ANNEX 10 A. EXECUTIVE SUMMARY
POLICY FRAMEWORK FOR INDIGENOUS PEOPLES AND QUILOMBOLAS

I. PRESENTATION

The State of Pará is home to 42 indigenous ethnic groups comprising a population of approximately 27,000 and 230 quilombola communities. Currently, 64 indigenous territorial units and 27 quilombola units are officially recognized or are in the process of being recognized by the government. These lands correspond to 25 percent of the State’s territory and are home to 640 settlements and a population of nearly 90,000 people.

Indigenous and quilombola peoples may benefit from Pará Rural Program through participation in its income generation component. However, the Program will not be designed to benefit a particular community or communities. The Program’s objective is to increase the income of rural communities fulfilling eligibility criteria set by Pará Rural. In accordance with World Bank Safeguard OP/BP 4.10, the indigenous peoples and quilombolas who participate in activities under the income generation component will be consulted in a culturally appropriate fashion in order to avoid or minimize potential adverse impacts. The State of Pará has a program, Raízes, that serves as an advocate and promoter of indigenous and Afro-descendent rights in the State. This State agency would collaborate with SEPROD to assure the indigenous people and quilombolas are adequate considered both with respect to access to benefits and avoiding adverse impacts from project.

II. LEGAL AND INSTITUTIONAL BASIS

Indigenous peoples

In the late 1980s, as a result of intensive mobilizations and debates promoted by indigenous organizations and various sectors of civil society, Brazil inaugurated a new framework for indigenous rights. Under the Constitution adopted in 1988, the constitutional rights of indigenous peoples were granted prominence and space, with a specific chapter of the Constitution dedicated to them (title VIII, “On Social Order,” chapter VIII, “On Indigenous Peoples”), as well as various other provisions and an article in the Transitional Constitutional Provisions Act (Ato das Disposições Constitucionais Transitórias—ADCT).

Two significant conceptual innovations with regard to previous Constitutions, to the 1916 Civil Code, and to the so-called “Indigenous Statute,” were highlighted: (1) The first abandoned the idea that Indigenous Peoples would have to assimilate into Brazilian
society and the expectation that their culture, social organization, usages, and customs were transitory. (2) The second and most relevant, because it involved the interest in land possession and ownership, defined Indigenous Peoples' as original owners of their lands. By this definition, the Brazilian State recognized that indigenous peoples rights to the land even precede the existence of the Brazilian State. In addition to extending certain land rights to indigenous peoples, the Constitution, also assured them of respect for their social organization, customs, languages, beliefs, and traditions. Over all, the 1988 constitutional provisions gave rise to the legal basis for defining ownership and State protection with regard to preservation, demarcation, integrity, and respect for indigenous lands.

In particular, Article 231 prescribes a variety of elements with regard to the nature of the ties of possession, occupation, and domain. Thus, indigenous lands are:

- Federal Government property;
- Intended for the permanent occupation by Indigenous Peoples;
- Any legal acts that affect this right of possession are declared null and void, except those of relevant public interest to the Federal Government;
- Only Indigenous Peoples may enjoy the wealth of the soil, the rivers, and lakes existing within them;
- The exploitation of water resources, research, and the extraction of mineral wealth may only be carried out on indigenous lands with the authorization of the National Congress after hearing the concerns of the affected communities and assuring their participation in the benefits of such exploitation;
- Granted inalienability and immunity; and the right over these lands is unassignable;
- Indigenous Peoples may not be removed from their lands except in exceptional and temporary situations.

With regard to rules for the demarcation of indigenous lands, since the 1973 Indigenous Statute (Law 6.001 of 12/19/73), the Federal Government began to adopt specific rules for administrative acts dealing with the demarcation of indigenous lands, in observance of article 19 of said law. Over the years this regulation underwent several modifications. The last one occurred with Decree 1775 in January 1996.

**Quilombos**

Article 68 of the Act of Transitional Constitutional Provisions—ADCT of the 1988 Constitution contains the first initiative to include *quilombolas* (members of *quilombos*) in the national legal system, assuring their right to the ownership of their lands.

In 1992 the State of Pará enacted Decree 663 that legitimized land for *quilombo* communities; Article 332 of the State Constitution of Pará includes a similar provision. The State of Pará has continued to develop regulations concerning this issue with additional laws passed in *quilombo* 1988 and 1999.
In addition to legitimizing land for Quilombolas, Pará’s legislation (and later Federal legislation) incorporated the concept of self-declaration as a means of verification in classifying as Quilombos “communities composed of descendants of African slaves who share a common identity and territorial reference.” Pará’s state legislation also recognizes that territorial space is closely associated with socio-environmental management and is vital for the physical and cultural reproduction of quilombola communities.

Under the Federal Constitution, Decree 227 of 11/21/03, returned the responsibility of regularizing the ownership of quilombo lands to INCRA and provided the legal frameworks for the definition of quilombo groups and the demarcation of their lands (using concepts already employed in Pará’s legislation, mentioned above).

Under the Brazilian legal framework, land occupied by quilombos came to be understood as important for the physical, social, economic, and cultural reproduction of these populations. Quilombo land is not individually titled but rather is registered as a collective title in the name of the interested community, which acquires the status of a legal non-profit association.

III. IMPACTS OF PUBLIC POLICIES FOR INDIGENOUS AND QUILOMBOLA POPULATIONS IN PARÁ

In recent years, the Government of the State of Pará has reoriented public policies to improve the quality of life for indigenous peoples and quilombolas. For example, the Programa Raízes (or “Roots”), created in May 2000 and associated with the State Justice Department aims “to energize efforts to regularize the ownership of lands occupied by quilombo communities and to implement socioeconomic, environmental, and cultural measures in support of education and health activities that favor the development of these communities and of indigenous societies in the State of Pará.” This Program implements important actions in favor of the State’s indigenous and quilombola communities. The largest is the legitimization of lands belonging to quilombos.

Another important public policy adopted in 1999 by the Government of Pará resulted in the inauguration of the legal framework and administrative rules for the processes of recognizing quilombola status and legitimizing lands, clearly demonstrating the development of a new way of treating quilombolas.

IV. COMPONENTS OF THE PARÁ RURAL PROGRAM AND PROBABLE IMPACTS ON INDIGENOUS PEOPLES AND QUILOMBOLAS

The discussion above provides a background in order to demonstrate that many risks to indigenous peoples and quilombolas transcend the scope of the Pará Rural Program and, rather, are connected to the macro-socioeconomic and environmental dynamics as well as the relevant public policies focused on these populations within the State. Still, a series of provisions will be taken within the project to accommodate for these communities and ensure that they benefit or at least are not adversely impacted.

For example, under the income generation component of Pará Rural (which addresses requests for support arising spontaneously from poor communities organized under any
type of association), all traditional populations [indigenous and quilombola] —duly prequalified—will benefit. Care will be taken, however, to ensure that the project not replace of other public policy instruments aimed specifically at benefiting populations in situations of economic vulnerability and nutritional risk, for which State and Federal Government compensatory public policies are more suited.

Under the Program’s land-use planning component, institutional frameworks will be established to control land and natural resource use. These frameworks help mitigate potential adverse effects on indigenous and quilombola peoples by establishing the basis for a new, more systematic land settlement model in the region.

The actions envisaged under this component include the implementation of a new land administration model, based on the establishment of a georeferenced cadastre of rural properties, which will have a positive impact on indigenous and quilombola communities. By improving security of land tenure in the State, the actions under this sub-component will reduce land usurpation (grilagem) on lands adjacent to indigenous or quilombola lands, which in many cases lead to illegal invasion of these lands.

Another action envisaged under this component is the implementation of Macro Ecological-Economic zoning in the State of Pará. This important instrument intends to control the processes of expanding the economic frontier toward forest areas, where indigenous and quilombola lands are located. In this regard, the process of macrozoning is expected to have a direct and positive effect on the quality of life of these populations. The actions to be carried out during macrozoning include the creation of new conservation units. These units, when located near indigenous or quilombola lands, constitute buffer zones that impede the processes of land invasion and hinder the establishment of illegal activities on these lands.

Indigenous lands are regularized under Federal legislation and thus would not be subject to regularization (titling) through the Pará Rural project. There are, however, a number of indigenous groups in the State that have not yet been officially identified by FUNAI. Most of them live in relatively remote regions and would not be touched by ITERPA’s land cadastre. In the unlikely event that ITERPA’s activities affect as yet unidentified indigenous groups, ITERPA could go forward to register the boundaries of land parcels claimed by various parties including indigenous people. Registration could actually facilitate the pursuit of a land claim by an indigenous group or FUNAI because a land claim registered by ITERPA becomes part of a public record and could then be contested. Under no circumstances would ITERPA seek to title land where there is a pending indigenous claim. Component C (Policy Development) is centered on Strategic Environmental Assessment that is based on heavy stakeholder participation at every stage of the analysis and policy recommendations.

With regard to possible adverse impacts on indigenous or quilombola populations, the

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3 This would pose no threat to indigenous peoples because the Constitution grants priority to indigenous land claims and provides that, when an indigenous land is regularized, private claims become null and void.
The following table presents possible scenarios that may stem from Pará Rural’s actions, as well as the mitigating actions to be undertaken include:

<table>
<thead>
<tr>
<th>Possible Impact</th>
<th>Mitigation Measure</th>
<th>Agency Responsible* (depending on the specific scenario and agency areas of competence)</th>
<th>Source of Funding</th>
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| Conflict or overlapping of boundaries between the new UCs to be created and existing (demarcated) TIs or TQs. | 1. Official agencies in charge of support to traditional populations will be officially invited to express their opinion on the location of new UCs near demarcated TIs and TQs.  
2. Public consultation, in accordance with Federal Law 9985/2000, will enable those populations that will be affected to express their concerns, and will facilitate the analysis of specific cases which may give rise to a redefinition of the boundaries of new UCs and the need to strengthen the demarcation of existing boundaries. | SECTAM, FUNAI, ITERPA, Raízes, IBAMA                                                  | The cost of topographic surveys of new UCs and of public consultations is included in Pará Rural’s Land Use Planning Component. Other costs related to strengthening the demarcation of boundaries will be borne by the responsible institutions, according to their area of competence. |
<table>
<thead>
<tr>
<th>Possible Impact</th>
<th>Mitigation Measure</th>
<th>Agency Responsible*</th>
<th>Source of Funding</th>
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</thead>
<tbody>
<tr>
<td>Conflict or overlapping of boundaries between UCs and TIs or TQs under study</td>
<td>1. Official agencies in charge of support to traditional populations will be invited to express their opinion on the location of new UCs near demarcated TIs and TQs. 2. Public consultation, in accordance with Federal Law 9985/2000, will enable those populations that will be affected to express their concerns, and will facilitate the analysis of specific cases which may give rise to a redefinition of the boundaries of new UCs, TIs and TQs, and the need to accelerate the process of demarcating boundaries.</td>
<td>SECTAM, FUNAI, ITERPA, Raizes, IBAMA, impartial mediator+</td>
<td>The cost of topographic surveys and of public consultations is included in the Land Planning component of Pará Rural. Other costs related to topographic studies of TIs and TQs and/or strengthening of boundary demarcation will be borne by the institutions responsible, depending on their area of competence.</td>
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<td>Pressure on natural resources located in TIs or TQs, generated by income generation projects promoted by Pará Rural.</td>
<td>Preparation of Indigenous or Quilombo Action Plans in consultations with affected indigenous and/or quilombola groups and relevant agencies to ensure that resources are legally and sustainably extracted and that remuneration for affected groups is fair and just.</td>
<td>PMU, Project Proponents; SECTAM, IBAMA, FUNAI, Raizes, NGOs.</td>
<td>Pará Rural, Project Proponents, SECTAM, IBAMA, FUNAI, Raizes.</td>
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<tr>
<td>Demands for labor within indigenous or quilombola communities, generated by income generation projects promoted by Pará Rural.</td>
<td>Preparation of Indigenous or Quilombo Action Plans in consultations with local leaders to insure culturally appropriate distribution of opportunities</td>
<td>PMU, Project proponents; FUNAI, Raizes, NGOs.</td>
<td>Pará Rural, Project proponents, FUNAI, Raizes.</td>
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<tr>
<td>Direct or indirect socio-cultural impacts on traditional communities.</td>
<td>Preparation of Indigenous or Quilombo Action Plans in consultation with local leaders to identify possible impacts and plan for</td>
<td>PMU, Project proponents; FUNAI, Raizes, NGOs, Impartial</td>
<td>Pará Rural, Project proponents, FUNAI, Raizes.</td>
</tr>
<tr>
<td>Possible Impact</td>
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<td>Deprivation of access to resource by creation of protected area</td>
<td>necessary training/assistance, and to ensure respect for traditional culture and organization.</td>
<td>mediators +.</td>
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<td></td>
<td>Preparation of a process framework in consultation with the affected parties as required under OP/BP 4.12</td>
<td>PMU, SECTAM</td>
<td>Pará Rural Project</td>
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* The entity indicated in **bold** would have the main responsibility of ensuring an adequate solution, together with the other agencies listed according to their respective areas of expertise.

* In some cases, the PMU will be in charge of hiring specialized consultants to analyze the situations encountered, hold consultations, and propose alternatives to avoid conflicts. In the latter case, the use of outside mediators, considered impartial by the interested parties, to facilitate the reaching of agreements, may be considered. Methodologies for "alternative resolution of environmental conflicts," for which literature and varied experiences exist, may be utilized.