

BRAZIL
SECOND NATIONAL ENVIRONMENTAL PROJECT PHASE II

SOCIAL FRAMEWORK

Resettlement Framework

Procedures for Prior Screening

The state projects to be submitted to the National Environmental Program (PNMA) will be aimed directly or indirectly at improving environmental quality and the conservation and sustainable use of natural resources. Thus, in general, they are not expected to have negative environmental impacts and consequently would not require mitigating actions. However, all projects will be subject to a prior environmental screening that will seek to identify possible negative environmental and social externalities (damages) and, if these are present, the states should following the procedures described in this document.

In projects with planned interventions that may in some way cause pollution or environmental degradation, it will be necessary to present a license or other equivalent legal instrument that provides evidence of the adoption of more environmentally suitable practices and acceptance by the public authority in the form of Brazilian legislation, particularly as stipulated in Law nº 6.938/81 and CONAMA Resolutions 001/86 and 237/97.

In addition to the above procedure, the projects should be analyzed with regard to the determinations contained in World Bank Operational Policies, particularly OP 4.01 – Environmental Assessment, 4.10 – Indigenous Peoples, and 4.12 – Involuntary Resettlement.

The procedures of this prior environmental screening, with the definition of tasks of proponent states and of the Ministry of Environment (MMA), are divided into three stages, as detailed below and summarized in a flowchart (section A, presented later):

- i) Screening and Evaluation Stage: the projects, containing a description of the potential negative impacts of the proposed activities, are analyzed and classified by the proposing states as Categories A, B, or C (depending on the probable degree of environmental impact), in accordance with the World Bank's safeguard policy¹ and submitted to the program's Technical Group for approval.

Brazilian legislation² should also be observed during this stage, with regard to the need for licensing of possible works or interventions.

- ii) Preparation Stage of Environmental Studies, Plans, and Special Reports: states proposing projects classified as A or B proceed to prepare the Environmental Assessment,³ Environmental Management Plan,⁴ Resettlement Action Plan⁵ or Indigenous Peoples or

¹ Bank Operational Policy - OP 4.01

² CONAMA Resolutions 001/86 and 237/97 and corresponding state and municipal legislation.

³ Bank Operational Policy - OP 4.01

⁴ Bank Operational Policy - OP 4.01

⁵ Bank Operational Policy - OP 4.12

Quilombolas Plan⁶ or other studies or plans to be defined in terms of the project's specific characteristics.

The projects classified in these categories should be submitted for environmental licensing or the signing of adequate institutional and legal agreements and commitments, when they propose works or interventions subject to control by the public authority.⁷

iii) Implementation Stage: projects in Categories A and B, definitively approved by the Supervisory Commission and suitable for implementation (having met the necessary requirements) and projects in Category C (without significant environmental impact), begin implementation and carry out the environmental monitoring of implemented actions.

1. ANALYSIS AND EVALUATION STAGE

The projects submitted by states for approval by the PNMA should contain a preliminary screening of their potential environmental or social impacts, described in a specific section that should also contain an analysis of alternatives and an identification of the necessary measures to minimize them, as well as the classification in Categories A, B, or C, in accordance with the degree or scale of potential environmental impact.

Upon being submitted for evaluation, the projects will be analyzed by the PNMA Technical Group to verify the correct identification of impacts, alternatives, mitigation measures, and classification.

Some types of projects or interventions may not be eligible under the scope of the program if the possibility of significant, irreversible negative impact is detected.

Category A. Projects with high social impact

A proposed project will be classified as Category A if any of the following situations apply:

- *Causing the involuntary removal of populations*⁸ (and consequently the need for resettlement), and/or depriving a population of its way of life (provided that this is legally supported); or
- *Affecting indigenous or quilombola populations.*⁹

The impacts of Category A projects may affect a broader area than the locations physically addressed under the scope of the project.

Category B. Projects with medium social impact

A project will be classified as Category B if its impacts on human populations or on cultural

⁶ Bank Operational Policy - OP 4.10 and Decree n° 4.887 dated 11/20/2003 or corresponding document.

⁷ Most of the projects carried out under the PNMA were originated by state environmental agencies which usually are also responsible for the environmental licensing of activities that cause pollution or degradation and that may be envisaged for implementation under the scope of the projects and thus the possibility arose to present other instruments, herein called "adequate institutional and legal agreements or commitments," besides licenses. The requirement to present environmental licenses, however, continues to be stipulated, since it may be necessary to present those from other federal entities (Federal Government, municipalities, or Federal District), or in the case that the proponent is not the licensing agency.

⁸ Bank Operational Policy – OP 4.12

⁹ Bank Operational Policy – OP 4.10

heritage areas, archeological sites) are limited in their scope (local), reversible, or susceptible to mitigating actions.

Category C. Projects with no significant social impact

A project will be classified as Category C if its social impacts are minimum or nonexistent.

This initial social impact classification will be made by the states and should be included in their project proposals; it will be summarized by the MMA Technical Group in an environmental summary sheet (see Section B) containing an opinion on each project, which will be submitted to the Program's Supervisory Commission for review.

The technical opinion should include possible pending issues to be resolved, such as the need for environmental licensing or the submission of adequate institutional and legal agreements and commitments, the submission of the Resettlement Action Plan (if the project causes the involuntary removal of a population), Indigenous Peoples or Quilombolas Plan (if the project interferes with indigenous or quilombola groups), or another report or plan judged to be more suitable for the issue that is presented under the scope of the project.¹⁰ Final approval of the project is therefore subject to compliance with these pending issues.

Preparation of Special Plans and Reports (Categories A and B)

Category A

A project classified as Category A should follow the procedures below, as the case may be:

- If the project may interfere with indigenous or quilombola populations, even when in a positive manner: prepare an Indigenous Peoples or Quilombolas Plan (see item 2.1 and Section C);¹¹
- If the project causes the involuntary removal of populations, making resettlement necessary: prepare a Resettlement Action Plan (see item 2.2 and Section C);¹²

2.1. Indigenous Peoples or Quilombolas Plan¹³

The Indigenous Peoples and Quilombolas Plan should contain specific guidelines to ensure that indigenous or quilombola populations benefit from the project, avoiding or minimizing any adverse effects caused by the activities to be implemented.

To prepare an Indigenous Peoples or Quilombolas Plan, the state should:

¹⁰ Brazilian legislation will be observed with regard to environmental licensing, as well as World Bank Operational Policies, particularly OP 4.01, 4.04, 4.10, 4.11, and 4.12 available at: <http://wbln0018.worldbank.org/html/eswwbsite.nsf/potwe?OpenView&count=500000> (visited on 1/17/2008).

¹¹ World Bank Operational Policy - OP 4.10

¹² World Bank Operational Policy - OP 4.12

¹³ World Bank Operational Policy - OP 4.10 and Decree n° 4.887 dated 11/20//2003 or corresponding document.

- a) Conduct a social assessment of the indigenous or quilombola communities affected;
- b) Conduct free, prior, informed consultations with affected indigenous or quilombola communities;
- c) Prepare the plan, taking into consideration the consultations with affected populations;
- d) Send the plan to the National Indian Foundation (FUNAI) or Ministry of Culture, through the Palmares Cultural Foundation, for analysis and approval;
- e) Incorporate the recommendations of the plan (approved by FUNAI or the Ministry of Culture, through the Palmares Cultural Foundation) in the project;
- f) Send the reformulated project to MMA, together with the Indigenous Peoples or Quilombolas Plan;
- g) Send to MMA, for review and comment by the World Bank, a report containing information on the social assessment and the consultations.

The general guidelines for the preparation of the Indigenous Peoples or Quilombolas Plan are listed in Section C.

2.2. Resettlement Action Plan¹⁴

The preparation of the Resettlement Action Plan is requested if the implementation of the state project necessarily implies (in an unavoidable and essential manner) the involuntary resettlement of resident populations.¹⁵

In this case, the state should:

- a) Formulate a timetable to proceed with the preparation of the Resettlement Action Plan;
- b) Prepare the Resettlement Action Plan, taking into consideration consultations with the affected populations;
- c) Incorporate the plan's recommendations into the project proposal and the RAP budget into the project budget;
- d) Send to MMA the reformulated project together with the Resettlement Action Plan.

The general guidelines for the preparation of the Resettlement Action Plan are listed in Section C.

3. IMPLEMENTATION STAGE

During the implementation stage, all projects should undergo an environmental diagnostic of the area's situation at project start-up, as well as the environmental monitoring of implemented activities. This monitoring should be performed throughout the project cycle, until project conclusion, in order to adequately measure its impact and the success of mitigatory measures, especially in relation to sustainability and environmental quality.

¹⁴ World Bank Operational Policy - OP 4.12

¹⁵ When the need for resettlement affects up to 200 people, a simplified Resettlement Action Plan Resettlement Action Plan will be required.

Category A

Projects classified as Category A should meet the relevant requirements—environmental licensing and Environmental Impact Assessment Report containing Environmental Management Plan; Resettlement Action Plan or Indigenous Peoples or Quilombolas Plan; or others that may be defined—for approval by the Supervisory Commission and should be ready to begin the implementation stage.

During implementation, Category A projects should put into practice the plans' recommendations and the license conditions, when necessary.

Category B

Category B projects should have obtained the respective environmental licensing¹⁶ so that they can be approved by the Supervisory Commission and can begin the implementation stage, at which time the mitigating actions and environmental monitoring of actions should be put into practice.

Category C

After a project classified as Category C is approved by the Supervisory Commission, its implementation may begin.

4. GENERAL STEPS FOR PRIOR SCREENING

The steps to be taken, with actions by states and MMA, are:

1. States send proposals to MMA. Project proposals should contain a preliminary characterization of likely impacts, indicating alternatives and mitigation measures, as well as their classification according to the scheme outlined in Section 1 above;

2. Projects are analyzed by the Program's Technical Group which verifies the accuracy of the analysis of their impacts and classification. An environmental summary sheet (presented in Section B) is prepared, together with a technical opinion on recommending whether or not to proceed with the following stages, differentiated for each category:

Category A

- A Resettlement Action Plan (in case of involuntary removal)¹⁷ or an Indigenous Peoples or Quilombolas Plan (if the projects have an impact on these populations)¹⁸ should be prepared, incorporating these plans' recommendations into the projects.
- An Environmental Impact Assessment Report (containing an Environmental Management Plan)¹⁹ should be prepared for all projects in Categories A or B that affect areas considered to be of landscape, historic, or cultural interest.²⁰
- A report containing information on the social assessment and the results of consultations with

¹⁶ When the need for environmental protection measures is verified, the preparation of an Environmental Management Plan may also be requested (see item 2.4), in accordance with World Bank Operational Policy OP 4.01

¹⁷ World Bank Operational Policy - OP 4.12

¹⁸ World Bank Operational Policy - OP 4.10 and Decree n° 4.887 dated 11/20/2003 or corresponding document.

¹⁹ World Bank Operational Policy - OP 4.01

²⁰ World Bank Operational Policy - OP 4.11

indigenous or quilombola communities and with residents who will be resettled, demonstrating their support for the project, should be submitted to MMA which will then send it to the World Bank, requesting its no objection, prior to the preparation of the Indigenous Peoples or Quilombolas Plan or the Resettlement Action Plan;

- The Indigenous Peoples or Quilombolas Plans should be sent by the state to FUNAI or to the Ministry of Culture, through the Palmares Cultural Foundation, for analysis and approval;
- The reformulated projects, the prepared plans, and the environmental licenses should be sent to MMA, which may request ad hoc expert opinions on the prepared plans. If the opinions are favorable, the plans (together with these opinions) will be sent to the World Bank, requesting its no objection.
- Once the Bank has given its no objection, it will be sent to the Supervisory Commission, together with a new opinion by the Technical Group (highlighting compliance with the previously identified pending issues), for final approval;
- Once these requirements are met, the project will be ready for implementation, including the implementation of the plans' recommendations and of the licensing's mitigation measures, if necessary.

Category B

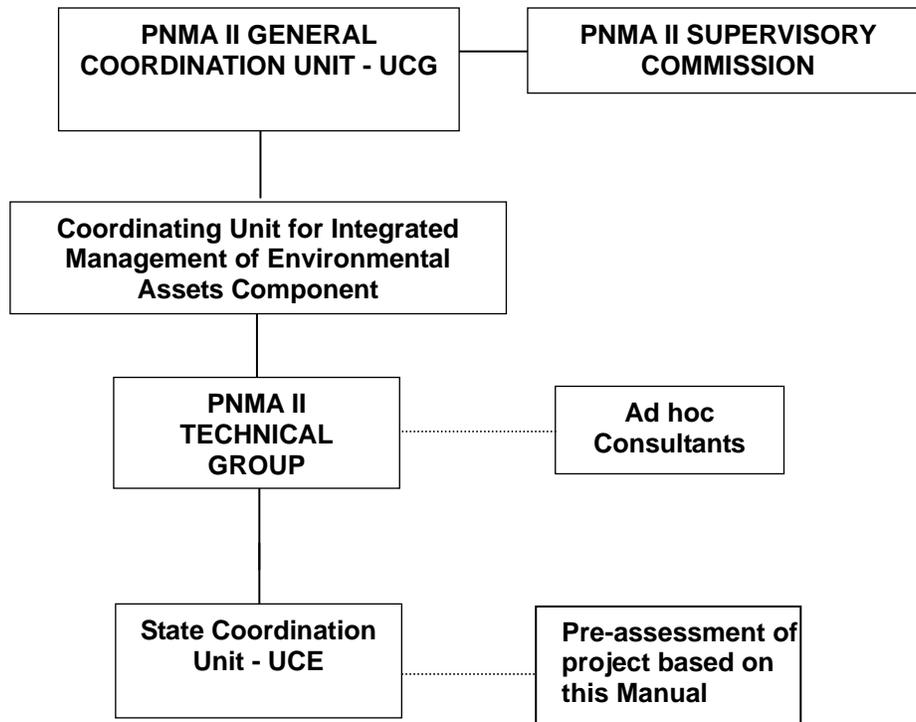
- Licensing should be requested²¹ and the necessary mitigating actions should be incorporated in the project.
- The state project should be sent together with the environmental licenses and the Environmental Impact Assessment Reports (containing an Environmental Management Plan), when necessary, to MMA. The Supervisory Commission will give its final approval so that the state can begin project execution, which will include the implementation of recommended mitigation measures.

Category C

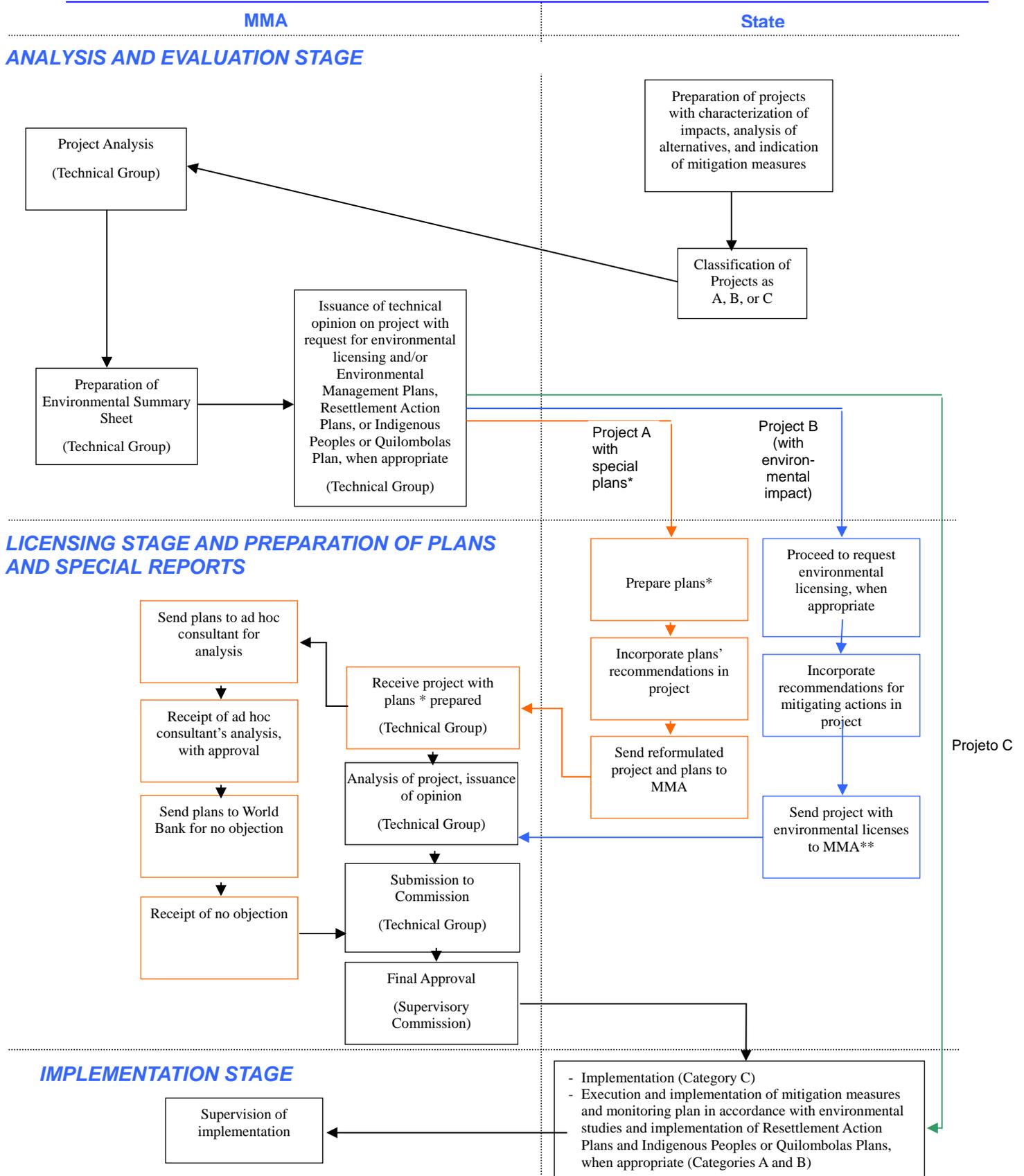
Once approved by the Supervisory Commission, these projects can immediately begin to be executed, since they do not need to meet prerequisites.

²¹ When the need for environmental protection measures is verified, the preparation of an Environmental Management Plan may also be requested (see item 2.4).

SIMPLIFIED ORGANIZATIONAL CHART (including decision-making and implementation authorities)



Section A: Flowchart



* Plans refer to the preparation of a Resettlement Action Plan, if the project causes involuntary removal of the population, or an Indigenous Peoples or Quilombolas Plan, if the project causes interferences with indigenous or quilombola groups, or an Environmental Management Plan (in an Environmental Impact Assessment Report), if the project causes a major, adverse environmental impact, in accordance with World Bank Operational Policies.

Section B: Sample of Environmental Summary Sheet

Project:

KEY COMPONENTS OF PROPOSED PROJECT	
State/location:	
Action:	
Current Status:	
Characteristics of proposed project:	
Population to be served:	

Does it affect indigenous or quilombola populations?	
Does it affect Conservation Units?	
Does it affect areas of environmental interest?	
Does it affect historical, cultural, or archeological heritage?	
Does it need environmental licensing?	
Does it affect areas with critical natural habitats?	

* A natural habitat in critical status may be generically defined as that which, due to processes of significant loss, fragmentation, or degradation (including various forms of pollution) of its original area, is experiencing changes in ecological processes and loss of key biodiversity components, thus requiring special, ongoing protection and replacement measures.

Negative impacts:
Positive impacts:
Proposed mitigation measures:

CONCLUSIVE OPINION	

Section C: General Guidelines for Preparation of Indigenous Peoples or Quilombolas Plan and Resettlement Action Plans, and of Environmental Impact Assessment Report and Environmental Management Plan

C1. Guidelines for Preparation of Indigenous Peoples and/or Quilombolas Plan²²

Law no. 6.001 of 12/19/73, which discusses the Indian Statute, establishes the following definitions in article 3:

- Indian: is any individual of pre-Colombian origin and descent who identifies himself/herself and is identified as belonging to an ethnic group whose cultural characteristics distinguish it from national society; and
- Indigenous Community or Tribal Group: is a set of Indian families or communities, either living in a state of complete isolation in relation to other sectors of the national community, or having intermittent or permanent contacts, but without being integrated in them.

Art. 2 of Decree n° 4.887 of 11/20/2003 states that “Remnants of quilombo communities, for purposes of this Decree, are considered to be ethnic-racial groups according to criteria of self-definition, with their own history, with specific land relationships, and with presumed black ancestry related to their resistance to the historic oppression suffered.”

The state, upon submitting a project that directly or indirectly affects an indigenous or quilombola area or community, should present a detailed report containing:

- A social assessment with the breadth, depth, and type compatible with the nature and level of the proposed project and its potential positive or negative effects on indigenous peoples or quilombolas;
- Results of free, prior, and informed consultations with the affected communities in order to guarantee their consent, with planning that includes gender and intergenerational issues, as well as participation in all stages of preparation and implementation;
- Indication of changes or adjustments made to the original project in terms of the indigenous issue, indicating those points where the recommendations from free consultations were incorporated and when project monitoring activities will be conducted by the affected communities.

During the preparation of the Indigenous Peoples or Quilombolas Plan, the following should be considered as guidelines:

- The preferences of indigenous or quilombola populations affected by the project should be taken into account; thus, they should be consulted through appropriate means (for example, public hearings or community meetings);
- The project’s likely adverse effects should be foreseen, and the means to impede or mitigate them should be developed;
- The institutions responsible for government linkage with indigenous or quilombola populations should have the necessary legal, social, and technical instruments to conduct activities, and the arrangements implemented should be as simple as possible—these arrangements may involve existing institutions, local and nongovernmental organizations with

²² World Bank Operational Policy - OP 4.10 and Decree n° 4.887 dated 11/20/2003 or corresponding document.

experience in issues related to indigenous or quilombola populations;

- The local patterns of social organization, religious beliefs, and resource use of indigenous or quilombola populations should be integrated in the plan;
- The activities performed should support production systems adapted to the needs and environment of indigenous or quilombola populations and help existing production systems to achieve sustainable levels;
- The changes introduced should be compatible with the local indigenous or quilombola culture;
- The creation or deepening of dependence by indigenous or quilombola populations' on government and/or project agencies should be avoided;
- Successful prior experiences or knowledge of the indigenous or quilombo area that will be the subject of interaction with the project should be considered.

The plans may include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, land ownership, and education.

The plans should contain:

- Legal framework;
- Description of current situation;
- Land tenure status;
- Strategy for local involvement and participation;
- Technical identification of development or mitigation activities;
- Institutional capacity;
- Implementation timetable;
- Evaluation and monitoring;
- Cost estimate and financing plan.

The adjustment of the Indigenous Peoples or Quilombola Plan will be subject to approval by the World Bank and the National Indian Foundation (FUNAI) or by the National Institute for Colonization and Agrarian Reform–Ministry of Culture, through the Palmares Cultural Foundation.

C2. Guidelines for Preparation of Resettlement Action Plan²³

The contents and level of detail of the Resettlement Action Plan may vary, depending on the circumstances and magnitude of the resettlement. However, the plan should necessarily include the establishment of objectives and policies, planning principles, an executive summary, and the following topics:

- Organizational responsibilities;
- Institutional arrangements;
- Socioeconomic analysis;
- Community participation and integration with the beneficiary population; thus, they should be consulted through appropriate means (for example, public hearings or community meetings);

²³ World Bank Operational Policy - OP 4.12

- Mechanisms for affected populations to appeal decisions made on resettlement;
- Eligibility criteria for compensation;
- Legal framework;
- Selection of location and alternative sites;
- Assessment of and compensation for lost assets;
- Land ownership, acquisition, titling, and transfers;
- Access to training, employment, and credits;
- Shelters, infrastructure, and social services;
- Environmental protection and management;
- Timetable of implementation, monitoring, and evaluation coordinated with project execution;
- Estimated costs.

The adjustment of the Resettlement Action Plan will be reviewed by ad hoc expert consultants (social, technical, and legal specialists) and will be subject to review and clearance by the World Bank.

C3. Guidelines for Preparation of Environmental Impact Assessment Report and Environmental Management Plan²⁴

The scope and level of detail of the Environmental Impact Assessment Report (requested for Category A projects) should be in accordance with the project's potential impacts.

The report should include at least the following items:

- a) Executive summary;
- b) Administrative, legal, and political structure: present the administrative, legal, and political aspects that the environmental analysis should consider;
- c) Project description: concisely describe the project (a map showing the project's location and its area of influence is normally included);
- d) Basic data: information on current and proposed activities within the project area but not directly related to the project, indicating the accuracy and reliability of data sources; Where published sources are not available, the project proponent will need to support field studies to collect basic data on environmental conditions;
- e) Environmental impacts: predict and evaluate the project's probable negative and positive impacts, in quantitative terms if possible. Identify mitigation measures and any residual negative impact that cannot be mitigated. Explore opportunities for environmental improvement;
- f) Analysis of alternatives: compare feasible alternatives for the location, project technology and implementation, including (if appropriate) the "without project" situation, in terms of its potential negative impacts; the feasibility of mitigation; its costs; its adjustment to local conditions; and institutional, training, and monitoring requirements; and
- g) Environmental Management Plan: address mitigation measures, monitoring, and

²⁴ World Bank Operational Policy - OP 4.01

institutional strengthening.

The Environmental Management Plan²⁵ consists of a series of institutional, mitigation, and monitoring measurements to be taken during project implementation to avoid adverse environmental and social impacts, compensate for them, or reduce them to acceptable levels. The plan also includes actions needed to implement these measures.

More specifically, the Environmental Management Plan includes the following components:

- a) Mitigation: identifies feasible, cost-effective measures that can reduce potentially adverse, significant environmental impacts to acceptable levels. It may also include compensatory measures if mitigation measures are not feasible, cost-effective, or sufficient;
- b) Monitoring: provides information on the project's environmental impacts and the effectiveness of mitigation measures;
- c) Institutional capacity: provides a specific description of the institutional arrangements responsible for the conduction and monitoring of mitigation measures; and
- d) Implementation timetable and cost estimates: provide a physical-financial timetable for the other three aspects (mitigation, monitoring, and institutional development) that are components of the management plan.

²⁵ The preparation of the Impact Assessment Report and the Environmental Management Plan may be requested for Category B projects, if there is a need for environmental protection measures.