

ART Secretariat Statement on the APA Complaint and Review Process and Findings

On 8 March 2023, a letter was submitted to the ART Secretariat by the Amerindian Peoples Association (APA) alleging various shortcomings in the process surrounding the issuance of TREES credits to the Government of Guyana for the 2016-2020 period. Following ART's established complaint process, the ART Secretariat actioned a review, which was conducted by Charlotte Young, Winrock International's General Counsel and Chief Risk and Compliance Officer. Ms. Young is not involved in the ART Secretariat's operations, was not involved in the processes surrounding the Government of Guyana's interactions with ART, and reports directly to the Winrock Board of Directors Audit Committee.

The review, which included stakeholder interviews and a close examination of the validation and verification process, determined that ART's processes were followed. In fact, it found that ART had made exceptions to its process to extend the public comments period from one month to nine months to allow as many comments as possible to be included in, and evaluated as part of, the validation and verification process.

The full results of the review were published today, 18 May 2023, on the ART website, together with the original letter from APA and responses from the Government of Guyana and the Chairman of the National Tshaos Council, a body comprised of elected leaders from every titled village and untitled Indigenous community in Guyana.

In conducting the review, Winrock's General Counsel interviewed representatives from APA, the Government of Guyana, Aster Global (the Validation and Verification Body, or VVB), and the ART Secretariat. The review focused on the primary issue that appears throughout APA's comments and complaints: that concerns were raised by APA, but those concerns were not heard or considered during the validation and verification process.

The review carefully examined this process, including how stakeholder comments were addressed by the Government of Guyana, particularly those related to consultations and Free, Prior and Informed Consent (FPIC) for REDD+ activities, as well as how the VVB incorporated the comments into their audit plan as they evaluated whether the Government of Guyana met the requirements of TREES. The review also provides detailed responses to relevant comments and complaints, while clarifying that many of APA's concerns relate to disputes with the Government of Guyana that lay outside of ART's mandate. Notably, ART does not act as a judge or arbiter of intra-governmental disputes.

The review concludes that the processes in ART's TREES Standard were properly followed with respect to the issuance of carbon credits to the Government of Guyana for the 2016-2020 time-period and that, with limited exceptions, all concerns raised in the complaints were evaluated by the VVB during the 2016-2020 validation and verification. After reviewing the evidence collected in its entirety, the validation and verification process for the 2016-2020 period concluded that the Government of Guyana was in conformance with all requirements of TREES as detailed in the verification report.

Finally, while the review concludes that ART's processes were followed, it also outlines how APA's comments, as well as comments received from other stakeholders, have helped identify several ways ART can continue to improve its process, which are currently being implemented by the ART Secretariat. These include:

- Revising reporting templates for TREES Participants to ensure information is more easily accessible to all stakeholders in the TREES Documents
- Revising VVB TREES Reporting templates to make the information on the validation and verification process, findings related to the validation and verification, and inclusion of public comments received more accessible to all stakeholders
- Updating the ART website to provide improved access to engagement opportunities such as the public comment periods and the complaint process
- Establishing more detailed guidance on the complaint and appeal process to clarify the principles, scope, steps and timing
- Revising the language for when the ART Secretariat procedurally accepts documents for posting on the ART Registry so that posted documents do not appear “approved”

Key Findings of the Review

The review provides detailed responses to all relevant comments and complaints raised by APA in its 8 March letter. It notes that almost all of the issues had been raised previously with the Government of Guyana, Aster Global, and ART in various communications. It also outlines how these same concerns are being re-evaluated as part of the 2021 validation and verification, currently underway, and how the VVB has already modified the audit plan to ensure there is time specifically scheduled for APA and Guyana’s other Indigenous advocacy groups to meet with the VVB one-on-one to share their concerns and provide additional information where possible for the VVB to investigate.

National Toshaos Council

A key issue that had not been raised prior to completion of the validation and verification process for the 2016-2020 TREES credits is whether the National Toshaos Council has the authority to make decisions on behalf of Indigenous peoples in Guyana. In its earlier comments, APA either stated that the National Toshaos Council had insufficient information on which to decide or didn't mention the National Toshaos Council at all. In fact, the first verification for the 2016-2020 period did not find any concerns regarding the National Toshaos Council agreeing to the benefit sharing outlined in Guyana’s 2030 Low Carbon Development Strategy (LCDS 2030). This newly raised concern will be considered during the 2021 verification process.

The review also highlights Aster Global’s comment, in its VVB report, “that because endorsement of the National Toshaos Council for the LCDS 2030 was a key consideration used in substantiating the Participant’s rights to manage and administer ERs to be issued by ART that are derived from titled and untitled Amerindian land, any changes to this endorsement by the National Toshaos Council would require reassessment to determine how the changes could affect the Participant’s rights. Although no concerns are currently identified by the VVB, the status of National Toshaos Council continued endorsement warrants ongoing consideration.”

LCDS 2030 Consultations and Participation in the ART-TREES Process

Effective participation by all stakeholders in ART’s process is essential. Based on comments received by APA and others following the issuance of 2016-2020 TREES credits, the ART Secretariat is implementing a number of process improvements, which are outlined above.

In terms of concerns listed in the 8 March letter about the consultations for the draft LCDS 2030, the review notes these had been raised previously and determines that Aster Global had thoroughly investigated them during the validation and verification process. During that process, Aster Global evaluated the responses and supporting documentation provided by the Government of Guyana, including Guyana's 2020 Draft for Consultation and consultation meeting summary reports; it considered the endorsement by the National Toshihos Council of the LCDS 2030; and it conducted a range of stakeholder interviews. It found that the evidence supported the Government's assertions that safeguards had been appropriately considered during the development of the REDD+ activities and that feedback received during the consultations helped inform Guyana's ART TREES strategy.

In response to claimed shortcomings regarding access to information – such as requesting that the LCDS be translated, as well as asking for better information on ART TREES and trainings which the government agreed to – the review determines that similar concerns were investigated during the validation and verification process. Aster Global concluded that supporting documents and interviews with representatives of government agencies, community forest associations and Amerindian villages substantiated the outreach efforts described in the TREES documents regarding the participation of Indigenous Peoples and/or local communities, particularly through their designated or elected representatives, and that the efforts conformed with TREES' requirements.

The review also notes that the APA representative indicated that APA has trouble tracking and understanding the ART processes. The ART Secretariat is implementing many of the process improvements outlined earlier so that all stakeholders find the processes more accessible. In addition, as noted in the report, the ART Secretariat has previously offered to provide a range of support to APA and other stakeholders, and remains ready and willing to answer questions, provide links to materials, and offer training for stakeholder groups upon request.

Titled and Untitled Land

Regarding the ownership of credits, the review notes that APA's 8 March letter appears to assert that the audit process under ART did not ensure that the rights of both titled and untitled Indigenous peoples to ownership of the credits from their land were respected, and that the government was claiming rights to carbon credits that had not been granted. The review notes that TREES does not require carbon rights to be explicitly defined in legislation.¹ It also highlights that Aster Global had determined, during the validation and verification process, that consultations took place with, and an endorsement was given by the National Toshihos Council -- the highest Indigenous governance body comprised of elected leaders from every titled village and untitled Indigenous community -- regarding the sale of credits from forests on Indigenous Peoples' lands.

The ART Secretariat wishes to clarify that because the agreed upon overall revenue sharing arrangement is not contingent on the amount of titled and untitled Indigenous lands, the exact value of titled and

¹ TREES requires that Governments demonstrate rights to the ERR's generated from the accounting area (regulatory frameworks, laws or administrative orders) noting that it may not be necessary for the Government to establish or enact new legislation or a legal framework to specifically address carbon rights. The Government must explain how, under existing constitutional or legal frameworks, carbon rights and/or related intangible property interests, are established and addressed. This includes a requirement for the Government to establish agreements for the transfer of rights to ERRs or benefit allocation arrangements with landowners / resource rights holders and/or other collective rights holders including Indigenous peoples and other traditional communities.

untitled lands does not impact the revenue sharing discussion. Per the requirements of TREES, and as noted in the VVB report, stakeholders such as the NTC may choose to renegotiate terms of agreements in the future.

Conclusion

The ART Secretariat wishes to thank APA and all stakeholders who participated in the process for the Government of Guyana's 2016-2020 validation and verification. The review of APA's complaint clarified that the public comment timeframe was extended to nine months to ensure as many comments as possible could be incorporated. Comments from APA that were not submitted in time to be considered in the 2016-2020 validation and verification process will be considered in the current 2021 assessment, as will the 8 March comments and related materials received, although many of these concerns were similar to those that were evaluated previously. This will provide another moment for all stakeholders to engage in the audit process and provide comments.

The APA complaints and concerns received, as well as those from other stakeholders, have helped the ART Secretariat identify ways in which the ART processes could be improved, and these changes are currently underway. In addition, the VVB has also specified ways in which the audit process will be modified based on lessons learned during the first validation and verification to ensure that APA representatives, as well as representatives from other Indigenous advocacy groups, are able to meet one on one with the VVB.

Going forward, the review notes that the APA has now subscribed to the ART listserv to receive notification of new and relevant participant documentation as it becomes publicly available to ensure that it has ample opportunity to submit comments to ART regarding these submissions. The ART Secretariat remains willing to answer questions or provide training on the ART process and requirements of TREES for any stakeholder upon request. We look forward to continuing to receive feedback as we gain experience and working collaboratively with stakeholders to identify means of improving our processes and requirements.