

From: laurag@apaguyana.com
To: [Magerkurth, Christina](#); [Nichalos Peters](#)
Cc: [Mailbox, REDD](#); [Grady, Mary](#)
Subject: RE: APA ART Appeal Submission
Date: Friday, October 27, 2023 5:58:05 PM
Attachments: [untitled](#)
[APA Letter to ART re Appeal and Withdrawal.pdf](#)

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Dear Christina

Please find attached the position of the APA with regards to the ultimatum of ART on the TOR of the Appeal.

Laura

Laura George
Governance and Rights Coordinator

Amerindian Peoples Association

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----- Original Message -----
Subject: RE: APA ART Appeal Submission



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27 October 2023

Christina Magerkurth
Managing Director, ART Secretariat

Dear Ms. Magerkurth:

We write in response to your correspondence dated 25 October, 2023 with an attached Dismissal Order that will become effective if we do not sign your TOR by 6pm Eastern Standard Time today. We note that we write today, and have consistently written, to you in your capacity as the Managing Director of the ART Secretariat and the representative of ART, the named respondent in the appeal. We feel that we must specify this, as we are unclear why your response to us is specified as coming from the appeal secretariat. The appeal secretariat is a body established in paragraph 4 of the proposed TOR for the appeal committee; there is no mention of it in TREES Art. 16 or in the Complaints Guidance. We were of the understanding that since the TOR for the appeal committee had not yet been agreed (even though different versions have been proposed by each party) the appeal secretariat has not yet been constituted.

We again reiterate that we are committed to the appeal process and hope that our appeal can be heard through a legitimate, effective, and transparent process that addresses the substantive concerns raised. We again request your proper consideration of the redlines we have proposed on the appeal committee TOR. We take exception to the characterization of APA's conditional acceptance of the TOR as a *unilateral demand* and to ART's suggestion that the conditional acceptance constituted procedural unfairness to ART. Conditional acceptances are common to negotiation of legal instruments, and it was our understanding that we were negotiating with ART as the respondent, since the appeal secretariat could not be constituted without a TOR executed by all parties. (We note that, consistent with this understanding, our correspondence has been addressed to the ART Secretariat, not the appeal secretariat, and all correspondence we have received has been on ART letterhead.) ART, presumably acting as the respondent, drafted the entire original version of the TOR without consulting us as the appellant; the appeal process as designed already includes one committee member who is a member of the respondent's board and one committee member who is a member of the organization which hosts the respondent's secretariat. It thus hardly seems reasonable to suggest that the APA is the party "dictat[ing] the rules of the Appeal to the other Party" when we request some changes to the TOR to help make the process more procedurally fair.



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We also take exception to the ART Secretariat's conclusion that our Appeal Addendum is "contrary to the rules of this Appeal". All versions of the TOR for the appeal committee that have been proposed name the appeal committee as the body that would make a decision regarding the eligibility of the appeal and on the appeal itself. It therefore seems to us that the respondent cannot take a conclusory decision regarding the conformance of our appeal documents with the rules of the appeal. We note that it is you writing as the "appeal committee secretariat" making this statement; even if the appeal committee secretariat had already been established, which we do not believe it has been, the appeal secretariat does not have the power to take a decision on whether any appeal documents meet the requirements for the appeal. It is precisely out of concerns about the interference of the appeal secretariat (the members of whom also represent the respondent) in the appeal process that we have proposed certain amendments to the TOR.

We do not intend to sign a TOR that has not had equal and adequate input from both parties and which will not allow for a fair, legitimate, effective, and transparent appeal process. We acknowledge that you made a couple minor concessions and edited this version from the original version sent; those edits corrected the spelling of Professor Celorio's name and allowed us a few days to file Appeal Addenda to address the new threshold criteria. Noting the fact that you as the ART Secretariat rejected our other requested redlines with minimal explanation, we then sent back another version of the TOR in which we compromised to prioritize only those redlines that we consider are the most essential for a proper consideration of our appeal. We had hoped that ART would be more committed to its own principles as listed in Sec. 1 of its own Complaints Guidance and would work with us towards ensuring that the TOR could provide for a fair, legitimate, predictable, and transparent appeal process.

We are well aware that at this point, the dismissal order that you sent is likely to go into effect as you stated at 6:01pm today. Although from the start we had noted the shortcomings of ART's complaint process, we are nonetheless disappointed as this is not the outcome we had hoped for. We are disappointed that despite our efforts to negotiate with ART to try and agree upon a TOR for the appeal committee that would ensure a fair appeal process, ART has time and again tried to coerce us into signing a version of the TOR that would:

- (1) not even openly acknowledge that the ART Secretariat, members of which the TOR would make the members of the appeal secretariat, also represents the named respondent (ART) in the appeal;
- (2) not allow the appeal committee to consult subject-matter and technical experts, even though the subject of the appeal relates to matters of international human rights law – a subject in which only one appeal committee member is an expert – and Guyanese law – a subject with which no appeal committee members are even familiar;



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- (3) not allow the appeal committee to consider information outside the appeal record which may be relevant to the appeal;
- (4) not allow the appeal committee to consider the substantive issues raised in our appeal and instead limit the appeal committee to consider only the issues raised in the Memorandum of Review of our complaint, even though the investigator of our complaint explicitly told us that only the appeal committee would consider the substance of our complaint;
- (5) not include a provision to help promote the appeal committee's impartiality and independence and to avoid improper interference by the appeal secretariat (who is also representative of the respondent) into the appeal; and
- (6) not allow for the parties to transparently discuss the appeal process after the appeal is over.

If ART is at all committed to upholding its own principles (as well as international best practice) for a fair, legitimate, effective, and transparent complaints process that engages in continuous learning and improvement, we remain open to engaging with ART to discuss and agree on a TOR for the appeal committee that will support such a process.

Respectfully,

A handwritten signature in black ink, appearing to read 'L George', is centered within a grey rectangular box.

Laura George
Amerindian Peoples Association