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March 8, 2023

To:
Mary Grady, ART Secretariat
Christina Magerkurth, ART Secretariat

cc:
Francis Seymour, ART Board
Pasang Dolma Sherpa, ART Board
Lucia Madrid, Winrock International
Christina Magerkurth, Winrock International
Paz Lozano, Emergent
Hege Ragnildstveit, Senior Policy Advisor, NICFI
Leif John Fosse, Senior Advisor, NICFI
Daniel Kandy, US Dept of State
Christine Dragisic, US Dept of State
Chris Penrose Buckley, UK FCDO
Jenny Lopez, UK FCDO

Re: Comment on latest approved ART documents for Guyana and complaint about issuance of credits for 2016-2020

Dear ART Secretariat:

The Amerindian Peoples Association writes to register our comments to the latest approval by ART of the TREES Registration Document for the 2021-2025 Crediting Period and a TREES Monitoring Report for 2021. We also submit this as a formal complaint pursuant to Section 16.1 of the TREES Standard, version 2.0.¹

Complaint about comment period

As a preliminary matter, we recognize that we are submitting these comments outside of the comment period provided for by the ART Secretariat;² nonetheless, we hope that our comments will be taken into account in light of the serious and outstanding concerns we have raised since before ART's first issuance of credits to Guyana. This comment period, while published by the ART Secretariat, was not announced by the Government as far as we are aware, and we have

¹ <https://www.artredd.org/wp-content/uploads/2021/12/TREES-2.0-August-2021-Clean.pdf>, Section 16.1 (When a Participant or stakeholder objects to a decision made by ART representatives or the application of the ART program requirements, the following confidential complaint procedure shall be followed: I. The Participant or stakeholder sends a written complaint via email to [redd@winrock.org](mailto:red@winrock.org). The complaint must detail the following: A. Description of the complaint with specific reference to TREES requirements, as applicable; B. Supporting documentation provided for consideration by ART in the complaint resolution process; and C. Complainant name, contact details, and organization.)

² <https://www.artredd.org/wp-content/uploads/2023/01/ART-Approves-TREES-Documents-Submitted-by-Guyana.pdf>



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not otherwise received any alert as to the approval of these new documents. Moreover, we believe that the comment period should have been *prior to* the approval of these documents, not as a post facto matter. We would expect that in the interest of ensuring that all *rightsholders* and stakeholders can actively monitor and effectively participate in the ART-TREES process, comments would be taken into account *prior to the approval* of any documents submitted by the Government, and that there would be *sufficient notification* of the comment period.

Registration of concern about legitimacy of ART grievance mechanism

We should also note as a preliminary matter that it is not at all clear to us whether or not this grievance mechanism provided for in the TREES standard meets international standards for best practice on grievance mechanisms. We hope it will. The fact that there is no information about the grievance mechanism available online, and that the method for submitting grievances is to submit them via the same email address as for other ART correspondence, seems to undermine the legitimacy of the mechanism, however.³ We look forward to hearing from you how this grievance mechanism will be able to meaningfully engage with the complaints raised and to address them.

Complaint about compliance with TREES standard and comments on current TREES Monitoring Report

We note that the TREES Registration Document and the TREES Monitoring Report for 2021 are substantially the same and the same as the documents submitted prior to the first round of crediting. We therefore reiterate the comments we have previously submitted to ART (see attached **Analysis of Guyana's Monitoring Report**), noting that these comments were not taken into account by the verification team, who deemed them to have been submitted too far outside the comment period.⁴ As the Government's Monitoring Report for 2021 and Registration Document for 2021-25 are not substantially different from the monitoring report and registration document submitted for the first round of crediting, and given that there have been no substantive changes in Guyana's safeguards system since then, our complaints about the Government's failure to adhere to the TREES requirements are the same as our comments to the Government's documents for this current round of crediting.

Complaint about and response to ART Secretariat "Fact Sheet"

We further wish to respond to and submit a formal complaint regarding inaccurate information provided by the ART Secretariat in its "Fact Sheet Regarding the Validation and Verification of

³ The UN High Commissioner for Human Rights guidance on non-State-based grievance mechanisms for victims of business-related human rights abuses recommends, for example, that grievance mechanisms are legitimate, meaning that they have "an appropriate degree of independence from the business enterprise(s) and other actors whose activities may be the subject of grievances...". "Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms Report of the United Nations High Commissioner for Human Rights*", A/HRC/44/32, 19 May 2020, Annex: Part II: Policy Objective 7.

⁴ Aster Global Environmental Solutions, "Architecture for REDD+ Transactions (ART) Program: The REDD+ Environmental Excellence Standard (TREES): Verification Report – Final v2", p. 21.



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Conformance of Guyana's REDD+ Program with TREES Requirements".⁵

In that "Fact Sheet", the ART Secretariat repeated claims made by the Government regarding so-called "consultations" held with indigenous peoples around the country, as well as with indigenous peoples' organizations, including us. We were extremely concerned to see the ART Secretariat and the verification body, Aster Global Environmental Services, take the Government's claims of having respected indigenous peoples' rights at face value without a critical analysis of whether the Government's actions constituted proper consultation, let alone true respect for indigenous peoples' rights to effective participation and FPIC. As we noted in previous correspondence to ART, the Government's summary of "consultations" did not record comments specifically made by many indigenous peoples at these meetings that they did not consider that the meeting could properly be called a "consultation", but a mere information-sharing session. In addition, the Government's own summary of "consultations" noted requests for information to be shared in simplified language and in translation, and for trainings to help communities better understand the LCDS. Despite Government officials' commitment to share translations and to conduct trainings of trainers, to date there have been no translated copies of the LCDS, nor simplified information regarding ART-TREES shared in indigenous languages, nor any such trainings conducted.⁶

As has been noted by numerous international human rights bodies and summarized by the UN Expert Mechanism on the Rights of Indigenous Peoples, FPIC and the right to effective participation require, *inter alia*, that indigenous peoples are provided with the "time necessary ... to absorb, understand and analyze information and to undertake their own decision-making processes", and that "information should be presented in a manner and form understandable to indigenous peoples, including translation into a language that they understand. Consultations should be undertaken using culturally appropriate procedures, which respect the traditions and forms of organization of the indigenous peoples concerned...." Further, "Adequate resources and capacity should be provided for indigenous peoples' representative institutions or decision-making mechanisms, while not compromising their independence." We draw your attention specifically to this word of caution from the EMRIP: "It is a concern if participation is used as support for State decisions where consent is not achieved..." and "Failure to engage with legitimate representatives of indigenous peoples can undermine any consent received."⁷

With this in mind, we note that the ART "Fact Sheet" incorrectly claims that "The National Toshias' Council is the governance structure defined by the Amerindian Act." The Amerindian Act does *not* imbue the National Toshias Council with any governance authority nor any other authority to make decisions on behalf of indigenous peoples. At most, its functions involve providing advice

⁵ <https://www.artredd.org/wp-content/uploads/2023/01/ART-Fact-Sheet-Regarding-the-Validation-and-Verification-of-Conformance-of-Guyanas-REDD-Program-with-TREES-Requirements.pdf>

⁶ See Office of the President, "Guyana's Low Carbon Development Strategy 2030: Summary of Feedback from Consultations Process and Consideration of Comments", July 2022, available at <https://lcds.gov.gy/summary-offeedback/>, (hereinafter "GoG LCDS Summary of Feedback") pp. 135, 143, 157.

⁷ "Free, prior and informed consent: a human rights-based approach Study of the Expert Mechanism on the Rights of Indigenous Peoples", A/HRC/39/62, 10 August 2018, paras. 21-24.



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and guidance to the Ministry of Amerindian Affairs and to villages.⁸ More importantly, the state cannot mandate how indigenous peoples should organize themselves nor what our representative institutions should be, and in Guyana, indigenous peoples have *not* chosen to have a National Toshias Council govern them and make decisions affecting their lands on their behalf. The NTC's resolution endorsing the LCDS and ART-TREES crediting plan cannot therefore be taken to be FPIC from all villages in Guyana.

Requests and proposed redress

We reiterate our request to the ART Secretariat and Board that it publish its reasons for its decisions to approve the credits, in light of the substantial concerns we have raised regarding Guyana's respect for indigenous peoples' rights and therefore compliance with the TREES standard.

Finally, we reiterate some of the recommendations we have made previously regarding steps that should be taken by the Government of Guyana in order to comply with the TREES standard. We recommend that the credits issued to Guyana that have not yet been purchased be frozen and suspended, and that no further credits be issued, until the following has been achieved:

1. Revision of the Amerindian Act 2006 in line with international human rights standards. A process to revise the Amerindian Act 2006 began in 2018, and both the then-Ministry of Indigenous Peoples' Affairs and the APA jointly with the NTC undertook a series of consultations with clusters of villages and district councils around the country. This series of consultations resulted in a set of recommendations that were presented to the then-Minister and more recently to the current Minister. It is our belief that the process to revise the Amerindian Act should continue from there, with a round of workshops conducted around the country to discuss the Amerindian Act and the recommendations already made, to produce further recommendations as desired. An independent, expert lawyer in indigenous peoples' rights recommended by international human rights bodies should then be engaged to draft a revised law on the basis of the recommendations submitted, and another round of consultations should be done on the draft bill. Following a revision of the bill on the basis of these consultations, it would be appropriate to engage international experts such as former UN Special Rapporteurs to provide any final comments on the bill before its presentation to the National Assembly for passage. We anticipate that with appropriate funding, this revision process can be completed within 2-3 years.
2. Resolving outstanding indigenous land claims. While some indigenous peoples' land claims require legislative action to resolve (such as demands for titling of collective territories in the Upper Mazaruni and the North Pakaraimas), many villages' outstanding land claims can be resolved within the framework of the existing Amerindian Act. Under the current legal framework, indigenous villages can submit requests for title, or if they already have title, can submit requests for extension of title. Although there are some requirements for submitting a request that do not conform to the process demanded by international human rights law (such as having a minimum of 150 persons in the population), the process does for the most part allow for communities to request title to

⁸ See Amerindian Act, Sec. 41.



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areas that are customary lands. Many villages have already submitted requests for titling (or extensions of existing title) under this Amerindian Act framework. Some of these requests have already been investigated by the Ministry and are ready for titling (and/or extension). Other villages have problems with the mapping or demarcation of their title that need to be resolved in a timely manner. A handful of villages also have had their extension requests blocked because they overlap into an existing protected area. These villages wish to continue protecting their customary lands, however, so the solution is simple: title the lands, and convert the national protected area into an Amerindian protected area.

Many more of these types of situations are documented in the series of Land Tenure Assessments⁹ the APA has produced over the past few years. We note that many indigenous communities in Guyana are interested in formally protecting their lands, after receiving title, via legal recognition of indigenous conserved areas and via adopted and recognized territorial management plans. Our indigenous peoples have been protecting their lands and territories for generations, and research being published in recent years is consistently showing that titled indigenous lands and territories consistently outperform government-established and exclusionary protected areas in conservation and ecosystem service outcomes. Titling indigenous territories thus not only protects human rights, but also would help Guyana better achieve its goals of protecting ecosystem services and conserving the environment.

3. *Ensuring access to justice for Isseneru and Chinese Landing Villages by implementing the recommendations of human rights treaty bodies.* The Inter-American Commission's decision in the Isseneru case in April last year¹⁰ recommended that the Government title the full extent of Isseneru's customary lands, revoke all unconsented-to mining in Isseneru's customary lands, and provide full reparations for the harms caused to the village by past failure to respect their rights. The village has requested that the Government engage them in a dialogue and set out the process by which reparations will be provided. This includes titling the village immediately, and allowing the village to complete a process of assessing the damage that has been done to their lands, environment, and cultural heritage and determining the most appropriate form of reparations for such harm.

The UN Committee on the Elimination of Racial Discrimination recommended that the Government revoke or suspend all mining concessions in Chinese Landing's titled lands unless or until the village grants its free, prior, and informed consent to the mining activity, and ensure that village members are free from threats, harassment, or other incidents of violence by miners. The root of the problem in Chinese Landing is that the Government granted four mining concessions to a miner inside of the village's titled lands, and both the Government and the miner continue to deny that the village has control over that area of

⁹ <https://apaguyana.com/wp-content/uploads/2021/02/APA-LTA-2021-FINAL.pdf>

¹⁰ <https://www.stabroeknews.com/2022/04/28/news/guyana/iachr-recommends-full-reparations-by-state-to-isseneru-villagers-for-human-rights-violations/>



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land. The Government must revoke the concessions or suspend the mining activity in Chinese Landing and assist the village in enforcing its right to control its own titled lands against miners.

4. Engage indigenous peoples nationally in a consultation process to determine the most appropriate method of benefit-sharing from the sale of carbon credits. The Government unilaterally decided that benefit-sharing should occur through access to a development fund, funded with 15% of the proceeds of the sale of carbon credits. Neither the 15% figure nor the method of controlling access to the funds in this way are derived from indigenous peoples ourselves. There are other mechanisms that are possible. For example, the percentage of proceeds to be shared with indigenous peoples could be derived from the percentage of forests we actually protect and which are within our customary (including as-yet untitled) lands. Some villages may desire that their representative district councils also be allowed to access funds. We might also envision percentages of proceeds flowing directly to communities, perhaps via district councils where they exist. These alternatives have never been presented to our peoples and never discussed, but they should be.

We look forward to constructive engagement with you on this moving forward.

Regards,

Laura George
Governance and Rights Coordinator
Amerindian Peoples Association



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APA Analysis of Guyana's TREES Monitoring Report (October 2021)

The Government of Guyana ("GoG") submitted a Monitoring Report to TREES in October 2021. While some claims made in that report are true, others are inaccurate and misleading; in particular, there are serious deficiencies in both law and practice regarding the protection of indigenous peoples' rights. These deficiencies have been recognized by international human rights bodies who have made numerous and specific recommendations to Guyana to improve its human rights performance.

The UN Special Rapporteur on the Rights of Indigenous Peoples recently issued a new report in which he expressed concern about the lack of respect for indigenous peoples' rights in REDD+ initiatives.¹¹ He recommended that States ensure that indigenous peoples are well-represented and have the capacity to engage in decision-making processes, including the planning, implementing, and monitoring of REDD+ projects.¹² He further recommended that indigenous peoples receive culturally appropriate benefits, including funding, from climate finance projects and that any funding received is managed by them.¹³ The UN Committee on the Elimination of Racial Discrimination Against Women in its new General Recommendation No. 39 similarly recommended that States ensure that indigenous women are effectively participating in decision-making related to the environment and climate change, and that their free, prior, and informed consent is sought and obtained before any climate projects, including carbon trading, are developed or implemented on their lands and territories.¹⁴

We do not believe the GoG can demonstrate its compliance with these recommendations nor the TREES standard, and we therefore wish to share the following specific analyses of the GoG's TREES monitoring report.

Section 2. Program partners: It is concerning that no indigenous peoples' organizations were included as program partners nor were invited to participate in the development of proposal to the LEAF initiative in August of 2021 nor the submission to ART-TREES in October of 2021. The ART-TREES website notes that "Ensuring the recognition, respect, protection and fulfilment of the rights of Indigenous Peoples and local communities is one of ART's immutable principles", and the TREES standard requires that the design and implementation of REDD+ actions were undertaken with the FPIC of the indigenous peoples concerned (theme 4.2). The lack of inclusion of indigenous peoples' organizations in the design of the government's proposal to ART-TREES

¹¹ UN Doc. A/77/238, Sec. VI.3.

¹² Ibid, paras. 71(b), (h).

¹³ Ibid, paras. 71(g), (i).

¹⁴ CEDAW, General recommendation No.39 (2022) on the rights of Indigenous Women and Girls, CEDAW/C/GC/39, 26 October 2022, para. 61.



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signals a failure to understand that the right to FPIC requires that indigenous peoples are included in decision-making from the very outset of any projects or programs that may affect them.

Section 4. Accounting area: The accounting area claimed by the GoG, 18,001,790 ha, includes approximately 3,417,022 hectares of titled indigenous lands and at least 3,688,158 of untitled indigenous customary lands. Such lands have been included in this proposal without the knowledge, participation nor consent of the indigenous governance institutions (Village and District Councils). These lands hold approximately 2,343.4 metric tons of carbon, the rights to which are also not clear under Guyanese law.

Section 5. Eligibility criteria: The GoG asserts that Guyana has a system in place for providing information on safeguards. While the GoG has submitted a first Summary of Information to the UNFCCC (containing much the same text as the TREES monitoring report), there is in fact no safeguard information system in place which has been consulted with nor agreed to with Guyana's Indigenous Peoples. The APA has prepared proposals for land and forest governance indicators for inclusion in the SIS, but to date there have been no inclusive discussions of the issue.

Section 6. Ownership rights to emissions reductions and/or removals to be issued by ART: As noted above, Guyana's legal framework does not address the issue of ownership of carbon stored in trees (nor in other forms) nor other ecosystem services. In addition, and as noted above, the accounting area claimed by Guyana includes approximately 3.4 million ha of titled indigenous lands, in which the ownership rights of the forest areas within those titles belongs to the relevant indigenous village council. To date, the government has not negotiated with nor attempted to reach any agreements regarding either the emissions reductions and/or removals within indigenous peoples' untitled customary lands nor even within titled lands.

Section 7. Safeguards

Cancun Safeguard A

Theme A.1: Consistency with the objectives of national forest programs.

We do not dispute that that the LCDS is broadly aligned with the National Forest Policy Statement and National Forest Plan, but it is important to point out that after nearly a decade of work on REDD+ readiness carried out in Guyana under the FCPF, the National REDD+ strategy was never finally approved, nor were any of the safeguard policy documents that were to form key parts of the implementation arrangements, including the environmental and social management framework, the safeguard information system, and the benefit sharing plan. It is telling, in fact, that the GoG has omitted all mention of those work streams and work products, which entailed years of on and off consultations with indigenous peoples.



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The idea that the REDD+ readiness process has enabled better inter-sectoral coordination and more efficient policy formulation is also belied by the facts. The REDD+ readiness process was managed in isolation from the FLEGT and EITI processes, despite obvious overlaps and potential synergy. No new legislation or policy frameworks emerged at the end of the REDD+ readiness process, and the fact the current administration simply rejected all of the analytical and consultative work carried out under the previous administration and re-drafted the LCDS 2030 with no input from indigenous peoples or civil society is a good indicator of the fact the multi-stakeholder processes in Guyana are top-down managed efforts with little or no effective participation from indigenous peoples. Indeed, while the GOG suggests that in the opt-in process for indigenous peoples, “free, prior, and informed consent according to Guyana’s legislation applies”, there is no law in Guyana that effectively enshrines the right to FPIC. The Amerindian Act provides for limited respect for the right to FPIC in certain situations, limited to titled indigenous lands and to specified activities, including small- and medium-scale mining, logging, and the establishment of a protected area. However, one of the recommendations from indigenous peoples during the REDD+ readiness process was in fact to strengthen the protections in the Amerindian Act to ensure that the indigenous peoples’ right to FPIC is recognized not only in their titled lands, but also in untitled customary lands (see more on this below).

Lastly, simply asserting that the Guyanese constitution recognizes the rights of indigenous peoples does not mean that such rights have been or will be protected and respected in practice on the ground, whether via the LCDS or any other policy, program or measure. Indeed, indigenous peoples were not included in decision-making around the proposal to ART-TREES. That several UN treaty bodies have documented and cited the GoG for ongoing human rights violations, just in the past year, is evidence enough that this statement is not based on objective facts.

Theme A.2: Consistency with the objectives of relevant international conventions and agreements.

It is true that Guyana is a signatory to thirty-three international treaties and agreements, and that Guyana’s Constitution incorporates six human rights treaties.¹⁵ The actual implementation of this provision in the Constitution is lacking, however, and Guyana’s legal and policy framework has not actually recognized and promoted the application of ratified international conventions. One key example is the Amerindian Act of 2006, which, while an improvement over the 1976 version of the law, has been called out by international human rights treaty bodies for its shortcomings. The Committee on the Elimination of Racial Discrimination (“CERD”) has on more than one occasion recommended that Guyana revise the Act to ensure that it complies with

¹⁵ Note that Guyana’s Constitution, Sec. 154A(1) and the Fourth Schedule specify six human rights treaties that are incorporated into the constitution and which shall be “respected and upheld by the executive body, legislature, judiciary and all organs and agencies of the Government”. This explicit incorporation into the Constitution does not apply to all ratified international treaties.



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obligations under the Convention on the Elimination of Racial Discrimination.¹⁶ The Committee on Economic, Cultural, and Social Rights (“CESCR”), and the Committee on the Elimination of Discrimination Against Women (“CEDAW”), as well as the Inter-American Commission of Human Rights (“IACHR”) have also all recommended revision of the Act to bring it in line with Guyana’s international human rights obligations.¹⁷

The Amerindian Act of 2006 does not recognize the inherent rights of indigenous peoples in Guyana to their customary lands; as the CESCR noted with concern, it instead establishes a system whereby the government “grants” those rights at its discretion.¹⁸ While progress has been made on titling indigenous villages, it is concerning, as noted by the CERD,¹⁹ that less than half of indigenous peoples’ still-claimed customary lands are currently legally recognized, and those titles are restricted to limited areas immediately around the currently-existing villages, and not on the wider territories where indigenous peoples have hunted, fished, farmed, gathered, and within which their villages and settlements have traditionally moved, nor the broader landscapes which hold profound spiritual and cultural connections for indigenous peoples.

The CERD also expressed concern about the Act’s discriminatory distinction between titled villages and villages that had not been granted any title to their lands, and the lack of recognition of the authority of untitled villages to control and manage their lands and resources.²⁰ In particular, villages have no recognized right under the Amerindian Act (and affirmed by judicial decisions) to FPIC over mining, logging, or other activities affecting their lands and resources in untitled lands.²¹ The CESCR expressed its concern that Amerindian Act of 2006 likewise does not allow indigenous peoples to own title to land according to their customary tenure systems, but rather restricts land ownership to village councils alone (for example, it does not allow for villages to collectively own title to a wider territory).²² It also allows the Minister of Amerindian Affairs wide discretion to intervene in village decision making, and indeed requires ministerial approval for a number of village administrative decisions, and allows the minister to approve the commencement of large-scale mining on titled indigenous lands without free, prior, and informed consent.²³

In terms of the process indicator, it is untrue that public institutions in Guyana working on REDD+ have successfully directed efforts to implement strategies that promote international

¹⁶ See, e.g., CERD/C/GUY/CO/14, 4 April 2006.

¹⁷ See CEDAW/C/GUY/CO/9, 30 July 2019.

¹⁸ See CESCR CO, para. 14(b).

¹⁹ See CERD CO para. 16.

²⁰ CERD CO para. 15. See also CESCR CO para. 14(d).

²¹ See CESCR CO para. 14(e), 16.

²² CESCR CO, para. 14(a).

²³ See CERD CO, para. 15; CESCR CO para. 14(c).



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conventions and agreements. To the contrary, the REDD+ process was managed in isolation and did not attempt any real cross sectoral approach.

Ironically, while mining is indeed the primary driver of deforestation in Guyana, the LCDS proposes the continued expansion of mining,²⁴ and the Guyana Geology and Mining Commission continues to issue new permits and licenses, particularly impacting peoples in Regions 7 & 8. With the recently completed geophysical survey of the country, there are fears that there may soon be an acceleration in the number and types of new mining permits being issued. In addition, Guyana has blatantly ignored the recommendations of the CERD in regards to respect for the Wapichan peoples' rights in respect of mining at Marudi Mountain. Despite numerous recommendations by the Committee for the government to respect the Wapichan peoples' right to FPIC, the government negotiated and brokered a new mining agreement between Romanex Guyana, Aurous, the Rupununi Small Miners Association (of which there are no indigenous members), and the Guyana Geology and Mines Commission without informing or seeking the participation and consent of the Wapichan people. The South Rupununi District Council (the legally recognized governance institution of the mostly Wapichan villages of the region) did not even learn of the existence of the agreement until it was made public in November 2021 and did not receive a copy of the agreement despite numerous requests and demands until July 2022.

Cancun Safeguard B

Theme B.1: Respect, protect, and fulfill the right of access to information.

Guyana does have a legal framework for access to information, but whether or not the legal framework is adequate, there is limited access to information in practice. For Guyana's indigenous and hinterland communities access to updated, complete and timely information on policies, programs and development projects which may impact them remains a critical gap. Most communities have intermittent and limited or no access to the internet, and there is little comprehensive information on GoG websites in any case. Most of our indigenous peoples have never seen the GoG's proposal to ART-TREES (and would not know where to find it), or even a copy of the Low Carbon Development Strategy 2030. Requests for information to line ministries are routinely ignored, and the government's outreach around policies and programs tends to be limited to short information sharing sessions with no room for questions or discussion, and tends to focus only on the benefits of proposed programs rather than any of the possible risks. The recent round of information sharing on the LCDS exemplifies this. In fact, the GoG's report on the consultations done noted the consultations with indigenous villages would be "particularly around revenue sharing and the Village Sustainability Plans".²⁵

²⁴ The LCDS proposes the continued expansion of "green" or sustainable mining and the gradual reduction of the use of mercury in mining; all of which are currently already reflect in the GGMC mining codes of practice.

²⁵ Office of the President, "Guyana's Low Carbon Development Strategy 2030: Summary of Feedback from Consultations Process and Consideration of Comments", July 2022, available at <https://lcds.gov.gy/summary-of-feedback/>, (hereinafter "GoG LCDS Summary of Feedback") p. 73.



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Moreover, as noted above, the LCDS document provides little clarity on what REDD+ actions are planned to generate carbon credits and what “opting in” to receiving benefits from the sale of carbon credits entails for communities.

Even requests for information specifically relevant to a given community’s rights are often ignored. As noted above, the South Rupununi District Council had to wait over eight months and submit numerous demands and requests before finally receiving a copy of an agreement about mining at one of their sacred mountains, Marudi Mountain.

Theme B.2: Promote transparency and prevention of corruption, including the promotion of anti-corruption measures.

According to Transparency International, Guyana has made some improvements over the past years in its public perceptions of public sector corruption, ranking 87th out of 180 countries, but still scores a low 39/100, indicating a widespread perception of rampant corruption.²⁶ That score has also declined over the past two years of the new government. The US Department of State notes that “There remained a widespread public perception of corruption involving officials at all levels and all branches of government, including the police and judiciary.”²⁷ The text from the GoG in its submission to ART/TREES again only notes the various mandates of Guyanese law, and is silent on steps to actually implement those provisions or demonstrated progress achieved.

With reference to the outcome indicator, the LCDS calls for 15% of carbon revenues to go to indigenous peoples without specifying how this figure was determined. This roughly corresponds to either our percentage of the national population, or the amount of lands titled to indigenous peoples.²⁸ Interesting to note, Guyana’s indigenous peoples have customarily owned and protected much more than the lands and resources currently titled, and covers at least 30% of the national forest estate. Equitable benefit-sharing requires consultation with indigenous peoples and agreement on the terms and mechanisms for sharing benefits. Further, the proposed distribution mechanisms for such benefits remain unclear and subject to no agreements with indigenous peoples. It appears that the government intends to continue to distribute resources via a top-down application process for implementation of Village Sustainability plans, which makes those benefits subject to both government interference and significant risks for a politicized and clientalist approach—continuing the practice of vote buying in rural areas. The GoG’s answer to the outcome indicator is again silent on any actual progress in the matter,

²⁶ <https://www.transparency.org/en/cpi/2021/index/guy>

²⁷ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/guyana/>

²⁸ The GoG has in meetings stated that “the total titled Amerindian forest area is approx. 12% and when the broader landscape is extrapolated in the short to medium-term future to 15%.” Office of the President, “Guyana’s Low Carbon Development Strategy 2030: Summary of Feedback from Consultations Process and Consideration of Comments”, July 2022, available at <https://lcds.gov.gy/summary-of-feedback/>, p. 76.



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merely referring to the “broad statements regarding regulating such rights” in the LCDS. The question of how much benefits will be received by indigenous communities from any carbon transactions, and how those benefits will be channeled, remains one to be discussed, negotiated and agreed upon in a mutually respectful manner.

Theme B.3: Respect, protect, and fulfill land tenure rights.

The lack of substantive detail in the government’s response to these indicators is telling. Regarding the structural indicator, while there is a legal framework for some recognition of land rights and customary use rights in Guyana, this legal framework is inadequate and is not anchored in ratified international conventions which have been incorporated into the Guyanese Constitution (as the GoG itself mentioned in its response to Theme A.2.). As noted above, numerous international human rights bodies, including the UN CERD, CESCR, CEDAW, and IACHR, have recommended that Guyana revise the Amerindian Act to strengthen the legal framework for the recognition and securing of customary land and tenure rights. Some specific recommendations pertain to revising the legal framework to ensure there are objective criteria (in line with international law) for titling of indigenous lands; that indigenous peoples’ customary tenure systems are recognized; and that rights to control and manage their lands and resources are not denied to communities who are still awaiting titling of their customary lands.

We note that the APA considers that there are gaps in the TREES Standard, in that it allows governments to skirt requirements to abide by international human rights obligations by providing that the recognition of indigenous land and resource rights need only be anchored in the domestic legal framework. This counters the spirit of the TREES standard, which as we have noted before, purports to promote respect for indigenous peoples’ rights. Nonetheless, in Guyana’s case, The UN CERD and CESCR conventions are two of the human rights conventions incorporated into the Guyanese Constitution and as such should be considered to form part of the national legal framework. Moreover, Guyana’s own highest court, the Caribbean Court of Justice, has noted that the “the right to protection of the law encompasses the international obligations of the State to recognize and protect the rights of indigenous people”.²⁹ We thus consider that this structural indicator cannot be considered to have been met while the recommendations of human rights bodies regarding the revision of the Amerindian Act in line with international human rights standards have not been implemented.

Regarding the process indicator, this administration, along with previous ones, has been extremely slow in advancing the legal recognition of indigenous customary lands that is provided for under the existing legal framework. The current Minister of Amerindian Affairs herself noted in 2020 that almost no progress had been made in the previous five years under the 2013

²⁹ *Maya Leaders Alliance et al. v. AG of Belize*, [2015] CCJ 15 (AJ), para. 52.



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Amerindian Land Titling project³⁰; in 2021, she announced two new titles were to be awarded and three villages would receive extension requests, noting that one of them had applied for their extension in 2004.³¹ This is in respect of a total of more than 60 communities waiting decades for their title or extension requests. The 2016 midterm evaluation of the project reflects this poor performance, stating “The accomplishment of the outputs and the component targets of the project are delayed.”³² The lack of resolution of the longstanding court case initiated by the Upper Mazaruni communities in 1998 seeking legal recognition of their territory and an end to illegal mining—*after 24 years*—is another good indicator that the GoG has not been able to effectively implement policies or projects to recognize, title and demarcate indigenous customary lands in Guyana.³³³⁴

The GoG’s monitoring report itself reveals the lack of understanding of indigenous peoples’ rights. The GoG suggests that indigenous communities can “acquire” lands or that the President can grant titles – however, indigenous peoples’ rights to their lands and resources are inherent rights, and it is obligatory upon the government to provide for legal recognition and respect for those rights, including through titling. It is unclear why the GoG mentions the Constitutional protection against expropriation here. While it is true that the Government cannot expropriate property without compensation, it should be noted that it has been recognized that indigenous peoples have a right to restitution of lands taken from them without their free, prior, and informed consent, and it is therefore the obligation of the government to appropriately compensate any third parties to whom it issued interests over indigenous peoples’ lands without FPIC.

In addition, there are deficiencies in the GoG’s implementation of its own policies and procedures to secure indigenous tenure rights to villages that it has already titled. For example, one village, Kako, received title in 1991 (and its title document states that the title is retrospectively dated to 1976), but government maps do not depict the village’s title, and the Guyana Geology and Mines Commission continues to issue mining concessions over the village’s titled lands as if the village did not have title.

Regarding the outcome indicator, the government did not even try to make a cogent description of how this indicator was met, instead providing information on stakeholder outreach, consultation and participation under REDD+, FLEGT and EITI. While many villages have some limited control over the (small) portions of their traditional lands and resources that are titled to

³⁰ <https://dpi.gov.gy/nothing-substantive-came-of-alt-project-in-five-years-minister-sukhai/>

³¹ <https://guyanachronicle.com/2021/11/25/land-titles-extension-for-eight-amerindian-communities/>

³² UNDP, Mid-Term Evaluation of the Amerindian Land Titling Project in Guyana, p.35

³³ <https://www.kaieteurnews.com/2022/09/08/slow-justice-for-upper-mazaruni-residents/>

³⁴ <https://www.stabroeknews.com/2022/05/29/news/guyana/upper-mazaruni-villages-in-five-year-wait-for-ruling-on-land-rights/>



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them, most indigenous peoples in Guyana do not have full access to, use of, or control over their traditional lands and resources. In fact, some villages do not even have control over their *titled* lands and resources. One notable example is Chinese Landing, which received title to a portion of their traditional lands in 1976. Despite the village having title, the government gave out mining concessions in the middle of the village's title to an outside miner. This miner does not have permission from the village to mine inside their title. Yet the government has not assisted the village in enforcing their rights to control their (titled) lands and resources. Miners working in the area have threatened, harassed, and even assaulted village members to the point that village members are afraid to visit the mining area, even to pass through, and must ask for permission from the miners if they want to approach without being harassed or threatened. This has severely restricted the village's access to their own lands and resources, including fishing and hunting grounds, as well as the village's ability to secure their livelihoods. Despite public attention to the issue and promises to address the situation, the GoG has not even investigated any of the incidents of threats, harassment, and violence against village members, let alone taken any action to remedy the land rights violation. In fact, the Minister of Amerindian Affairs has publicly abandoned any attempts to help address the rights violations against the village, stating that "We have done all we can to assist Chinese Landing". In the meantime, mining has been expanding significantly, with double the amount of large equipment entering the village this year, causing residents to fear mercury poisoning and irreparable damage to the waters and other resources they rely upon.³⁵

The APA has extensively documented the situation with respect to indigenous lands in Guyana in a series of participatory land tenure assessments, available at: <https://apaguyana.com/media-publications/>

Theme B.4: Respect, protect and fulfill access to justice.

Guyana's highest court, the Caribbean Court of Justice, has noted that the right to access to justice is more expansive than mere access to judicial or quasi-judicial processes.³⁶ The Court noted that the "right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and rule of law. ... The right to protection of the law may ... require the relevant organs of the State to take positive action in

³⁵ For more information regarding the situation in Chinese Landing, see: <https://www.stabroeknews.com/2022/05/13/opinion/editorial/chinese-landing/>;

<https://guyanatimesgy.com/chinese-landing-land-dispute-uncerd-calls-for-rights-of-indigenous-people-to-be-protected/>; <https://www.stabroeknews.com/2022/07/07/news/guyana/mining-situation-in-chinese-landing-continues-to-deteriorate-toshao/>; <https://www.kaieteurnewsonline.com/2022/07/09/chinese-landing-residents-helpless-against-invasion-of-titled-lands/>; <https://www.stabroeknews.com/2022/08/11/news/guyana/we-have-done-all-we-can-to-assist-chinese-landing-sukhai/>; <https://news.mongabay.com/2022/08/the-water-is-brown-community-in-guyana-rings-the-alarm-over-unsustainable-mining-near-river/>.

³⁶ Maya Leaders Alliance et al. v. AG of Belize, [2015] C CJ 15 (AJ), para. 44.



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order to secure and ensure the enjoyment of basic constitutional rights. ...”³⁷ As relevant here, this right “encompasses the international obligations of the State to recognize and protect the rights of indigenous people. A recognized sub-set of the rule of law is the obligation of the State to honour its international commitments.”³⁸ As described in detail above, Guyana has not fulfilled its international obligations to respect the rights of indigenous peoples, and thereby has not respected, protected, and fulfilled indigenous peoples’ right to access to justice.

A diagnostic 2020 study of access to justice for indigenous peoples in Guyana carried out by the Justice Education Society “confirmed substantial barriers in accessing justice in Guyana, especially for Indigenous women and girls, compounded by limited institutional programs to address the challenges Indigenous people face.”³⁹ The APA and FPP have also documented many failures in the relation to access to justice over the years, including in relation to international climate and forest programs, see for example: <https://www.forestpeoples.org/en/topics/responsible-finance/publication/2014/indigenous-peoples-rights-and-climate-policies-guyana-sp>

The failures of the GoG in this regard are clear when reviewing the Outcome Indicator. There are countless land disputes in Guyana, in which indigenous peoples are struggling to keep unwanted miners, loggers, ranchers, or protected areas, outside of their lands. The lack of resolution to many of these disputes is precisely because of the failure of the GoG to guarantee indigenous peoples’ right to access to justice. Many of these conflicts are documented in the participatory land tenure assessments the APA has produced (<https://apaguyana.com/media-publications/>).⁴⁰ Just a small representative sample of these disputes include: conflict with miners that has escalated into threats, violence, and a climate of fear in Chinese Landing; conflict with unwanted miners in Isseneru, Kako, Parabara, and countless other villages; land conflict with imposed protected areas in Regions 1 (Santa Rosa Village and Shell Beach Protected Area), 8 (Chenapou Village and Kaieteur National Park), and 9 (Shea, Rupunau, Shulinab, and Sand Creek Villages and Kanuku Mountains Protected Area). There are also many unresolved disputes over the accuracy of the demarcation that was done of their titled lands. One example is Arau Village, whose demarcation halved the village title and left the village itself outside of its demarcated boundary.

Cancun Safeguard C

Theme C.1. Identify indigenous peoples and local communities, or equivalent.

³⁷ Ibid, para. 46.

³⁸ Ibid, para. 52.

³⁹ <https://justiceeducation.ca/diagnostic-study-access-to-justice-indigenous-peoples-guyana>

⁴⁰ The specific reports on Regions 1, 2, and 8 can be found here: <https://www.forestpeoples.org/en/lands-forests-territories-cultural-identity/report/2016/groundbreaking-study-carried-out-indigenous>; and <https://www.forestpeoples.org/en/participatory-resource-mapping/report/2018/our-land-our-life-participatory-assessment-land-tenure>.



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The GoG's failure to meet this safeguard is already addressed in comments above. However, it is worth specifically noting here that the Amerindian Act refuses to recognize indigenous communities as governance institutions that can hold title to land unless the settlement has a population of more than 150 and has been in existence for 25 years. International human rights bodies have denounced this requirement as being arbitrary and inconsistent with international human rights law. It discriminates against our peoples' ways of living, in which settlements may move across the traditional territory over the years, and in which settlements may comprise fewer than 150 persons. While for the most part, Guyana does recognize the existence of indigenous peoples, this provision clearly limits the ways in which indigenous peoples are recognized. In addition, as noted above, the GoG does not recognize in its legal framework indigenous peoples' customary tenure systems. It only allows for village councils to hold title, refusing to recognize that many of our peoples traditionally governed lands and resources collectively, across villages.

Theme C.2: Respect and protect traditional knowledge.

See above comments.

Theme C.3: Respect, protect, and fulfill rights of indigenous peoples and/or local communities, or equivalent.

See above comments.

Cancun Safeguard D

Theme D.1: Respect, protect, and fulfill the right of all relevant stakeholders to participate fully and effectively in the design and implementation of REDD+ actions

See above comments.

Theme D.2: Promote adequate participatory procedures for the meaningful participation of indigenous peoples and local communities, or equivalent.

As APA has noted in its previous submissions to the ART Secretariat, the Government of Guyana has serious limitations in its ability to implement adequate participatory procedures for participation of indigenous peoples and community representatives in policy processes. The recent round of consultations around the LCDS was a case in point, with many community members reporting government officials made short informational presentations, such presentations focused on the positive aspects of the LCDS with no mention of possible risks, and that time for discussion was not included. One GoG official noted in response to recommendations by Ms. Laura George that consultations not be rushed: the government must "make sure the opportunities in the world don't pass Guyana by, for example on the Architecture for REDD+ Transactions: The REDD+ Environmental Excellence Standard (ART TREES). The timelines for some of these things get set way in advance outside of anyone in Guyana's control,



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so we should at least make sure people are aware of this as well.”⁴¹ If it is indeed the case that it is ART-TREES rushing the timeline for development of the proposal, we request that the Board review and revise its policies to enable appropriate implementation of indigenous peoples’ rights to participation and FPIC.

The GoG’s own document summarizing their “consultations” on the LCDS showcases some of the inadequacies of the consultation process, and the lack of effective inclusion of indigenous peoples in the development of the proposal and LCDS. It should be noted that the GoG’s summary document does not document the statements made by villagers in some meetings that they did not consider the meeting to be a consultation, but merely an informational sharing session. Nonetheless, what is documented already demonstrates the inadequacies of the consultations process. For example, the document notes that in a discussion at an SRDC meeting in March, one resident noted that “the document is large, they did not have time to read it and recommended that they be simplified and translated into indigenous languages” and that local resource persons be trained to help community members understand it. The GoG official at the meeting responded that “translation will be shared shortly with Communities”.⁴² To date, communities have not received translated copies of the LCDS. Similar recommendations for training of trainers to do better explain and seek feedback on the LCDS were made in Regions 1 and 7; although GoG officials responded that they would put in place a training of trainers,⁴³ since then, those single meetings have been the only “consultation” with those communities.

⁴¹ GoG LCDS Summary of Feedback, p. 75.

⁴² Ibid, p. 135.

⁴³ Ibid, p. 143, 157.