



ART'S CONTROVERSIAL CERTIFICATION OF CARBON CREDITS TO THE GOVERNMENT OF GUYANA

A Case Study on Challenges for
“High-Integrity” Labels in Carbon Markets

Amerindian Peoples Association
Forest Peoples Programme
Rainforest Foundation US

ART's Controversial Certification of Carbon Credits to the Government of Guyana: A Case Study on Challenges for "High-Integrity" Labels in Carbon Markets

Design and layout: [Maple Rock Design Ltd](#)

Publication date: 27 February 2024

ART's Controversial Certification of Carbon Credits to the Government of Guyana: A Case Study on Challenges for "High-Integrity" Labels in Carbon Markets © 2024 by APA, FPP, and RFUS is licensed under CC BY-NC-ND 4.0. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>

The contents of this report may be reproduced and distributed for non-commercial purposes if prior notice is given to the copyright holders and the source and authors are duly acknowledged.

The publication is freely available online at the websites of APA, FPP, and RFUS.

Copyright is retained by APA, FPP, and RFUS. This overall copyright attribution of the publication does not overwrite the copyright attributions of the single images inside the publication. For all the images that are not originals, the photographer and/or original source has been credited, and the copyright is with the authors of those images/graphs.

Legal disclaimer: Any summaries of legal documents should not be taken as authoritative interpretations of the law and should not be considered to be a legal opinion or legal advice. They are intended solely to be plain English explanations of the law to help provide the reader with some background information.

© Amerindian Peoples Association, Forest Peoples Programme, and Rainforest Foundation US

Main cover photo and top center © Ezra Jeffries, South Rupununi District Council

Other cover photos © APA



Amerindian Peoples Association
200 Charlotte Street, Bourda
Georgetown, Guyana
Tel: +592 2238150
apaguyana.com



Forest Peoples Programme
1c Fosseyway Business Centre,
Stratford Road,
Moreton-in-Marsh, UK
Tel: +44 1608 652893
forestpeoples.org



Rainforest Foundation US
50 Court St. Suite 712
Brooklyn, NY 11201 USA
Tel: +1 212 431 9098
rainforestfoundation.org

CONTENTS

I. EXECUTIVE SUMMARY	5
II. INTRODUCTION	7
III. THE ART STANDARD	8
IV. ART'S FAILURE TO SAFEGUARD SOCIAL INTEGRITY IN ITS ISSUANCE OF CREDITS TO THE GOVERNMENT OF GUYANA	12
A. Failure to Respect Indigenous Peoples' Land Rights	12
1. Failure to Question the Government of Guyana's Proposed Accounting Area	13
2. Flawed Understanding of Emission Reductions and Removals Rights	14
3. Threats to Indigenous Peoples' Land Rights in the REDD+ Implementation Plan	16
B. Failure to Respect Indigenous Peoples' Participation Rights	19
C. Failure to Respect Indigenous Peoples' Right to Benefit-Sharing	21
V. FAILURE OF ART'S INTERNAL GRIEVANCE MECHANISM TO REMEDY RIGHTS VIOLATIONS AND MEET INTERNATIONAL STANDARDS	23
A. Deficiencies in the Design of the ART Grievance Mechanism	23
B. ART's Failure to Address the APA Complaint in Accordance with International Human Rights Standards	26
1. Cursory Dismissal of APA's Complaint	26
2. Dismissal of the Appeal of the APA Complaint Without Any Substantive Review	28
VI. CONCLUSION AND RECOMMENDATIONS	31

Abbreviations

APA	Amerindian Peoples Association
ART	Architecture for REDD+ Transactions
ERR	Emission Reductions & Removals
GoG	Government of Guyana
IPs	Indigenous peoples
LCDS	Low Carbon Development Strategy 2030
NTC	National Toshias Council
REDD+	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries. The “+” stands for additional forest-related activities that protect the climate, namely sustainable management of forests and the conservation and enhancement of forest carbon stocks. ¹
TREES	The REDD+ Environmental Excellence Standard
UNGP	United Nations Guiding Principles on Business and Human Rights
VCM	Voluntary carbon market
VVB	Validation and Verification Body

List of Figures

1	Rights Violations Against Indigenous Peoples and How They Correspond with Relevant TREES Safeguards	10
2	ART in Guyana Annotated Timeline, Part 1: Certification and Sale of TREES Carbon Credits	11
3	Failures of ART’s Grievance Mechanism to Meet International Standards	25
4	Example of the Unpredictability of the ART Grievance Mechanism	27
5	ART in Guyana Annotated Timeline, Part 2: APA’s Complaint and Appeal to ART	30

1 What is REDD+?, UNFCCC, <https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd>.

I EXECUTIVE SUMMARY

The voluntary carbon market has come under intense scrutiny over concerns around the environmental and social integrity of the carbon credits being sold. Even certification bodies are seemingly incapable of delivering on their promise to certify “high-integrity” credits. The certification of jurisdictional REDD+ carbon credits by the Architecture for REDD+ Transactions (ART) to the Government of Guyana (GoG) in December 2022 provides an important case study on the challenges facing the high-integrity carbon market.

ART claims to be a program that “ensures the environmental and social integrity of” emission reductions and removals credits through requiring compliance with its standard, The REDD+ Environmental Excellence Standard (TREES).² TREES incorporates the Cancún Safeguards and requires that ART program participants respect, protect, and fulfill the rights of indigenous peoples. The GoG submitted its proposal for carbon credits certification to ART in December 2020 without any prior consultation with indigenous peoples and their communities. It proposed to sell carbon credits generated from all forests in the country, including forests on indigenous peoples’ traditional lands, some of which are titled under national law.

The GoG held several information-sharing sessions regarding its national Low Carbon Development Strategy 2030 – of which its proposal to ART was one component – with communities, but did not conduct consultations with indigenous peoples within the meaning of international human rights law. No indigenous peoples were asked for nor gave their free, prior, and informed consent to the proposal. The National Toshias Council endorsed the policy framework within which the ART proposal formed one component, but it does not have the authority to give consent on behalf of indigenous peoples to such a program.

Aster Global Environmental Services, Inc., conducted the validation and verification process for the GoG’s proposal. Although Aster did interview civil society representatives and visit some indigenous communities, ART’s validation and verification standard only required Aster to evaluate the GoG’s own reported compliance with TREES. Aster’s completed validation and verification found that the GoG’s self-reporting showed that it met ART’s program requirements, and ART subsequently certified credits to the GoG. A portion of the credits were then sold to an oil company, Hess Corporation.

A national indigenous peoples’ advocacy organization, the Amerindian Peoples Association (APA), filed a complaint with ART’s internal grievance mechanism in March 2023, arguing that ART’s program requirements had not been met. The APA also noted several concerns with the design of the grievance mechanism, notably the lack of independence of the mechanism from the ART Secretariat and Board. In May 2023, the ART Secretariat dismissed the APA’s complaint without considering any of the substantive concerns raised. The same day, ART issued its new Complaints Guidance. In the subsequent appeal filed in June 2023, the ART Secretariat rebuffed the APA’s attempts to discuss the appeal process to ensure its fairness, transparency, and independence. The ART Secretariat dismissed the APA’s appeal in October 2023 without ever

² ART, About Us, <https://www.artredd.org/about-us/>.

considering the substantive issues raised and without addressing the concerns the APA brought forth about ART's grievance mechanism.

This case study highlights some of the challenges high-integrity carbon credits certification bodies face and lessons learned. It discusses the failures of certification bodies to guarantee high-integrity credits with respect to indigenous peoples' land rights, participation rights, and right to determine adequate benefit-sharing mechanisms. Certification bodies must do more to ensure that their standards can guarantee full respect for human rights.

Certification bodies must:

- Require participants to demonstrate compliance with international human rights standards.
- Not rely on government self-reporting in validation and verification processes.
- During validation and verification processes, employ experts in indigenous peoples' rights and experts in the relevant national context, and consult affected indigenous peoples.
- Have grievance mechanisms that meet the internationally accepted criteria for non-State-based grievance mechanisms.

II INTRODUCTION

The rapidly growing voluntary carbon market (VCM) has spawned an array of standards and certification schemes that purport to guarantee high-integrity carbon credits. These certification schemes aim to respond to well-documented failings in the social and environmental integrity of projects and transactions in the VCM. Carbon credits certified by such schemes theoretically allow sellers to make more reliable claims about their product's environmental impact, while meeting crucial social safeguards meant to protect the rights of peoples and communities affected by such schemes; based on these assurances, they are able to charge a premium. However, many of the certification bodies themselves have come under criticism for failing to deliver what they promise.³

One such certifier is the Architecture for REDD+ Transactions (ART), which assesses carbon credits against a standard called The REDD+ Environmental Excellence Standard (TREES).

In December 2022, ART issued the world's first TREES carbon credits to the Government of Guyana (GoG). These credits were issued retroactively for the period 2016-2020. This marked the first time a country had been issued carbon credits for preventing forest loss and degradation, as well as the first time a country had received high forest, low deforestation credits.⁴ ART's ability to deliver on its guarantees of environmental and social integrity has come under scrutiny since it issued these credits to the GoG. The credit issuance has been regarded as the first test case for the new certifier.

Concerns about the environmental integrity of the carbon credits issued to the GoG have been well-documented.⁵ There appears to be significant confusion, however, around the social integrity of these credits. This case study aims to provide clarity on contentious issues in the debate around the social integrity of the TREES credits issued to the GoG by ART. The case study also describes the first attempt to use ART's grievance mechanism in response to concerns about the social integrity of the GoG TREES credits and the ways in which the ensuing process failed to meet international standards for non-State-based grievance mechanisms like ART's.

3 See, e.g., Patrick Greenfield, "Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows," The Guardian, 18 Jan. 2023, <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>; Nina Lakhani, "Revealed: top carbon offset projects may not cut planet-heating emissions," The Guardian, 19 Sep. 2023, <https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-green-house-gases>; Jones, J. P. & Lewis, S. L. (2023). Forest carbon offsets are failing. *Science*, 381(6660), 830–831, <https://doi.org/10.1126/science.adj6951>; West, T. A., Wunder, S., Sills, E. O., Börner, J., Rifai, S. W., Neidermeier, A. N., Frey, G. P. & Kontoleon, A. (2023). Action needed to make carbon offsets from forest conservation work for climate change mitigation. *Science*, 381(6660), 873–877, <https://doi.org/10.1126/science.ade3535>.

4 The GoG is the first participant to have credits certified by ART, but several other countries are in the process of certifying such credits.

5 See, e.g., Liang Lei, "Is There a Case for 'High Forest, Low Deforestation' Carbon Credits?," *Eco-business.com*, 1 Feb. 2023, <https://www.eco-business.com/news/is-there-a-case-for-high-forest-low-deforestation-carbon-credits/>; Charlotte Streck et al., "Comment: Preliminary results are in – good intentions for HFLD credits risk undermining climate change mitigation," *Carbon Pulse*, 22 Dec. 2022, <https://carbon-pulse.com/185976/>.

III THE ART STANDARD



Pristine forests in Chenapou Village, North Pakaraimas. © APA

What is ART?

ART self-describes as a “standalone, independent program” that is governed by an independent Advisory Board of Directors, financially overseen by the Board of Managers of Environmental Resources Trust LLC, a wholly-owned nonprofit subsidiary of Winrock International, and managed by a secretariat that is hosted by Winrock International.⁶ Winrock is a tax-exempt charity registered in the United States,⁷ and ART is currently funded via Winrock by the government of Norway and the Climate and Land Use Alliance, a network of US-based philanthropies.⁸

ART requires that all credits it certifies meet its standard, TREES. TREES “sets out ART requirements for the quantification, monitoring, and reporting of GHG emissions and removals; demonstration of implementation of the Cancún Safeguards; and verification, registration, and

⁶ ART, “About Us”, <https://www.artredd.org/about-us/>, accessed 5 Dec. 2023. Note that prior to December 2023, there was no public information that ART was financially overseen by Environmental Resources Trust.

⁷ Winrock International Institute for Agricultural Development, EIN: 71-0603560, information available at <https://apps.irs.gov/app/eos/details/>.

⁸ Ann Usher, “Pushback from rights experts after aid-funded carbon certifier rejects first appeal from indigenous group,” Development Today, 13 Nov. 2023, <https://www.development-today.com/archive/2023/dt-8--2023/push-back-from-rights-experts-after-aid-funded-carbon-certifier-rejects-first-appeal-from-indigenous-group>; Grant Agreement between the Norwegian Ministry of Climate and Environment and Winrock International Institute for Agricultural Development regarding Websak 18/1151, the Architecture for REDD+ Transactions, https://winrock.org/wp-content/uploads/2021/08/Winrock_KLD_Signed_VI-redacted.pdf. See also Winrock Int’l, “A Fruitful Partnership: Margaret A. Cargill Philanthropies and Winrock Int’l,” 24 Feb. 2020, <https://winrock.org/a-fruitful-partnership/> (noting that ART is a “new initiative with seed funding from the government of Norway”).

issuance of TREES credits.”⁹ ART claims that the standard “ensure[s] that all TREES credits issued are real, measured, permanent, additional, net of leakage, verified by an accredited independent third party, and are not double counted.”¹⁰

One of ART’s “Immutable Principles” is “to ensure the recognition, respect, protection, and fulfillment of the rights of indigenous peoples.”¹¹ ART purports to do this by incorporating in Section 12 of TREES the Cancún Safeguards, internationally agreed under the United Nations Framework Convention on Climate Change, each of which is broken down into themes with structure, process, and outcome indicators. TREES requires that a participant at the start of its first five-year crediting period demonstrate conformance with the structure and process indicators, and either demonstrate conformance with the outcome indicators or have a plan for achieving conformance with those within five years.¹²

Cancún Safeguards A, B, C, and D address social integrity, and Safeguards A, B, E, F, and G address environmental integrity. As relevant to social integrity, Cancún Safeguard A requires that a program participant’s actions are consistent with the objectives of relevant international conventions;¹³ Safeguard B requires that the program participant respect, protect, and fulfill the right of access to information, land tenure rights, and access to justice;¹⁴ Safeguard C requires that the program participant respect, protect, and fulfill the rights of indigenous peoples;¹⁵ and Safeguard D requires that the program participant promote adequate procedures for the meaningful participation of indigenous peoples.¹⁶

In issuing credits to the GoG, ART failed to uphold compliance with its standard, and indeed, failed to adhere itself to its standard.

9 TREES, Section 1.1.

10 TREES, Section 1.1.

11 TREES, Section 1.1, Immutable Principle 2.

12 TREES, Section 12.3.

13 TREES, Section 12.5.1.

14 TREES, Section 12.5.2.

15 TREES, Section 12.5.3.

16 TREES, Section 12.5.4.

Figure 1 Rights Violations Against Indigenous Peoples (IPs) and How They Correspond With Relevant TREES Safeguards

Rights violations against indigenous peoples and their communities relevant to the ART program

TREES Safeguards that should have prevented these violations of rights

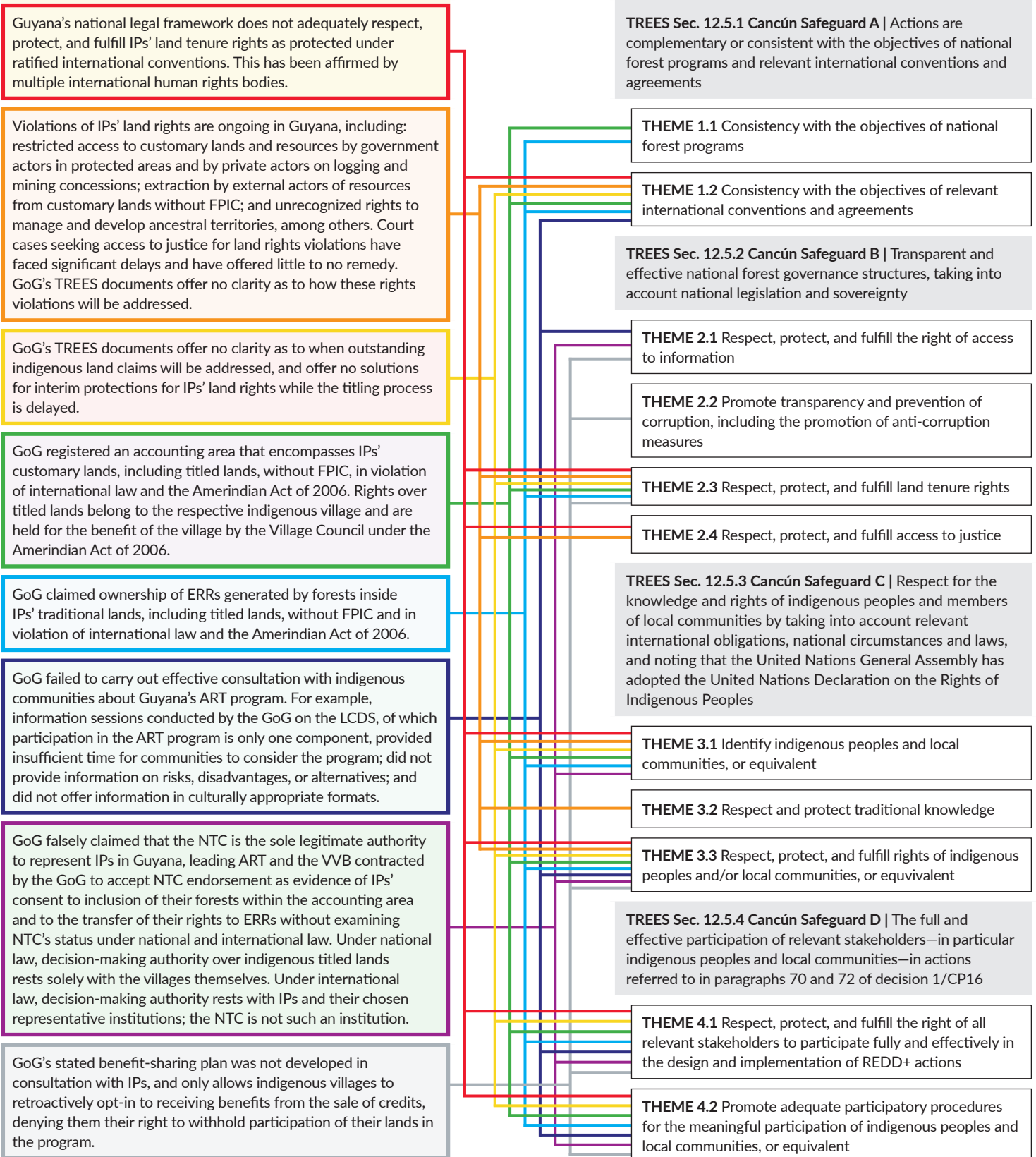
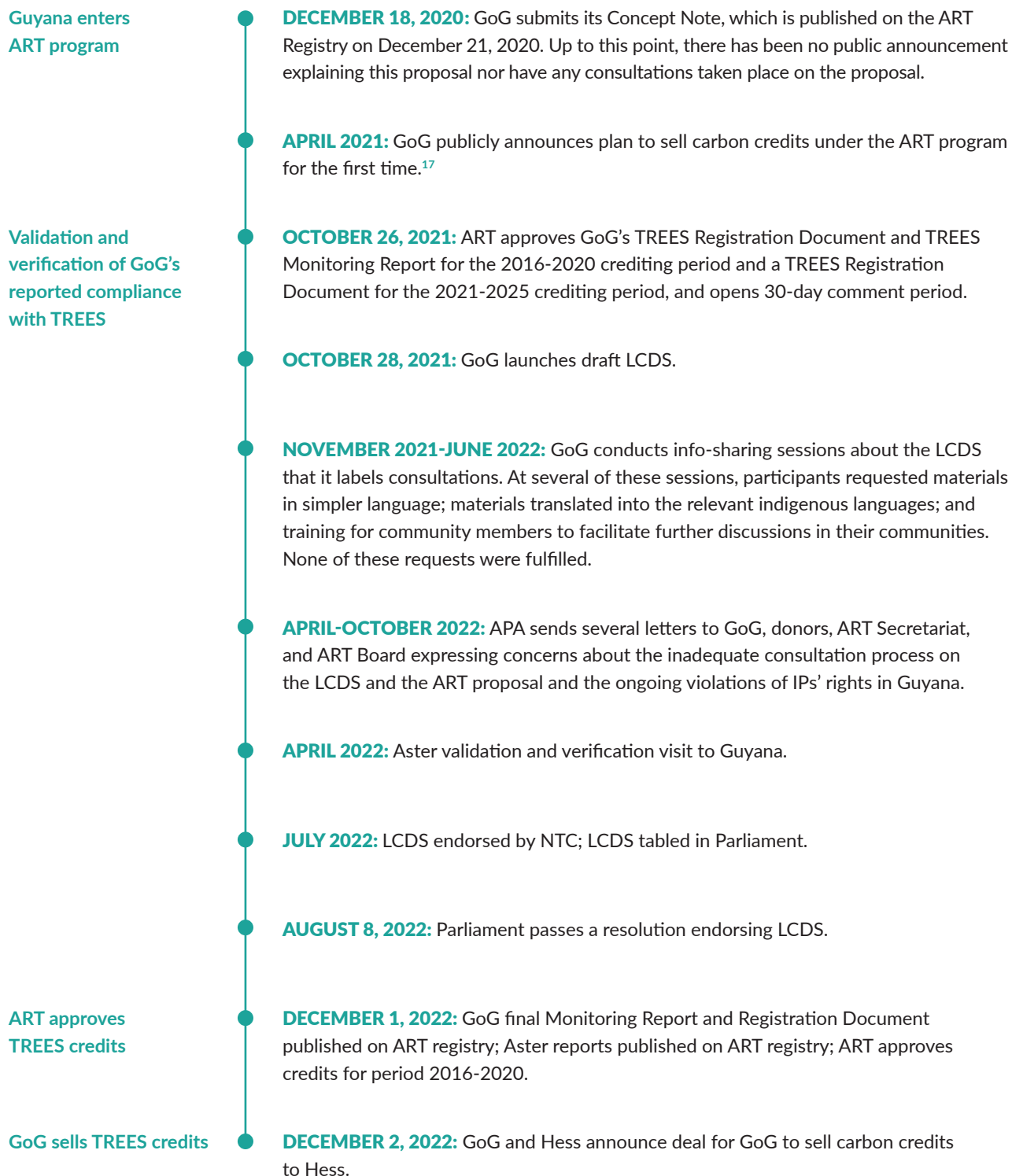


Figure 2 ART in Guyana Annotated Timeline, Part 1: Certification and Sale of TREES Carbon credits



¹⁷ Guyana Dept. of Public Information, "LCDS Initiatives Will Be Financed through Sale of Carbon Credits - Draft Document," 22 Nov. 2021, <https://dpi.gov.gy/lcfs-initiatives-will-be-financed-through-sale-of-carbon-credits-draft-document/> (referring to an April 2021 press conference).

IV ART'S FAILURE TO SAFEGUARD SOCIAL INTEGRITY IN ITS ISSUANCE OF CREDITS TO THE GOVERNMENT OF GUYANA

ART's failure to safeguard social integrity stems from both shortcomings in its standard as well as deficiencies in its enforcement of that standard. ART attempts to ensure compliance with TREES by requiring program participants to undergo third-party validation and verification to ensure that their program meets TREES requirements. The validation and verification process is undertaken by an ART-approved Validation and Verification Body (VVB) that is contracted by the program participant – in Guyana's case, this VVB was Aster Global Environmental Services, Inc. Inadequacies in the standard itself, in the validation and verification of the standard, and in the overall process for certification are all evident in the process of ART's certification of credits to the GoG.

A. Failure to Respect Indigenous Peoples' Land Rights

Indigenous villages in Guyana are the legal owners of their titled village lands under the Amerindian Act of 2006.¹⁸ National law falls short, however, of international human rights obligations, which require the government to legally recognize all of indigenous peoples' traditional lands in accordance with their customary tenure systems.¹⁹ Indigenous peoples' traditional territories in Guyana extend far beyond their currently titled lands, and under international law, indigenous peoples are recognized as having rights to own, occupy, control, and manage their traditional lands, territories, and resources. These land rights are incorporated into TREES via the Cancún Safeguards. Yet despite TREES requiring that program participants respect indigenous peoples' property rights, ART continued to overlook or ignore the violations of indigenous peoples' land and resource rights by the GoG in its initial approval of the GoG's TREES Concept Document and later approval of the GoG's final TREES Registration Document and Monitoring Report for the 2016-2020 crediting period, and in its final issuance of credits to the GoG.

18 The Amerindian Act of 2006 provides that village councils are to "hold for the benefit and use of the village all rights, titles and interests in or over village lands", Sec. 13, and that unless specifically delegated to a village council, all decisions to be made by villages are to be made in a village general meeting, Sec. 34.

19 International human rights bodies have recommended that the GoG revise the Amerindian Act of 2006 and other relevant laws in accordance with the UN Declaration on the Rights of Indigenous Peoples. E/C.12/GUY/CO/2-4, 28 Oct. 2015, para. 15 (urging the State to "revise the Amerindian Act 2006 and other relevant laws with a view to ensuring, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, that the Amerindian people's rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources"); CEDAW/C/GUY/CO/9, 30 July 2019, para. 44(b) (urging the State to "Amend the Amerindian Act (2006) and other relevant laws, using a gender-sensitive approach, with a view to ensuring that the rights of Amerindian communities to their lands, territories and resources are fully recognized and protected, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples"); CERD/C/GUY/CO/14, 4 Apr. 2006, para. 14 (urging the State to ensure that "the representatives of indigenous communities be consulted, and their informed consent sought, in any decision-making processes directly affecting their rights and interests"); CERD/EWUAP/106th session/2022/MJ/CS/ks, 29 Apr. 2022 (urging the State to "Incorporate the principle of free, prior and informed consent in domestic legislation, including by amending the Amerindian Act of 2006, with indigenous peoples' participation, and to fully and adequately guarantee the right to consultation of indigenous peoples").



An Indigenous man from the South Pakaraimas, Region 9 studies the Amerindian Act. © APA

1. Failure to Question the Government of Guyana's Proposed Accounting Area

The GoG submitted its TREES Concept to ART in December 2020. The proposal lists the accounting area (the area in which Emission Reductions and Removals – or ERRs – will be calculated for the generation and sale of credits) as 100% of the national forest estate. This area, which covers about 18 million hectares, includes around 3.5 million hectares of titled indigenous lands and at least as much untitled traditional lands. ART approved the TREES Concept the same month and thereby approved the GoG for participation in ART.²⁰ No changes were made to the accounting area in the GoG's final TREES Registration Document and Monitoring Report for the 2016-2020 crediting period.

Although the GoG's formal submissions proposed the accounting area for the carbon crediting program to include all forests in Guyana, no indigenous communities were consulted on, let alone consented to the inclusion of the forests in either their titled lands or untitled customary lands in the program. The inclusion of indigenous peoples' forests in the accounting area thus occurred in violation of indigenous peoples' rights to self-determination, to participation in public affairs, and to control of their traditional territories and the resources therein. The move therefore also violated Cancún Safeguards A, B, C, and D (incorporated into TREES), which require that REDD+ programs be consistent with relevant international conventions and agreements, that indigenous peoples have access to information and are able to participate meaningfully in these programs, and that other rights of indigenous peoples be respected. ART overlooked this fact in its approval of the GoG's formal submissions to its program. It continued to ignore and overlook the GoG's disrespect of indigenous peoples' land and participation rights throughout the validation and verification process.

²⁰ The GoG's TREES Concept, along with other TREES documents, can be found on ART's registry: <https://art.apx.com/mymodule/reg/TabDocuments.asp?r=111&ad=Prpt&act=update&type=PRO&aProj=pub&tablename=doc&id1=102>.



Indigenous Peoples from across the Upper Mazaruni Territory at the 2023 Land Conference in Phillipai Village.
© APA

2. Flawed Understanding of Emission Reductions and Removals Rights

Carbon credits issued by ART are Emission Reductions and Removals (ERRs) credits. TREES does not require that carbon rights are explicitly addressed in national legislation, but it does require that the program participant has “demonstrated clear ownership or rights” over ERRs. The GoG has not done so. The GoG’s TREES documents state that “Forests in Guyana are managed and administered under the Guyana Forestry Commission Act 2007 and the Forest Act 2009. Guyana’s National Forest Policy outlines the national ownership and mandate of forest areas in Guyana and include [sic] forest goods and services including forest carbon services.”²¹ Neither “forest goods and services” nor “forest carbon services” are defined in the aforementioned statutes, nor do the statutes or the National Forest Policy clearly vest rights to ERRs from indigenous lands in the GoG.

Despite what the GoG’s TREES documents suggest, Guyanese national legislation is clear that not all forest in Guyana is nationally owned. The Forest Act itself acknowledges that the GoG does not own all forests in Guyana and cannot, for example, issue forest concessions over titled indigenous lands. Similarly, the GoG acknowledges in its TREES documents that the National Forest Policy on which its justification for ERR ownership relies “does not directly apply to private property and Amerindian Titled Lands.”²²

The GoG’s final Monitoring Report for the 2016-2020 crediting period does not discuss this discrepancy.²³ It does not acknowledge that indigenous villages are by Guyanese law the legal

²¹ Guyana Forestry Commission, TREES Registration Document, 12 Sep. 2022, p. 7.

²² Ibid.

²³ Guyana Forestry Commission, TREES Monitoring Report, 12 Sep. 2022, pp. 8-9.



A section of forest in Isseneru Village, Middle Mazaruni. © APA

owners of their forests inside titled lands. Nor does it acknowledge that, under international human rights treaties ratified by Guyana and incorporated into its Constitution,²⁴ indigenous peoples own the resources in their customary territories. Instead, the GoG reported that the National Tshaos Council (NTC) endorsed the proposal to sell ART-certified credits via its endorsement of the national Low Carbon Development Strategy 2030 (LCDS). The NTC was established by the Amerindian Act of 2006 as a body comprising all tshaos (heads of indigenous villages) in Guyana. It is imbued by statute with advisory functions. It does not hold title to land.²⁵ A village council, of which the tshao is one member, is the entity holding title to land under the Amerindian Act. All decisions to be made by an indigenous village, such as a decision whether to include village lands in a national REDD+ program, are required to be made in a village general meeting.²⁶ The NTC's endorsement of the ART proposal does not, therefore, demonstrate the GoG's legal rights to the ERRs generated on indigenous titled lands. However, although TREES requires a program participant to "demonstrate clear ownership or rights", ART never required further explanation from the GoG and instead seemed to accept the NTC endorsement as evidence of a transfer of ownership of ERRs.

24 See Constitution of Guyana, Art. 154A.

25 Amerindian Act, Sec. 41.

26 Amerindian Act, Sec. 34.

What does free, prior, and informed consent look like in Guyana?

Free, prior, and informed consent (FPIC) is by now understood internationally to be a core right that safeguards other rights of indigenous peoples. However, the right to FPIC appears to remain poorly understood by bodies like ART or the VVB contracted by the GoG in this process. To properly assess whether FPIC was granted by the rightsholders or their representative institutions requires knowledge of the indigenous peoples in question and of the relevant legal frameworks.

Under international law, indigenous peoples – through their own representative institutions – have the right to give or withhold their FPIC to measures affecting them or projects that may affect their traditional lands, territories, and resources, including carbon financing projects.²⁷ For Guyana’s indigenous peoples, these representative institutions include district councils and village councils. Indigenous peoples in Guyana do not consider the NTC to be such a representative institution. While individual toshaos are required by the Amerindian Act to represent the interests of their villages, indigenous peoples in Guyana do not consider their toshaos to be authorized to make unilateral decisions affecting their lands.

Under national law, titled indigenous villages make decisions affecting their titled lands in village general meetings.²⁸ Tshaos cannot make decisions regarding the use of their lands on their own. A group of toshaos acting together, such as the NTC, also does not have this authority. The NTC does not hold any title to land and has no decision-making power over any village’s lands, and as such, cannot grant consent for the use of titled village lands and resources.

3. Threats to Indigenous Peoples’ Land Rights in the REDD+ Implementation Plan

TREES requires program participants to submit a REDD+ implementation plan to outline the programs or activities planned to achieve ERRs.²⁹ It is not clear if the GoG submitted such a plan to ART when it submitted its TREES Concept; if it did, the plan is not available in the ART public registry. The GoG’s final Monitoring Report prior to the credit issuance states that its REDD+ strategy is a “component of the [sic] Guyana’s LCDS”, and although the two documents “are not different in content and context”, the LCDS is “broader than the REDD+ Strategy component”.³⁰ The LCDS is the Low Carbon Development Strategy 2030,³¹ endorsed by the Parliament of Guyana in August 2022.

None of the GoG’s publicly available TREES documents, nor the LCDS itself, make clear which components of the LCDS are part of the REDD+ strategy, nor does Guyana otherwise have a published REDD+ strategy.

27 See, e.g., UNDRIP, Arts. 19, 32; E/C.12/GC/24, CESCR General Recommendation No. 24 (2017), para. 12; A/HRC/54/31*, UN Special Rapporteur on the Rights of Indigenous Peoples, Green financing - a just transition to protect the rights of Indigenous Peoples, 21 Jul. 2023; IACTHR, Case of the Saramaka People v. Suriname, Judgment of 28 Nov. 2007, paras. 133-37.

28 Amerindian Act, Sec. 34.

29 TREES, Sec. 3.2.

30 Guyana Forestry Commission, TREES Monitoring Report, 12 Sep. 2022, p. 12.

31 Government of Guyana, Guyana’s Low Carbon Development Strategy 2030, July 2022, <https://lcds.gov.gy/wp-content/uploads/2022/08/Guyanas-Low-Carbon-Development-Strategy-2030.pdf> (hereinafter “LCDS 2030”). The LCDS does not explicitly state what REDD+ actions the GoG will undertake. TREES does define both REDD+ actions and REDD+ activities, however. See TREES, Definitions, <https://www.artredd.org/wp-content/uploads/2021/12/TREES-2.0-August-2021-Clean.pdf>, p. 76.



A public meeting of the North Pakaraimas District Council. © APA

Although it remains unclear what activities the GoG claims to have generated the retroactively credited ERRs, it is clear that in the time period from 2016 to 2020 there were ongoing violations of indigenous peoples' rights. In addition, while the LCDS may be broader than the GoG's participation in the VCM, it is through the sale of ART-certified credits that the GoG primarily expects to finance the other objectives of the LCDS.

Many of the activities described in the LCDS – which are either part of the REDD+ strategy or are otherwise activities that the GoG plans to finance using carbon credit revenue – have historically been linked to violations of indigenous peoples' rights in Guyana and have the potential to continue violating their rights. These include renewable energy projects, forestry, mining, and the establishment of protected areas.

There are numerous reports of logging companies harassing indigenous peoples and preventing them from accessing their traditional forests, as well as of unwanted logging in indigenous peoples' lands decimating valuable timber stocks, destroying non-timber forest produce, scaring off game animals, and polluting water sources that indigenous peoples customarily use.³² Mining concessions are granted over indigenous peoples' lands without consideration for indigenous peoples' rights to control, develop, and use those lands, including over areas that are known to the GoG to be sacred sites, such as Marudi Mountain in Wapichan territory.³³ All of the protected

³² See, e.g., Wow-Rorah, Wa-Kakoh; Na'na Nonori, Na'na Emamiri; Ca Hota, Ma Taho; *Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Region 1 and Region 2*, Amerindian Peoples Association and Forest Peoples Programme, 2016, <https://www.forestpeoples.org/sites/fpp/files/publication/2016/12/ita-study.pdf>, pp. 203, 206-207.

³³ See CERD/EWUAP/106 th session/2022/MJ/CS/ks, 29 Apr. 2022; South Rupununi District Council, *Wapichan Environmental Monitoring Report*, Sep. 2018, <http://wapichanao.communitylands.org/1548691773093-wapichan-environmental-monitoring-report-2018-v2.pdf>.



The destruction of forests in the Upper Mazaruni caused by extensive gold mining. © APA

areas in Guyana have been established and administered in violation of indigenous peoples' rights. Despite explicit promises by the GoG to respect indigenous peoples' rights inside a few of the protected areas, there continue to be violations of indigenous peoples' rights to access and use their resources inside such areas.³⁴

Many of these violations are enabled by the GoG's failure to recognize the land tenure rights of indigenous peoples under both international and national law. The GoG conceives of indigenous land rights as "granted" by the state, rather than being inherent. Most villages that have received title report that it does not cover the full extent of their traditional lands.³⁵ The GoG also interprets these titles to exclude subsurface rights, rights to waterways, and portions of land covered by extractive concessions. In addition, the GoG makes a discriminatory distinction between indigenous communities with title to their land and those without title. Treaty bodies have recommended that the GoG abolish this distinction and recognize the rights of indigenous peoples to the full extent of their traditional lands and territories.³⁶

The GoG Monitoring Report suggests that it has respected indigenous peoples' rights in the design and implementation of REDD+ actions. Although the GoG's report is not entirely clear,

34 For example, in 2002, the then-President of Guyana signed an agreement with the indigenous leaders of Region 8 to protect "Amerindian rights, traditions, privileges, customs and usages" inside Kaieteur National Park. This agreement has not been respected, however, and the customary rightsholders have been restricted from conducting traditional activities inside the park. *Ina Pata, Ko'Mangnátok Yeselu; Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Region 8*, Amerindian Peoples Association, Forest Peoples Programme and Rainforest Foundation US, May 2018, https://rainforestfoundation.org/wp-content/uploads/APA_LTA_R8.pdf, pp. 35-38.

35 *Our Land, Our Life: A Participatory Assessment of the Land Tenure Situation of Indigenous Peoples in Guyana: Report for Regions 1, 2, 7, 8, & 9* (hereafter "Our Land, Our Life"), Amerindian Peoples Association, Forest Peoples Programme and Rainforest Foundation US, Feb. 2021, <https://apaguyana.com/wp-content/uploads/2021/02/APA-LTA-2021-FINAL.pdf>, pp. 6-7.

36 See CERD/C/GUY/CO/14, paras. 15-16; E/C.12/GUY/CO/2-4, paras. 14-15.

it seems to suggest that the GoG has met Cancún Safeguard C’s outcome indicator in TREES by implementing the Amerindian Land Titling Project and the Amerindian Development Fund. However, despite having received external funding to implement some of its indigenous land titling obligations for the past eleven years via the Amerindian Land Titling Project, the GoG has yet to complete the titling of the villages that are part of this project. Many communities in Guyana still have no title over any part of their customary lands, and 90% of the 85 villages with land titles that participated in a land tenure assessment conducted by the Amerindian Peoples Association (APA) reported that their land titles did not correspond to the full extent of their traditional lands.³⁷ The GoG does not explain how the Amerindian Development Fund helps to ensure that indigenous rights are protected in the context of REDD+ activities.



Residents assessing mining concessions within their titled and traditional lands. © APA

B. Failure to Respect Indigenous Peoples’ Participation Rights

The LCDS is the framework within which the GoG claimed to have engaged in “consultations” on the ART proposal. These “consultations,” which have been described by many communities rather as information-sharing sessions, took place from November 2021 to June 2022.³⁸ As participants in some of the sessions noted, information-sharing cannot be confused with meaningful consultation, let alone FPIC. They reported that these sessions had minimal opportunities for participation, and no discussion of alternative mechanisms by which indigenous peoples could benefit from the carbon stock and healthy forests on their lands, nor of any potential risks or disadvantages of participation in the program (and indeed, as stated above, the decision to include indigenous lands in the program was taken long before any of these sessions).

37 Our Land, Our Life, p. 14.

38 Office of the President, “Guyana’s Low Carbon Development Strategy 2030: Summary of Feedback from Consultations Process and Consideration of Comments”, Jul. 2022, available at <https://lcds.gov.gy/summary-of-feedback/> (hereafter “LCDS Summary of Feedback”) pp. 6-7 (summarizing engagement with indigenous communities).

Upper Mazaruni council restates that carbon trading consultations defective

The Upper Mazaruni District Council (UMDC) yesterday restated their position that proper consultations on carbon trading were not conducted in their communities, neither was their free, prior, and informed consent (FPIC) given to sell carbon from their customary lands.

The UMDC consisting of eight villages and satellite areas in Cuyuni/Mazaruni held its statutory meeting on 9-11 May, 2023 in Paruima and collectively reaffirmed its stance.

Although the government previously shared some information on the Low Carbon Development Strategy (LCDS), these sessions were not specifically about carbon markets and the Architecture for REDD+ Transactions (ART), a release from the UMDC said yesterday.

“These are separate topics that should have had separate consultations. In addition, the government did not listen to our request for funding and support to train our own resource persons, who could travel from village to village to consult with our people on both the LCDS and the carbon trading plan. If the government had supported us in this way, we would have been able to take our own time to understand these plans and come to our own decisions on them. The cluster meeting held in Kamarang Village was insufficient for proper consultation. In addition, putting information on

websites is not helpful for villages with limited internet access”, the council asserted.

It said that it was dismayed by recent statements by the Office of the Vice President and the NTC executive body that deny these concerns. It added that it was aware that the Amerindian Peoples Association (APA) has been the target of these attacks because of the letter that it sent to the ART board last month arguing that FPIC was not complied with in the carbon credits scheme.

“Like the APA, we are concerned that our FPIC was not properly sought in this matter, nor was it given.

We know that our people acting collectively may exercise this right. The National Tshaoa Council provides valuable advice, but it cannot exercise this right on our behalf. These rights are important for us and for indigenous peoples all over the world where other countries want to sell carbon credits like Guyana”, the council said.

In addition, the council said that the requests made by the APA in their letter to ART are the very requests its communities have long been making: revise the Amerindian Act, resolve outstanding land claims, and ensure justice for communities suffering from illegal mining.

“We do not agree with the attacks on our rights. We call on the NTC chair



The Upper Mazaruni District Council

and executive body to desist from issuing statements that claim to speak for our communities when we have not agreed to these statements. We are unhappy that the government misrepresents consultations with indigenous peoples to people outside

of Guyana. We also call on the Office of the Vice President and the NTC executive body to cease their attacks and devote their energy instead to engaging constructively with our communities to address the legitimate concerns that have been

raised”, the council said.

It listed the signatories to the statement as the villages of Phillipai, Chinoweing, Jawalla, Kako, Kamarang/Warawatta, Waramadong and Paruima. It said that Omanaik/Kambaru was absent.

JOB OPPORTUNITY

Applications are invited from suitably qualified persons to fill the vacant post of
SECURITY OFFICER

Requirements

- Sound secondary education
- At least two years' experience in the related field
- Must have a pleasant personality and be able to interact with the general public in a professional manner
- Police clearance
- Two references (one from previous employer)
- Good interpersonal skills
- Highly motivated and trustworthy individual

Please send all applications to the:
Human Resources Officer
Guyana Publications Inc.
46-47 Robb Street, Lacytown
or hr@stabroeknews.com



Unsuitable applications will not be acknowledged.

GUYANA PUBLICATIONS INC. JOB OPPORTUNITY

Applications are invited from suitably qualified persons to fill the vacant post of:

ACCOUNTS CLERK

Requirements:

- Five CXC subjects
- Computer knowledge
- Two references (one from previous employer)
- Police clearance
- Highly motivated and trustworthy individual

Please send all applications to the Human Resources Officer- Guyana Publications Inc. 46-47 Robb Street, Lacytown or email – hr@stabroeknews.com

A snapshot of a published press statement by the Upper Mazaruni District Council (UMDC) highlighting defective consultations on the carbon credit scheme. © APA

The GoG’s report on the so-called “consultations” noted that the meetings with indigenous villages would be “particularly around revenue sharing and the Village Sustainability Plans”,³⁹ which villages are required to share with the GoG in order to receive any benefits from the sale of carbon credits. In addition, the sessions concerned the entire LCDS, of which jurisdictional forest carbon crediting is only one part. The limited information-sharing sessions held by the GoG in indigenous communities were thus insufficient for communities to fully understand the carbon crediting program.

The GoG also failed to fulfill requests made by participants at the LCDS information-sharing sessions. Some participants requested simplified materials about the LCDS, including materials in local languages.⁴⁰ These were never provided. Other villages requested that local facilitators be trained to go to villages individually to consult them about the LCDS.⁴¹ This did not happen either. One GoG official’s response to recommendations that consultations not be rushed was

39 Ibid, p. 73.

40 See, e.g., Ibid, pp. 136, 143.

41 Ibid.

that the government must “make sure the opportunities in the world don’t pass Guyana by, for example on ... ART TREES. The timelines for some of these things get set way in advance outside of anyone in Guyana’s control, so we should at least make sure people are aware of this as well.”⁴² The comment implies that ART was rushing the development of the GoG’s crediting program. Taken together, these deficiencies demonstrate that the GoG’s information sessions failed to meet international standards for consultation with indigenous peoples.⁴³

The inadequacy of the GoG’s “consultations” on the LCDS, which it used as a stand-in for consultations on its carbon crediting program, undercuts the GoG’s claim to ART that it complied with Cancún Safeguard D, which requires full and effective participation of affected stakeholders, especially indigenous peoples, in the design and implementation of the state’s REDD+ program. Moreover, the GoG’s inclusion of indigenous peoples’ lands in the accounting area in its original concept document submitted to ART in December 2020, prior even to any of these information sessions, suggests a lack of good faith on the part of the GoG to adhere to its FPIC obligations.

C. Failure to Respect Indigenous Peoples’ Right to Benefit-Sharing

The LCDS describes a proposed benefit-sharing model to distribute a portion of the revenue from carbon credit sales to indigenous communities. The benefit-sharing plan is to distribute 15 percent of revenue from carbon credit sales to indigenous communities,⁴⁴ subject to an “opt-in” mechanism. Revenues received by villages under this mechanism must be spent on projects described in a Village Sustainability Plan that is approved by the GoG.⁴⁵ The choice to opt in or opt out applies only to revenue sharing; it is not a mechanism for communities to give or withhold consent to their lands being used in the calculation of forest carbon credits.⁴⁶

Sale of “high-integrity” carbon credits to an oil company

Just one day after ART announced the issuance of credits, the GoG and Hess Corporation announced a deal for Hess to purchase 37.5 million carbon credits, generated from 2016 to 2030, from the GoG for US\$750 million.⁴⁷ Indigenous peoples were not consulted on or even informed of this deal in advance. In community workshops conducted by facilitators from the South Rupununi District Council after the Hess sale, community members overwhelmingly expressed opposition to the decision to sell carbon credits to an oil company.

This benefit-sharing plan was not developed in consultation with indigenous peoples and does not meet the requirements under international law for benefit-sharing with indigenous peoples. The right to benefit-sharing is inherent to indigenous peoples’ right to self-determination and

42 Ibid, p. 75.

43 The GoG’s information sessions would not even constitute a “consultation” as defined in the Constitution of Guyana, Art. 232, which requires that the person to be consulted “is afforded a reasonable opportunity to express a considered opinion on the subject of the consultation”.

44 The other 85 percent of the revenue is to support national development priorities outlined in the LCDS.

45 LCDS 2030, pp. 43-45.

46 The section of the LCDS described here is titled “Opting Into the ART-TREES Revenue Sharing Mechanism.”

47 Hess Corporation, “Hess Corporation and the Government of Guyana Announce REDD+ Carbon Credits Purchase Agreement,” 2 Dec. 2022, <https://www.hess.com/newsroom/news-article/2022-12-13-hess-corporation-and-the-government-of-guyana-announce-redd-carbon-credits-purchase-agreement>.

thus flows from indigenous peoples' rights over the resources in their territories and the right to give or withhold FPIC for the use of those resources.⁴⁸ TREES requires there be a "benefit allocation arrangement" between the program participant and any rightsholders to demonstrate that the program participant has clear ownership to ERRs. However, the GoG's benefit-sharing plan only allows indigenous villages to retroactively opt in to receiving benefits from the sale of credits; any villages that chose not to opt in would not receive any benefits, but would nonetheless still have had their lands included in the accounting area, and the ERRs generated from their lands put up for sale or sold by the GoG.



Indigenous youth activist Kemal Robinson presenting at the event "Carbon Markets and Rights: Indigenous Peoples' Perspective on the Approval of ART TREES Credits in Guyana" during NYC Climate Week 2023. © RFUS

48 UNDRIP does not refer to benefits, and instead, the right to benefits is subsumed within the right to self-determination and indigenous peoples' rights over their lands, territories, and resources. The Inter-American Court of Human Rights explained that indigenous peoples have the right to share the benefits of an activity that results in a restriction of their rights to their lands and resources, and that the benefit sharing arrangement must be developed with the effective participation of indigenous peoples. IACTHR, *Saramaka People v. Suriname*, Judgment of 28 Nov. 2007, para. 138; IACTHR, *Saramaka People v. Suriname* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs), Judgment of 12 Aug. 2008, para. 13.

V FAILURE OF ART'S INTERNAL GRIEVANCE MECHANISM TO REMEDY RIGHTS VIOLATIONS AND MEET INTERNATIONAL STANDARDS

Despite the evidence of the GoG's non-compliance with TREES, ART's VVB assessed the GoG's claims as being in conformance with the standard, and ART certified and issued 33.47 million carbon credits to the GoG in December 2022.⁴⁹

In response to the rights violations described above, the Amerindian Peoples Association (APA), a national indigenous peoples' advocacy organization in Guyana, filed a complaint in March 2023 with ART's internal grievance mechanism established in TREES Section 16. The complaint outlined the violations of indigenous peoples' rights and failures of the GoG to comply with TREES social safeguards, reiterating many comments that the APA had already made to ART and the VVB which had gone unaddressed. Like the credit issuance more broadly, the complaint has been viewed as a test case for ART.

International standards for non-State-based grievance mechanisms, such as ART's, state that for such mechanisms to be effective, they must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.⁵⁰ These standards form part of the UN Guiding Principles on Business and Human Rights and have been further elaborated by the UN High Commissioner for Human Rights. Both the design and the implementation of ART's grievance mechanism failed to comply with these standards.

A. Deficiencies in the Design of the ART Grievance Mechanism

The design of ART's grievance mechanism falls short of international standards for non-State-based grievance mechanisms. TREES Section 16, which establishes the ART grievance mechanism, does not contain detailed information about the mechanism's mandate or objectives, nor the policies and processes for resolving grievances. It assigns personnel to the grievance mechanism without any requirements for their qualification for the work and without sufficient attempts to establish the independence of the mechanism.

During the initial complaint process, the ART Secretariat is tasked with assigning a representative to investigate the complaint. Although TREES specifies that the representative is to be someone

⁴⁹ ART, "ART Issues World's First Jurisdictional Forestry TREES Carbon Credits to Guyana," 1 Dec. 2022, <https://www.artredd.org/wp-content/uploads/2022/12/ART-Issues-Worlds-First-Jurisdictional-Forestry-TREES-Carbon-Credits-to-Guyana.pdf>.

⁵⁰ Office of the High Commissioner for Human Rights, *UN Guiding Principles on Business and Human Rights*, Principle 31, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (hereafter "UNGPs"). See also Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms*, A/HRC/44/32, 19 May 2020 (hereinafter "OHCHR Grievance Mechanism Report").

without any involvement in the issue that is the subject of the complaint, it is the Secretariat that then makes a decision on the complaint. If an appeal is later filed, the appeal is decided by a committee comprising three members, two of whom are involved with ART: one is a member of ART's host Winrock's Senior Management or Board, and one is a member of the ART Board of Directors. Given that ART's Secretariat makes the recommendation to the ART Board regarding certification of credits, and that the ART Board takes the final decision on the approval of credits, there is a lack of independence in both the complaint and appeal processes.

Finally, there is no information in TREES (nor in ART's later-published Complaints Guidance) regarding the potential remedies for violations of the human rights safeguards in TREES. It is only in ART's Validation and Verification Standard that ART indicates that the only remedy available for errors in validation and verification is a downward adjustment in future crediting periods.⁵¹ ART has otherwise never indicated whether it would offer other remedies, including supporting processes to help governments improve their compliance with the human rights safeguards in TREES.

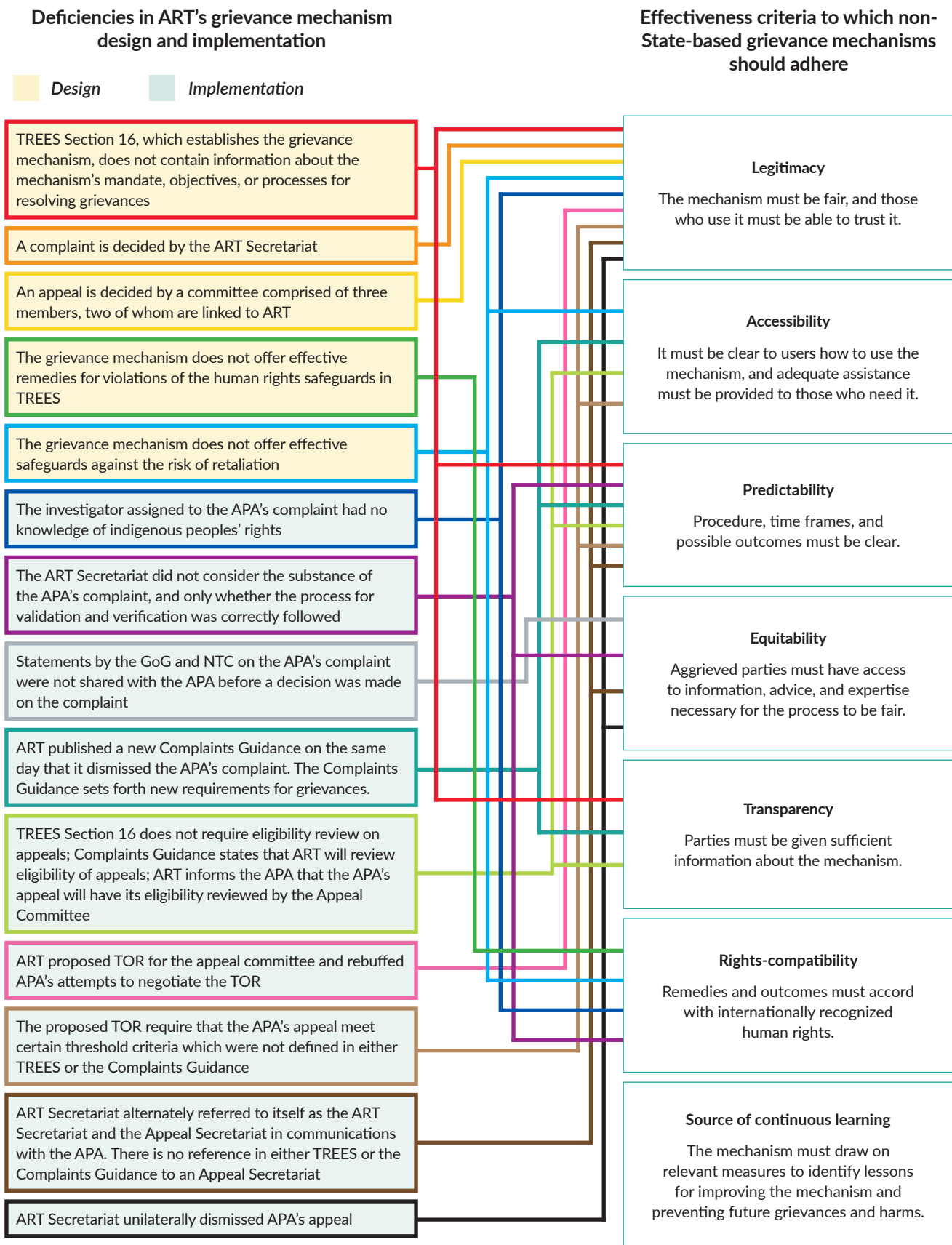
ART's grievance mechanism's failure to prevent the risk of retaliation

ART's grievance mechanism does not have effective safeguards in place to prevent the risk of retaliation against complainants, as it should under applicable international standards. The APA was maligned in several press releases by the GoG after it filed a complaint with ART's grievance mechanism.⁵² Despite proposing confidentiality provisions in the terms of reference for the appeal committee that were so strict as to undermine the transparency of the process, after dismissing the APA's appeal, ART published the names and email addresses of the APA staff members working on the complaint and appeal without even informing them.

51 ART, TREES Validation and Verification Standard: Version 2.0, December 2021, <https://www.artredd.org/wp-content/uploads/2022/01/TREES-Val-and-Ver-Standard-v2-Dec-2021.pdf>, Sec. 3.11.

52 For example, press releases by the GoG following the filing of the APA's complaint have falsely and baselessly accused the APA of having a "true motive of sacrificing development of Amerindian villages, to foster their political motives", Guyana Office of the Vice President, Press Release, 18 April 2023; or of "pay[ing] themselves handsomely by showing Guyana in a bad light". Guyana Office of the Vice President, Press Release, 19 April 2023.

Figure 3 Failures of ART's Grievance Mechanism to Meet International Standards



B. ART's Failure to Address the APA's Complaint in Accordance with International Human Rights Standards

1. Cursory Dismissal of APA's Complaint

ART's handling of the first – and to date, only – complaint it has received via its grievance mechanism demonstrated its lack of commitment to the internationally agreed principles that should guide non-State-based grievance mechanisms. The APA's complaint, filed in March 2023, alleged that the GoG had failed to comply with TREES requirements, especially safeguards on indigenous peoples' rights.

The ART Secretariat assigned a staff member at Winrock who had no knowledge of indigenous peoples' rights to investigate the APA's complaint. The investigator only conducted one phone interview with a member of the APA staff and stated that her review would not cover the substance of the complaint, but would only look at procedural issues, such as whether the APA had had an opportunity to raise its concerns. She informed the APA that they would have to appeal the decision on their complaint in order to seek a review of the substantive issues in their complaint. The approach taken in the investigation contravened the TREES guidelines on complaints – which specify that complaints should relate to “a decision made by ART representatives or the application of the ART program requirements” and not the validation and verification process – and undermined the effectiveness and rights-compatibility of the complaint process.

The GoG and NTC submitted statements contesting the accuracy of the APA's allegations⁵³ to ART during the course of the complaint. These were not shared with APA before ART's decision on the APA's complaint.

On May 18, ART published the investigator's memorandum of review,⁵⁴ a decision adopting all of the memorandum's recommendations,⁵⁵ and a new document referred to as the “Complaints Guidance,”⁵⁶ apparently in response to stakeholder feedback that the process was opaque and underdeveloped. While the Complaints Guidance provides some further detail regarding the operation of the grievance mechanism, it also introduces new requirements, undermining the predictability of the mechanism in the midst of an active complaint process.

The memorandum of review and the ART Secretariat's final decision on the APA's complaint did not engage with the substance of the complaint. The decision noted, “The review concludes that the processes in ART's TREES Standard were properly followed” and “with limited exceptions, all concerns raised in the complaints were evaluated by the VVB during the 2016-2020 validation and verification”. The “limited exception” referred to the concern raised by the APA that ART had accepted the NTC endorsement of the LCDS as proof of FPIC for the sale of credits from indigenous peoples' lands. The ART Secretariat did not engage with this concern, and instead dismissed it on the basis that the APA had not raised the concern during the validation and

53 Guyana Forestry Commission, “Statement from the Guyana Forestry Commission on the Complaint by the APA on Guyana's ART TREES Application,” 3 Apr. 2023, <https://www.artredd.org/wp-content/uploads/2023/05/Statement-to-ART-Secretariat-re-APA-Grievance-April-3-2023.pdf>; Letter from Derrick John to Christina Magerkurth, 24 Apr. 2023, <https://www.artredd.org/wp-content/uploads/2023/05/Formal-Communication-by-NTC-to-ART-Secretariat-RE-Complaints-Procedure.pdf>.

54 Memorandum from Charlotte Young to ART Secretariat, Re: APA Comment/Complaint: “Comment of latest approved ART documents for Guyana and complaint about issuance of credits for 2016-2020” dated March 8, 2023, 11 May 2023, <https://www.artredd.org/wp-content/uploads/2023/05/Letter-to-ART-Secretariat-Regarding-APA-complaint-Guyana-5.11.23-final.pdf>.

55 ART Secretariat, “ART Secretariat Statement on the APA Complaint and Review Process and Findings,” 18 May 2023, <https://www.artredd.org/wp-content/uploads/2023/05/ART-Secretariat-Statement-May-18-2023.pdf>.

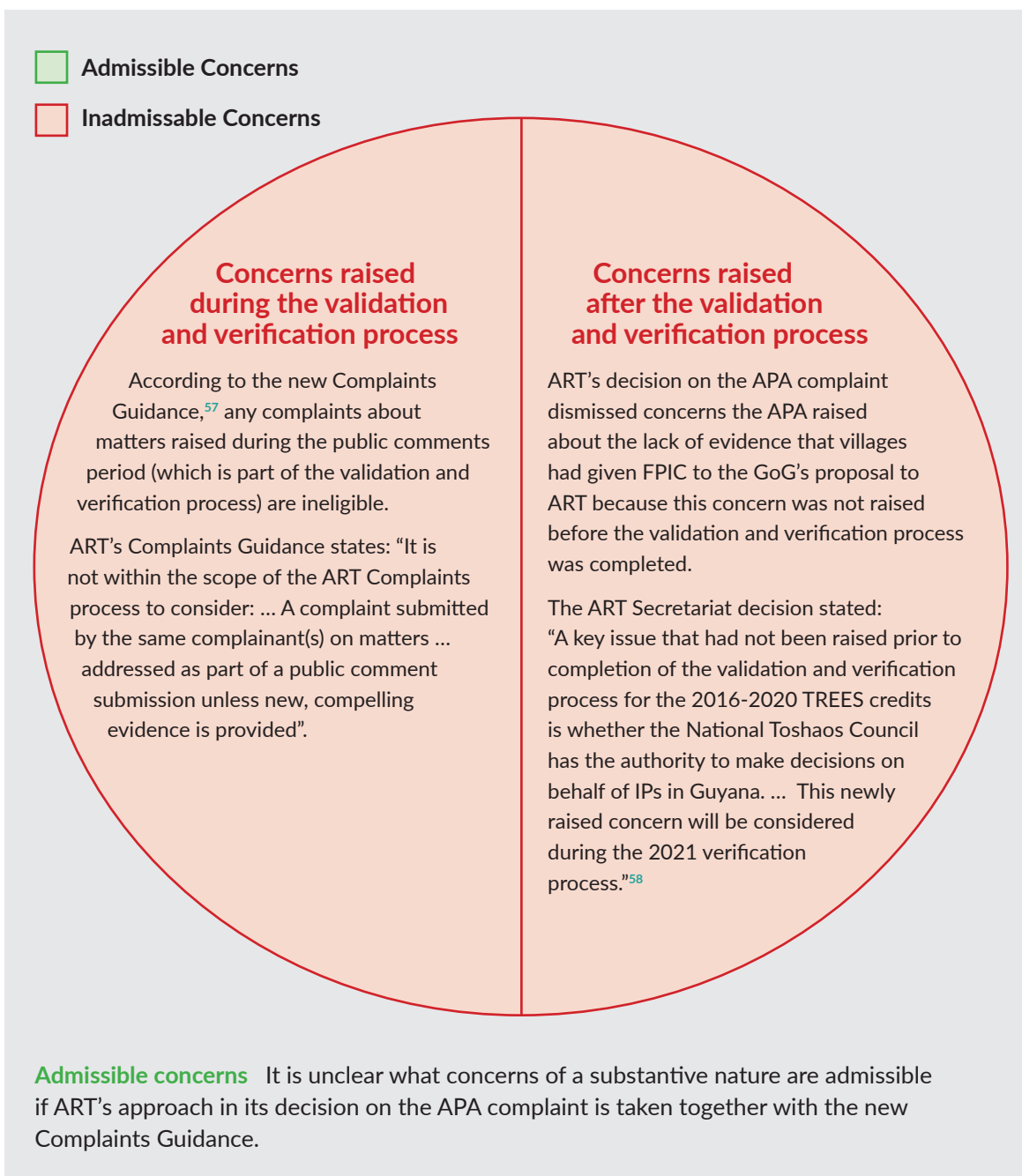
56 Guidance on ART's Complaints and Appeals Process (hereafter “ART Complaints Guidance”), <https://www.artredd.org/wp-content/uploads/2023/05/ART-Complaints-Guidance-May-2023-Final.pdf>.

verification process. ART did not acknowledge the fact that neither the GoG, VVB, nor ART had given any public indication until the credits were approved in December 2022 that they would consider NTC endorsement of the LCDS to constitute fulfillment of FPIC requirements.

Figure 4 Example of the Unpredictability of the ART Grievance Mechanism

ART's new Complaints Guidance, issued on the same day that it made the decision to dismiss APA's complaint, appears to severely restrict the scope of complaints.

Scope of complaints admissible under ART's grievance mechanism



⁵⁷ Ibid, Section 2, para 2.b.

⁵⁸ ART Secretariat, "ART Secretariat Statement on the APA Complaint and Review Process and Findings," 18 May 2023, <https://www.artredd.org/wp-content/uploads/2023/05/ART-Secretariat-Statement-May-18-2023.pdf>.

2. Dismissal of the Appeal of the APA Complaint Without Any Substantive Review

The APA appealed ART's decision on its complaint in June 2023, within the 30-day deadline established by the new Complaints Guidance that was published on the same day its complaint was dismissed.

The ART Secretariat informed the APA in July 2023 that it would convene a committee to review the appeal, and that the committee would determine the eligibility of the appeal. TREES Section 16 does not stipulate that there is to be any eligibility determination before an appeal process; the new Complaints Guidance published by ART after dismissing the APA's complaint states that ART would conduct the eligibility review within 30 days of receiving the appeal. The ART Secretariat's deviation from both TREES and the Complaints Guidance was one of a series of decisions taken by ART that undermined the predictability and legitimacy of the appeal process.

The APA submitted its nominee to the appeal committee in August 2023. The ART Secretariat approved the APA's nominee shortly afterward.

In September 2023, the ART Secretariat sent terms of reference (TOR) for the appeal committee for the APA to review. This could have presented an opportunity for ART to accept input into the design of the grievance process, particularly as the appeal process was not already well-defined by either TREES Section 16 or the Complaints Guidance.

The TOR proposed by the ART Secretariat contained several provisions that would have undermined the legitimacy, equitability, and transparency of the process:

- The TOR introduced new “threshold requirements” for determining the eligibility of the appeal that were not defined in either TREES Section 16 or the Complaints Guidance. This contributed to the unpredictability and inequity of the process.
- The TOR limited the information available to the appeal committee, including by preventing the committee from considering information from external sources like subject-matter experts. This would undermine the legitimacy of the process, and because the APA complaint concerned indigenous peoples' rights, these limitations also threatened the rights-compatibility of the mechanism.
- The TOR restricted the scope of the appeal committee's review to errors in the complaint investigation report, which as mentioned did not consider any substantive issues raised in the complaint. This would render the entire grievance mechanism pointless, as consideration of substantive issues would have been avoided for the entire duration of the process.
- The TOR would have established an Appeal Secretariat to act as administrative secretary to the Appeal Committee. The prospective members of the Appeal Secretariat were the executive and managing directors of the ART Secretariat, undermining independence and creating confusion about what role ART representatives were taking.
- Confidentiality provisions in the TOR would have made all communications regarding the appeal confidential, undermining the transparency of the process.⁵⁹

⁵⁹ ART has since published all of this correspondence, but it was clear that it was unwilling to proceed with the appeal without agreement to the confidentiality provisions. Ironically, ART published the communications without prior notification to the APA, after the dismissal of the appeal.

The APA sent comments on the TOR to ART on October 4, expecting to negotiate the terms.⁶⁰ ART rejected almost all of the proposed revisions with cursory, vague explanations.⁶¹ ART did agree to correct a misspelling of the name of APA's nominee to the appeal committee and to add a provision allowing APA to submit an addendum to their appeal within three days to address the newly established threshold criteria. The ART Secretariat threatened to dismiss the appeal if the APA did not sign the TOR within three days. This deadline was subsequently extended by five days. Nonetheless, the continuous changing of the eligibility criteria undermines both the predictability and accessibility of the mechanism. In addition, the fact that the ART Secretariat claimed authority to unilaterally dismiss an appeal against its own decision on the complaint is evidence of the lack of independence of the grievance mechanism.

The APA sent its addendum addressing the threshold criteria, along with a redlined version of the TOR prioritizing the amendments that the APA considered necessary for a fair consideration of the appeal, on October 18. The ART Secretariat responded on October 25 with a draft dismissal order, stating that the dismissal order would go into effect at 6:01 P.M. on October 27 if the APA did not sign the TOR by 6:00 P.M. on October 27. It again rejected the APA's attempts to negotiate the TOR, making no amendments to the earlier version. ART's communication stated that the APA could not "dictate the rules of the Appeal. ... Neither the Appellant nor the Respondent has the ability to dictate the procedures of the Appeal to the other party to the Appeal."⁶² It appeared that ART, the Respondent, was doing just that. ART's refusal to engage with the APA in the design of the grievance process ignores best practice, which suggests regular and meaningful consultations with stakeholders and rightsholders on the design of the mechanism.⁶³

On October 27, the APA replied to the ART Secretariat reiterating that the TOR as drafted did not enable APA's trust in the process and therefore that APA could not agree to the terms. The APA expressed its disappointment at the threatened dismissal of its appeal and again urged ART to negotiate the TOR with the APA to ensure an appeal process that meets international standards, as reflected in ART's own Complaints Guidance.

The ART Secretariat notified the APA on November 3 that the dismissal order had gone into effect at 6:01 P.M. on October 27. This dismissal order was published on their website, along with a statement by ART, on November 3.

ART's dismissal order not only contains factual errors, it demonstrates the lack of independence in the appeal process, which the APA had hoped that changes to the TOR could help avoid. As just one example, the dismissal order states, in reference to the APA's proposed redlined TOR, that the APA "unilaterally amended" the TOR "in contravention of the Appeal Committee's decision". Given that the Appeal Committee had in fact never met, it could not have made any decisions, suggesting that the ART Secretariat had elected to act as the Appeal Committee and to make decisions regarding the APA's ability to negotiate the terms of the appeal process. This assumption of authority by ART further emphasizes the lack of independence of the grievance mechanism.

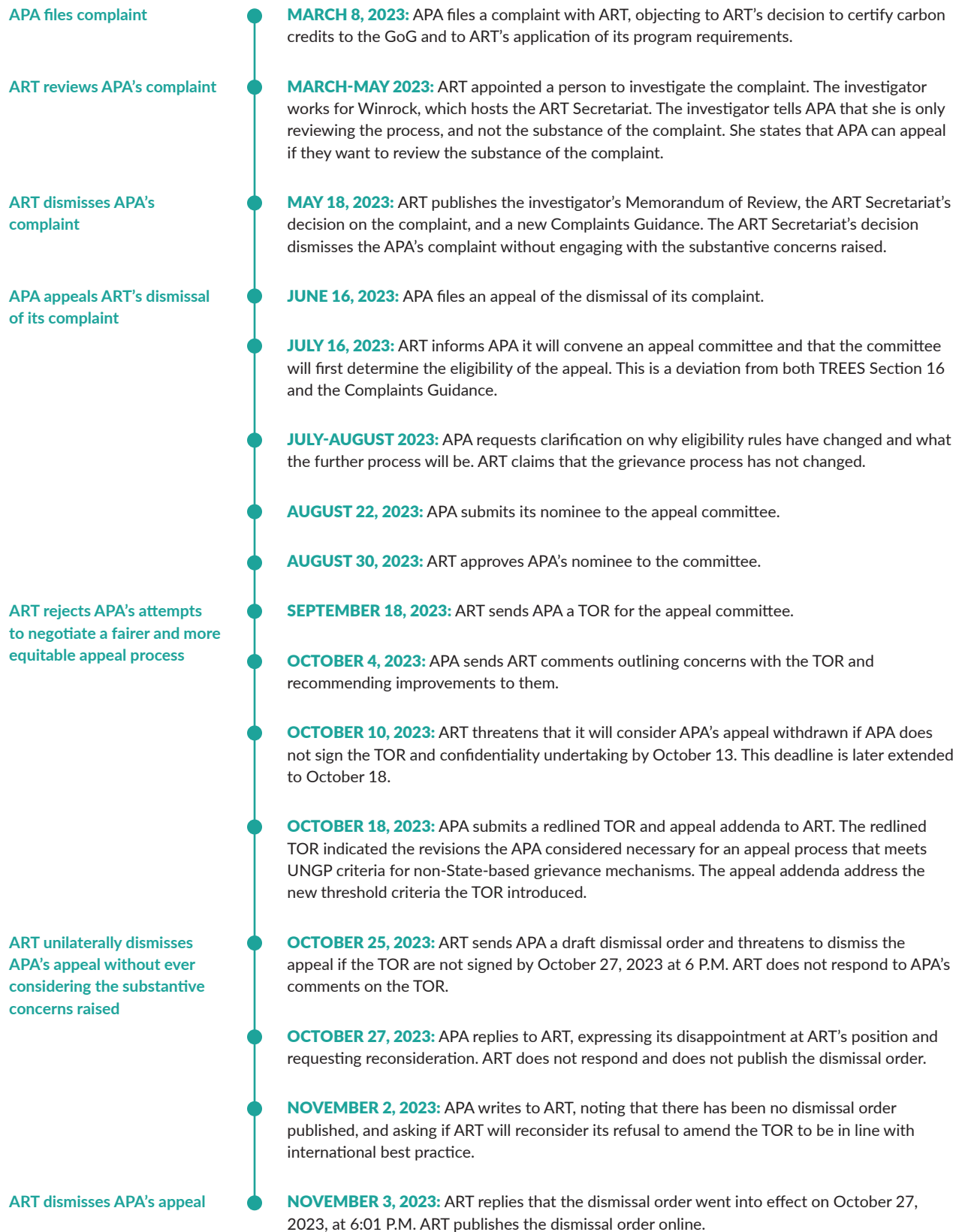
60 See OHCHR Grievance Mechanism Report, Annex: Part II: para. 7.2 (elaborating that legitimate grievance mechanisms meaningfully consult with rightsholders about the design of the mechanism).

61 For example, "proposed amendments are not supported by TREES, the Guidance, or due process."

62 Letter from Christina Magerkurth to Amerindian Peoples Association, 25 Oct. 2023, <https://www.artredd.org/wp-content/uploads/2023/11/15-Response-to-APA-Appeal-Addendum-with-Order-of-Dismissal-October-25-2023.pdf>.

63 UNGPs, Principle 31(h).

Figure 5 ART in Guyana Annotated Timeline, Part 2: APA's Complaint and Appeal to ART



VI CONCLUSION AND RECOMMENDATIONS

VCMs have been under intense scrutiny over the past few years, with serious questions raised as to whether certification schemes can in fact deliver high-integrity carbon credits. ART's first – and to date, only – issuance of jurisdictional REDD+ carbon credits to the GoG is an important test case for the VCM. It demonstrates the failure of one of the most prominent VCM certification standards – which describes its mission as serving “as a global quality benchmark for jurisdictional REDD+”⁶⁴ – to uphold high social integrity requirements.

This case study reveals several important lessons learned for high-integrity VCMs:

1. *Carbon credit certification standards should require participants to demonstrate compliance with international human rights standards.* Although TREES incorporates the Cancún Safeguards, ART's standard still falls short of international human rights standards in a few ways. For one, TREES does not require compliance with its safeguard outcome indicators until *after* the first five years of a government's participation in the program. More importantly, neither TREES nor ART's guidance on validation and verification offer any systematic mechanism to evaluate and ensure compliance with the safeguards, which is primarily achieved through self-reporting.⁶⁵ In Guyana's case, the GoG's Concept reported that it had already achieved conformance with all structure, process, and outcome indicators of all of the TREES safeguards. Yet it is well-documented, including by UN human rights bodies, that there are many ongoing indigenous peoples' rights violations in Guyana and that the national legal framework governing indigenous peoples' rights is deficient. Although the APA pointed this out to the VVB and to ART on numerous occasions, ART nonetheless certified the GoG as being in compliance with the TREES safeguards.
2. *Validation and verification of compliance with a certification standard must not rely on government self-reporting.* As currently structured, ART's mechanism relies heavily on government self-reporting against the TREES safeguards. In fact, ART's Validation and Verification Standard only asks that the VVB evaluate the descriptions the government provides in its TREES registration documents. ART requires that the VVB assess whether the government has described ownership rights to ERRs but does not require the VVB to validate or assess the legality of the claims to the credits.⁶⁶ Similarly, the VVB is only required to evaluate the environmental and social safeguard structure, process, and outcome indicators against the description and evidence provided by the government itself.⁶⁷ For outcome indicators, ART does not actually require evidence that outcomes have been achieved at any point; rather, it merely requires after the first five years of participation in the program that the outcomes are being monitored and that there are “stepwise improvements” in outcomes defined by the government itself.⁶⁸

64 ART, “Information and Answers to Frequently Asked Questions (FAQs) about ART and TREES,” <https://www.artredd.org/faqs/#art>.

65 Mariano Alberto Martínez Berganza, *Proposal for Additional Provisions for the ART TREES Standard*, Mesoamerican Alliance of Peoples and Forests, <https://www.alianzamesoamericana.org/en/wp-content/uploads/2023/09/Art-Trees-Ingles.pdf>, p. 8.

66 ART, TREES Validation and Verification Standard: Version 2.0, December 2021, <https://www.artredd.org/wp-content/uploads/2022/01/TREES-Val-and-Ver-Standard-v2-Dec-2021.pdf>, Secs. 3.3, 3.4.

67 Ibid.

68 Ibid.

3. *Validation and verification of compliance with a certification standard should employ experts in indigenous peoples' rights and experts in the relevant national context, and consult affected indigenous peoples, so that VVBs can assess whether any claims of respect for indigenous land tenure rights and FPIC rights are legitimate.* It is critical that the validation and verification team include experts who can properly assess the relevant government's claims against the realities on the ground. The lack of knowledge of the national legal framework in Guyana, together with the lack of knowledge of indigenous peoples' customary tenure systems in Guyana, resulted in an acceptance of the NTC's endorsement of the LCDS in Guyana as proof of FPIC for the inclusion of indigenous lands in the program and a transfer of rights to ERRs. An expert with knowledge of indigenous peoples' rights and the national context would have understood, among other issues, that securing an endorsement from the NTC was not the same as securing FPIC from each indigenous people and village affected by the program. Consultation with affected indigenous peoples is also necessary for this purpose. As noted above, VVBs cannot rely predominantly on government self-reporting, but must triangulate information obtained from rightsholders themselves as well as third-party sources, such as international human rights bodies or NGO reports.
4. *Carbon credit certification schemes should have grievance mechanisms that meet the internationally accepted criteria for non-State-based grievance mechanisms.* Carbon credit certification bodies are actors to which international human rights standards such as the UNGPs apply. They should have grievance mechanisms that meet minimum international standards, to enable an avenue for access to justice for aggrieved rightsholders. The defects in ART's grievance mechanism undermine the entire certification system. ART's handling of the APA's complaint and appeal showcased its lack of real commitment to upholding respect for indigenous peoples' rights, as well as its lack of understanding of its own human rights responsibilities. A high-integrity certification scheme cannot be credible without having in place a robust grievance mechanism that can properly address complaints of non-compliance with its standard.