcebook*, Technical Paper No. 139 (Washington, D.C., 1991).

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needed to develop mechanisms appropriate for the project area.

- (e) *Technical Identification of Development or Mitigation Activities.* Technical proposals should proceed from on-site research by qualified professionals acceptable to the Bank. Detailed descriptions should be prepared and appraised for such proposed services as education, training, health, credit, and legal assistance. Technical descriptions should be included for the planned investments in productive infrastructure. Plans that draw upon indigenous knowledge are often more successful than those introducing entirely new principles and institutions. For example, the potential contribution of traditional health providers should be considered in planning delivery systems for health care.
- (f) *Institutional Capacity.* The government institutions assigned responsibility for indigenous peoples are often weak. Assessing the track record, capabilities, and needs of those institutions is a fundamental requirement. Organizational issues that need to be addressed through Bank assistance are the (i) availability of funds for investments and field operations; (ii) adequacy of experienced professional staff; (iii) ability of indigenous peoples' own organizations, local administration authorities, and local NGOs to interact with specialized government institutions; (iv) ability of the executing agency to mobilize other agencies involved in the plan's implementation; and (v) adequacy of field presence.
- (g) *Implementation Schedule.* Components should include an implementation schedule with benchmarks by which progress

can be measured at appropriate intervals. Pilot programs are often needed to provide planning information for phasing the project component for indigenous peoples with the main investment. The plan should pursue the long-term sustainability of project activities subsequent to completion of disbursement.

- (h) *Monitoring and Evaluation.*⁶ Independent monitoring capacities are usually needed when the institutions responsible for indigenous populations have weak management histories. Monitoring by representatives of indigenous peoples' own organizations can be an efficient way for the project management to absorb the perspectives of indigenous beneficiaries and is encouraged by the Bank. Monitoring units should be staffed by experienced social science professionals, and reporting formats and schedules appropriate to the project's needs should be established. Monitoring and evaluation reports should be reviewed jointly by the senior management of the implementing agency and by the Bank. The evaluation reports should be made available to the public.
- (i) *Cost Estimates and Financing Plan.* The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year and linked to a financing plan. Such programs as revolving credit funds that provide indigenous people with investment pools should indicate their accounting procedures and mechanisms for financial transfer and replenishment. It is usually helpful to have as high a share as possible of direct financial participation by the Bank in project

6. See OD 10.70, *Project Monitoring and Evaluation*.

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components dealing with indigenous peoples.

Project Processing and Documentation

Identification

16. During project identification, the borrower should be informed of the Bank's policy for indigenous peoples. The approximate number of potentially affected people and their location should be determined and shown on maps of the project area. The legal status of any affected groups should also be discussed. TMs should ascertain the relevant government agencies, and their policies, procedures, programs, and plans for indigenous peoples affected by the proposed project (see paras. 11 and 15(a)). TMs should also initiate anthropological studies necessary to identify local needs and preferences (see para. 15(b)). TMs, in consultation with the REDs, should signal indigenous peoples issues and the overall project strategy in the Initial Executive Project Summary (IEPS).

Preparation

17. If it is agreed in the IEPS meeting that special action is needed, the indigenous peoples development plan or project component should be developed during project preparation. As necessary, the Bank should assist the borrower in preparing terms of reference and should provide specialized technical assistance (see para. 12). Early involvement of anthropologists and local NGOs with expertise in matters related to indigenous peoples is a useful way to identify mechanisms for effective participation and local development opportunities. In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible, since land disputes frequently lead to delays in executing measures

that are contingent on proper land titles (see para. 15(c)).

Appraisal

18. The plan for the development component for indigenous peoples should be submitted to the Bank along with the project's overall feasibility report, prior to project appraisal. Appraisal should assess the adequacy of the plan, the suitability of policies and legal frameworks, the capabilities of the agencies charged with implementing the plan, and the adequacy of the allocated technical, financial, and social resources. Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan as described in para. 14(a) (also see para. 15(d)). It is particularly important to appraise proposals for regularizing land access and use.

Implementation and Supervision

19. Supervision planning should make provisions for including the appropriate anthropological, legal, and technical skills in Bank supervision missions during project implementation (see para. 15(g) and (h), and OD 13.05, *Project Supervision*). Site visits by TMs and specialists are essential. Midterm and final evaluations should assess progress and recommend corrective actions when necessary.

Documentation

20. The borrower's commitments for implementing the indigenous peoples development plan should be reflected in the loan documents; legal provisions should provide Bank staff with clear benchmarks that can be monitored during supervision. The Staff Appraisal Report and the Memorandum and Recommendation of the President should summarize the plan or project provisions.