

From: [Magerkurth, Christina](mailto:Christina.Magerkurth@winrock.org)
To: laurag@apaguyana.com
Cc: [Mailbox, REDD](#); [Grady, Mary](#); [Amerindian People Association](#)
Subject: RE: Appeal of ART decision on APA's Complaint
Date: Monday, September 18, 2023 1:35:00 PM
Attachments: [APA Appeal Terms of Reference Sept 18 2023 final.pdf](#)

Dear Laura,

Thank you for reaching out. We have not yet had an initial meeting with the Committee. We wanted to prepare Terms of Reference so that the process is fully transparent and everyone has the same understanding. I am attaching a copy for you to review and will be sending a version for you to sign via Docusign. Please let me know if you have any questions.

As soon as we have received all signatures, we will provide the initial documents and schedule our first meeting.

Sincerely,
Christy

From: laurag@apaguyana.com <laurag@apaguyana.com>
Sent: Wednesday, September 13, 2023 4:36 PM
To: Magerkurth, Christina <Christina.Magerkurth@winrock.org>
Cc: Mailbox, REDD <REDD@winrock.org>; Grady, Mary <MGrady@WINROCK.ORG>; Amerindian People Association <apaguy@networksgy.com>
Subject: RE: Appeal of ART decision on APA's Complaint

CAUTION: This email originated outside Winrock. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Christina

I am following up. I hope you are well.

I'm writing to check in to see whether the ART Secretariat has officially set up the appeal committee as yet. If so, would you mind letting us know who the other committee members are, and what are the next steps for the appeal process?

We recall that the Secretariat was to provide all information to the appeal committee regarding the matter, will the APA also be copied on these communications so that we can see what information the appeal committee has received and send the committee any further information we consider necessary, for example, a recommendation that the committee consider inviting support from technical or subject matter experts, per section 4 (3) of the ART complaints guidance?

regards

Laura

Laura George
Governance and Rights Coordinator

Amerindian Peoples Association

Our Land, Our Lives, Our Culture

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----- Original Message -----

Subject: RE: Appeal of ART decision on APA's Complaint

From: "Magerkurth, Christina" <Christina.Magerkurth@winrock.org>

Date: 8/30/23 7:40 pm

To: "laurag@apaguyana.com" <laurag@apaguyana.com>

Cc: "Mailbox, REDD" <REDD@winrock.org>, "Grady, Mary" <MGrady@WINROCK.ORG>, "Amerindian People Association" <apaguy@networksgy.com>

Dear Laura,

Thank you again for your letter. The ART Secretariat approves your nominee. We will be in touch with you and with Professor Celorio next week regarding the next steps in the process.

APPEAL

Amerindian Peoples Association

(the “Appellant”)

- and -

Architecture For REDD+ Transactions

(the “Respondent”)

**(Re Complaint by Amerindian Peoples Association regarding the 2016-2020
Validation and Verification of the Government of Guyana’s REDD+ Program)**

TERMS OF REFERENCE

Members of the Independent Committee (each a “Member”)

Roselyn Fosuah Adjei

Rosa Celerio

Thomas Green

ART Secretariat

Mary Grady

Christina Magerkurth

18 September 2023

Laura George

Governance and Rights Coordinator
200 Charlotte Street
Bourda, Georgetown, Guyana
Email: apaguy@networksgy.com

Representing Amerindian Peoples Association

**Architecture For REDD+ Transactions
ART Secretariat**

c/o Mary Grady and Christina Magerkurth
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Arlington, Virginia 22202 USA

Roselyn Fosuah Adjei

yafossy@yahoo.com

Rosa Celerio

rcelorio@law.gwu.edu

Thomas Green

Tcgreen100@gmail.com

I. The Parties and their Representatives

1. By signing these Terms of Reference, the Appellant and the Respondent (collectively the “**Parties**” or separately each a “**Party**”) confirm that the above-mentioned representatives of the Parties are duly authorised to act and express themselves in this Appeal in the name and for the account of the Party that appointed them, in particular for the execution of these Terms of Reference. Each may validly exercise his/her power and authority individually or collectively.
2. Any addition or change to the registered office of a Party or to a Party’s legal representation after the date of these Terms of Reference must be communicated to the Committee and the ART Secretariat (“**Secretariat**”) in writing immediately after such addition or change.

II. Constitution of the Committee

3. The Committee shall serve as the decision-making body for the purposes of the Appeal. It will be constituted as follows:
 1. On August 30, 2023, Rosa Celerio was confirmed as Member upon approval by the Secretariat following proposal by the Appellant pursuant to Article 16.2 of the REDD+ Environmental Excellence Standard (“**TREES**”) and Article 4.3 of the Guidance on ART’s Complaints and Appeals Process (“**Guidance**”).
 2. On July 19, 2023, Thomas Green was confirmed as Member upon acknowledgment by the Secretariat and nomination by Winrock from among Winrock’s Board of Directors or Senior Management team pursuant to Article 16.2 of TREES and Article 4.3 of the Guidance.
 3. On July 17, 2023, Roselyn Fosuah Adjei was confirmed as Member upon acknowledgment by the Secretariat and nomination by ART from among ART’s Board of Directors pursuant to Article 16.2 of TREES and Article 4.3 of the Guidance.
4. The Parties agree to the appointment of Mary Grady and Christina Magerkurth as the administrative secretaries for the Committee, referred to as the Secretariat (“**Secretariat**”) in these Terms of Reference.
5. By signing these Terms of Reference, each Party confirms that the Committee has been properly constituted and in accordance with TREES and the Guidance.
6. Accordingly, the Parties waive any objections in respect of matters known to the Parties at the date of signature.

III. Obligations of Committee

9. Members and Non-Voting Members, as applicable, shall not act as an advocate for any Party to the Appeal and shall conduct themselves at all times in a manner that is:

1. Wholly independent;
 2. Wholly impartial; and
 3. Free of any personal interest or other conflict of interest in respect of any and all aspects of the Appeal.
10. Members and Non-Voting Members, as applicable, shall be subject to the requirements of confidentiality set out below and their Confidentiality Undertaking.
11. In the event that a Member or Non-Voting Member, as applicable, breaches a confidentiality obligation set out in these Terms of Reference, that individual will be subject to removal from his/her position upon a majority vote of all other Members of the Committee.

IV. Obligations of Secretariat

12. The Secretariat shall be required to support these proceedings in such a way that promotes and upholds their efficiency, timeliness, impartiality, and confidentiality.

V. Notifications and Communications

13. The Parties and the Committee must send copies of all written correspondence directly to all other Parties' representatives, each Member, and the Secretariat simultaneously to the addresses indicated set out in this Terms of Reference.
14. Communications shall be sent to the Party representatives at the email addresses as set out in this Terms of Reference on or before any date set by the Committee and by courier only when required. All signatories shall promptly notify the Secretariat of any change in their contact information.
15. Documents must be sent to the Secretariat in electronic form only.
16. Subject to any requirements of mandatory law that may be applicable, and unless the Parties agree otherwise, (1) the Terms of Reference may be signed in counterparts and (2) such counterparts may be scanned and communicated to the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof.

VI. Procedure to Date

15. On March 8, 2023, the Appellant delivered its complaint ("**Original Complaint**") regarding the 2016-2020 validation and verification of the Government of Guyana's REDD+ Program, in accordance with Article 16.2 of TREES and Article 3.1 of the Guidance.
16. On April 3, 2023, the Government of Guyana provided its formal response to the Original Complaint ("**Guyana Response**").

17. On April 24, 2023, the Chair of the National Tashaos Council provided its formal response to the Original Complaint (“**NTC Response**”).
18. On May 11, 2023, Charlotte Young, Winrock International’s General Counsel and Chief Risk and Compliance Officer, acting as the “**Independent Reviewer**”, delivered her conclusions based on a review of the Original Complaint (“**Memorandum of Review**”).
19. On May 18, 2023, the Secretariat published the Memorandum of Review along with a statement (“**Statement of Secretariat**”) on ART’s public website.
20. On June 16, 2023, the Appellant delivered its intention to appeal the Memorandum of Review’s conclusions (the “**Appellant’s Submissions**”).

VII. Overview of the Appeal Process

21. The Appeal shall proceed in two stages:

1. First, the Committee shall have ninety (90) days from the execution of these Terms of Reference in order to consider the Appellant’s Submissions in order to determine whether the Threshold Requirements (defined below) have been met. If the Committee determines that, on the basis of the Appellant’s Submissions, the Threshold Requirements have not been met, then the Appeal shall be dismissed and the decision of the Committee shall be final and binding. The Committee shall issue its written decision on the Threshold Requirements (“**Threshold Decision**”) to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website.
2. Second, if the Committee determines that the Threshold Requirements have been met, the Committee shall issue its Threshold Decision to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Appeal shall then proceed in accordance with the following process and timelines:
 1. The Respondent may, in its sole discretion, file Responding Submissions, in response to the Appellant’s Submissions, on or before the date that is ten (10) days after the date that the Threshold Decision has been posted on the ART website. The Responding Submissions shall be strictly confined to the matters raised in the Appellant’s Submissions and the mandate of ART TREES.
 2. In the event that that Respondent files Responding Submissions, the Appellant may, in its sole discretion, file Reply Submissions, in response to the Respondent’s Reply Submissions, on or before the date that is ten (10) days after the date that the Threshold Decision has been posted on the ART website. The Appellant’s Reply Submissions shall be strictly confined to the matters raised in the Respondent’s Responding Submissions and shall not raise new issues or be repetitive of the Appellant’s Submissions.
 3. The Secretariat shall promptly prepare and disseminate to the Parties and the Members an appeal record (“**Appeal Record**”) which shall consist of:

- (i) Original Complaint;
- (ii) Guyana Response;
- (iii) NTC Response;
Memorandum of Review;
- (iv) Statement of Secretariat;
- (v) The Appellant's Submissions;
- (vi) The Respondent's Responding Submissions, if any; and
- (vii) If the Respondent has filed Responding Submissions, the Appellant's Reply Submissions, if any.

4. The Committee consider the Appeal Record and render its Decision on the Appeal (the "**Decision**") in accordance with these Terms of Reference, based exclusively on the written record before it within the mandate of ART TREES on or before the date that is ninety (90) days after the date that the Threshold Decision has been posted on the ART website. The Decision shall be final and binding, with the effect of any such Decision being implemented on a prospective and not a retroactive basis.

VIII. General Conduct of the Committee

22. The Appeal shall be conducted by the Committee in accordance with the due process mandated by the Article 16.2 of TREES and the Guidance including: applicable notice of timelines and proceedings, the opportunity to provide written submissions in accordance with Section IX, and a written decision of the Committee based exclusively on the record before it and matters within the mandate of ART TREES.
23. Any additional procedural matter may be determined by the Committee by way of procedural orders after consultation with the Parties.
24. Subject to Section 23, any question of admissibility or what is beyond the scope of the ART TREES mandate shall be decided by the Committee.
25. The Committee shall deliberate the matters properly before it in strict confidence and attempt to arrive at all decisions by consensus. Where consensus is not achievable, the decisions of the Committee shall be made by a simple majority of its voting Members.
26. The Appeal is limited to the issues raised and evidence proffered in the Original Complaint, as mandated by Article 16.2 of TREES and Article 4.1 of the Guidance and matters within the mandate of ART TREES. The Committee shall not consider any new issues, and, subject to the Appellant's Submissions addressing the alleged error in the Memorandum of Review as set out in Paragraph IX.2(ii), the Committee shall not accept any new or additional evidence.
27. The Appellant bears the burden to prove that it has met the Threshold Requirements, and if it has received a positive Threshold Decision, that the Appeal should succeed on its merits.
28. Each of the Parties shall bear their own costs of the proceeding.

IX. Threshold Eligibility Determination

29. The Committee shall conduct an eligibility review in accordance with Article 16.2 of TREES and Articles 4.1 and 4.2 of the Guidance. In particular, the Committee shall review the Appellant's Submissions to determine whether the Appeal meets the following threshold requirements (collectively, the "**Threshold Requirements**"):
1. The Appeal is limited to (i) the issues raised and the record in the Original Complaint, and (ii) matters within the mandate of ART TREES;
 2. The Appellant has: (i) clearly identified the specific finding(s) in the Memorandum of Review that is (are) being appealed; and (ii) submitted written evidence demonstrating a reasonable likelihood of a material error in the specific finding(s) identified in (i); and
 3. The Appellant has met the procedural requirements of an ART Appeal, including providing the Appellant's Submissions within 30 days of receiving the Memorandum of Review by notice to ART at REDD@winrock.org with the subject line "Appeal submission to ART";
30. The Appellant's Submissions to support the evaluation of the Threshold Requirements shall include: (i) a statement of the specific finding(s) from the Memorandum of Review that is (are) being appealed, (ii) written submissions setting out clear evidence of the Appellant's asserted error; and (iii) submissions on how the error, if proven, would have had a material impact on the recommendations set out in the Memorandum of Review.
31. The burden of proof and onus is on the Appellant to prove that the Threshold Requirements have been met.
32. The Committee shall have ninety (90) days from the date that the Appeal Panel is constituted through the execution of these Terms of Reference by all relevant entities in order to consider the Appellant's Submissions and render its Threshold Decision on whether the Threshold Requirements have been met.
33. If the Committee determines that, on the basis of the Appellant's Submissions, the Threshold Requirements have not been met, then the Appeal shall be dismissed, and the decision of the Committee shall be final and binding. The Committee shall issue its written Threshold Decision to the Secretariat, which shall provide notice and a copy of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Secretariat shall communicate the Committee's Threshold Decision to the Appellant and the Respondent, with notice that the Appeal is dismissed and shall proceed no further.
34. If the Committee determines that the Threshold Requirements have been met, the Committee shall issue its Threshold Decision to the Secretariat, which shall provide notice of the Threshold Decision to all Parties and post the Threshold Decision on the ART website. The Appeal shall then proceed in accordance with the process and timelines outlined in Section 21(2) and Part XI of these Terms of Reference.
35. The Committee's determination set out in the Threshold Decision shall be final and binding on the Parties.

XI. Determination of Issues on Appeal and Decision

36. The processes and procedures set out in this Part XI apply only in the event that the Committee, in its Threshold Decision, determines that the Threshold Requirements have been met. If the Committee in its Threshold Decision determines that the Threshold Requirements have been met, then the Appeal shall proceed on its merits and within the scope of the ART TREES mandate.
37. The Committee shall then, on the basis of the Appeal Record, determine whether:
 1. There was a clear and proven error in the Memorandum of Review reflecting the decision recommendations of the Independent Reviewer; and
 2. The error, if remedied, would have had a material impact on the decision, recommendations of the Independent Reviewer set out in the Memorandum of Review.
38. In the event that the Committee finds that the questions outlined in Section 37 are both answered in the affirmative, then the Appeal shall succeed, and any remedies shall be limited to the mandate of ART TREES and implemented through the Secretariat on a prospective, and not a retrospective, basis. The Committee shall issue its Decision to the Secretariat, which shall provide notice of the Decision to all Parties and post the Decision on the ART website. The Secretariat shall communicate the Committee's Decision to the Appellant and the Respondent, with notice of any prospective actions that will be taken by the Secretariat in accordance with the Decision.
39. In the event that the Committee finds that either of the questions outlined in Section 37 are answered in the negative, then the Appeal shall be fully and finally dismissed. The Committee shall issue its written Decision to the Secretariat, which shall provide notice and a copy of the Decision to all Parties and post the Decision on the ART website. The Secretariat shall communicate the Committee's Decision to the Appellant and the Respondent, with notice that the Appeal is fully and finally dismissed.
40. The Committee shall limit its considerations on the Appeal to the Appeal Record for the purposes of formulating its final decision and findings on the Appeal addressing the questions set out on Section 37 and issuing its Decision on the Appeal.
41. The burden of proof and onus is on the Appellant to prove that the Appeal should be granted on its merits and that both questions set out in Section 37 are answered in the affirmative.
42. The Committee and the Parties agree to make every effort to conduct the Appeal in an expeditious and cost-effective manner, in accordance with these Terms of Reference.
43. The Committee shall issue a written report setting out its Decision on or before the date that is 90 days after it receives the completed Appeal Record. In the event the Committee does not achieve consensus, the Decision will be based on a majority vote of the Members, with any dissenting views set out as part of the same written document.
44. The Committee shall have the right to extend the review timeline, as required, with notice of any such extensions provided to the Parties.

45. The Decision shall be communicated via email to the Parties and posted on the ART website, where it will be publicly available.
46. The Decision is a final and binding disposition of the Appeal with no further right of appeal to any other body.

XIII. Language of the Appeal

47. The language of the proceedings is English.

XIV. Place and Conduct of Appeal

48. There shall be no defined place of the Appeal as the Committee is encouraged to conduct its processes electronically with the assistance of the Secretariat. The Committee shall meet in person, electronically, or through combined in-person and electronic means in order to deliberate and render its Threshold Decision, and if applicable, Decision. Members and Non-Voting Members may participate in a meeting by means of teleconference or video conference through which all members at the meeting can speak to, and hear, all other participants at the meeting.
49. This Appeal shall be conducted in writing with all Parties proceeding by way of written submissions, and the Committee issuing its Threshold Decision, and, if applicable, the Decision, in writing. This shall not limit the ability of the Committee to confidentially discuss or deliberate the issues before it in accordance with each Member's enduring Confidentiality Undertaking or the Secretariat's ability to administer the Appeal.
50. The Secretariat in its supporting capacity shall be entitled to attend the Committee's meetings.
51. Meetings of the Committee shall be in-camera and wholly confidential.

XV. Protection of Personal Data

52. The Parties and their legal representatives shall put in place and shall ensure that all those acting on their behalf put in place:
 1. appropriate technical and organizational measures to ensure a reasonable level of security appropriate to the Appeal, taking into account the scope and risk of the processing, the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the Appeal, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive business, proprietary or confidential information; and
 2. mechanisms to ensure that they comply with data breach notification procedures.

XVI. Confidentiality

53. The Appeal including all deliberations of the Committee are and shall be strictly confidential, in accordance with Article 16.2 of TREES.
54. Members of the Committee shall not discuss the substance of the Appeal, their deliberations, or any other matter relating to the Appeal other than when the Committee is meeting to deliberate for the purposes of formulating and rendering the Threshold Decision, and, if applicable, the Decision.
55. The Parties, the Committee and the Secretariat shall use Confidential Materials (as defined below) solely for the purpose of this Appeal and for no other purpose. Confidential Materials are all documents produced, filed or exchanged in the present Appeal, including:
1. all correspondence between or among the Parties, the Committee, the Secretariat and/or any third parties in relation to the Appeal;
 2. all documents filed in the Appeal, including the Appeal Record, and all documents produced (whether by a Party or a third party);
 3. all minutes, records (including recordings and notes), and deliberations of the Committee, its meetings and conferences; and
 4. information contained in or derived from any such documents.

(“Confidential Materials”)

56. Documents and information shall not be considered Confidential Materials to the extent that they are:
1. Properly available on ART’s website at <https://www.artredd.org/complaints/> as of September 4, 2023;
 2. The Threshold Decision or the Decision, once rendered and communicated to the Parties; or
 3. Part of the Appeal Record, once the Decision has been rendered and communicated to the Parties.
57. The Parties, the Committee, and the Secretariat shall not disclose or publish any Confidential Materials unless expressly provided for in these Terms of Reference or agreed to in writing by the Parties.
58. All individuals participating in or supporting this proceeding shall be required, prior to being entitled to participate in the proceedings or receive any documents in connection with the proceedings, to give a written undertaking to keep Confidential Materials confidential and to comply with these Terms of Reference, such undertakings to be in the form set out in **Schedule “A”** attached to these Terms of Reference.

59. The Parties, the Committee and the Secretariat shall not disclose Confidential Materials, or the information contained therein, to any third person, excluding any individual (including experts, delegates and representatives) necessary for the ordinary conduct of the Appeal. Any such necessary individual, prior to such disclosure, shall be required to give a written confidentiality undertaking in accordance with Schedule A and these Terms of Reference.

60. For greater certainty, unless disclosure is required by law, judicial or arbitral order, or for the purpose of enforcing a judgment, order, direction, decision or award, or as needed to protect or to pursue a Party's legal right, or to enable the Secretariat, a Member or Non-Voting Member to respond to a challenge, the Parties, the Committee and the Secretariat undertake to preserve the confidential nature of the Appeal, as set out above.

61. Any documents, communications or correspondence submitted in the course of these proceedings may be destroyed unless a Party or a Member requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence.

XVII. Signature of the Terms of Reference

I agree to be bound by these Terms of Reference:

_____ Name
For and on behalf of Appellant

Date:

_____ Name
Member

Date:

_____ Name
Member

Date:

_____ Name
Member

Date:

I agree to be bound by these Terms of Reference, as applicable to the Secretariat:

_____ Name
For and on behalf of Secretariat

Date:

“Schedule A”

CONFIDENTIALITY UNDERTAKING

TO: The Secretariat and [Parties/other Party]

FROM: Amerindian Peoples Association (and its counsel) and Architecture For REDD+ Transactions (and its counsel), the Members [as applicable].

1. IN CONSIDERATION of being provided with materials in connection with the appeal between Amerindian Peoples Association and Architecture For REDD+ Transactions (the “**Parties**”), in respect of which a presumption of confidentiality applies to all materials (“**Confidential Materials**”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.

2. I acknowledge that I am aware of the Terms of Reference that has been agreed to by the Parties, a copy of which has been attached to this Undertaking as **Schedule “A”**, and I agree to be bound by it.

3. I specifically Acknowledge that I am aware of the Terms of Reference’s confidentiality provisions, which impose an obligation to treat all aspects of these proceedings as confidential, subject to certain limited and specified exceptions, and I agree to be bound by these requirements.

4. I will promptly return or otherwise destroy any Confidential Materials received by me to the Party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings.

5. I acknowledge and agree that either of the Parties to this appeal is entitled to relief to restrain breaches of the Terms of Reference, including breaches of its provisions relating to confidentiality, to enforce its terms and provisions in addition to any other remedy to which any Party to this appeal may be entitled at law or in equity.

6. I agree to submit to the jurisdiction of the courts of Arkansas in relation to any dispute arising in relation to this matter.

SIGNED, SEALED AND DELIVERED before a witness this ___ day of _____, 2023.

(Print Name) (Print Witness Name)

(Signature) (Witness Signature)