

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the rights of indigenous peoples

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(Please use this reference in your reply)

7 February 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 43/14 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the imminent forced evictions during the Covid-19 pandemic of 21 families (63 persons) who self-identify as belonging to the Nooksack indigenous Tribe, living in homes funded by the Federal Department of Housing and Urban Development. These homes are situated on Federal lands owned by the Federal Government in the northern part of the State of Washington in the United States. Many of the concerned individuals are older persons, women and children - some of them with disabilities and chronic diseases -, the families having lived in their respective homes for over a decade. The imminent eviction will significantly impact the health of some vulnerable individuals and older persons who are being cared for by their family members who live with or near them. It will also threaten the right of those families to enjoy their own culture and to use their own language in community with others.**

According to the information received:

The Nooksack Tribe gained federal recognition in 1973, at which time it assumed civil regulatory power over the real property on which the homes sit today. They are an indigenous people living in the northwest corner of Washington State, which a decade ago counted around 2,000 members.

On 12 February 2013, the Nooksack Tribal Council approved resolution 13-02 initiating the involuntary disenrollment of descendants of a common ancestor called Annie James. The decision was based on article 2, section 4, of the Nooksack Tribal Constitution, which specifies that the loss of membership is exclusively limited to failure to meet the requirements set forth for membership. However, Annie James' ancestors meet the membership criteria in article 2, section 1 (c) of the Tribe's constitution, enabling any descendent of an enrolled member of the Tribe, provided they possesses at least one-fourth degree Indian blood. On 14 February 2013, 306 members of the Nooksack Tribe, descendants of the common ancestor Annie James, received a letter informing them that they had been disenrolled from the tribe.

Some of the affected families challenged their dismissal before the Nooksack Tribal Court. On 31 March 2014, the Tribal Council was enjoined from ejecting 306 persons of its members from the Tribe, through orders in Case No. 2013-CI-CL-OO3 issued by the Nooksack Tribal Court.

On 24 February 2016, the legal representatives of all the families were disbarred from practicing the law at Nooksack, without any prior notice or opportunity to challenge the decision. The decision was based on the Nooksack Tribal Council's ordinance for a business license title 54 that requires lawyers to become certified to practice law in their land.

On 28 April 2016, the legal representatives of the families applied for a business license. On 16 May 2016, the Nooksack Tribe Council denied the requests of those legal representatives to be licensed. Today, there are only 11 licenced legal representatives, and they are all lawyers for or employees of the Nooksack Council. The families could not secure a certified legal representative in great part because the Tribe Council would not license or admit any lawyer who is or might be adverse to its officials, to practice law at Nooksack. As a consequence, one of the families sought the representation of an external lawyer, and the judicial request was rejected.

On 22 September 2016, because the families were still under the threat of disenrolment despite the 2014 decision of the Nooksack Tribal Court in their favour, they sought justice through the Nookscak Tribal Court of Appeals. Consequently, the Tribal Council was enjoined from ejecting 306 persons from among its members, through orders Case No. 2014-CI-CL-007 issued by the Nooksack Court of Appeals. At that time, the legal representative of the families, who was disbarred by the Nooksack Tribal Council, could still practice law at the Court of Appeals.

In November 2016, the Tribal Council cohort commenced the first Tribal Court proceeding aimed at ejecting the 21 families from their homes. Some of the families received a judicial eviction order in 2016. The 21 families were allowed a "meeting with the Tribal Council" via teleconference for "a maximum of ten (10) minutes," and were advised that: "No questions will be entertained." They were denied the right to have a lawyer represent them in those meetings.

On 23 December 2016, the State's Interior Department invalidated those eviction efforts as well as any "so-called tribal court actions and orders" rendered since 24 March 2016.

In early 2017, the Tribal Council nevertheless commenced efforts to evict some of the 21 families from their homes. Some of the families received letters by mail stating the termination of their home-buying agreements due to being ejected from the Tribe in November 2016.

On 3 April 2017, the Federal Department of Justice stated that the Nooksack Tribal Council, in November 2016, while lacking the legal authority to disenroll the 21 families, had endeavoured to unilaterally declare members of this minority group 'disenrolled' using a sham hearing process while also systematically depriving them of the means to challenge their disenrollment again in the tribal judicial system.

On 4 April 2017, the Federal Department of Housing and Urban Development (HUD) demanded the Tribe to rescind the Notices of Termination (eviction) delivered to the families, "the sole basis for [which was] the purported disenrollment of these individuals" in November of 2016. In response, the Tribal Council delayed its efforts to evict the families.

On 15 March 2018, the Nooksack Tribal Council again sought to disenroll everyone who comprises the 21 families. The Tribal Council undertook a "phone poll" to "ratify" the November 2016 disenrollment despite the Tribal Court and Court of Appeals orders that stayed the disenrollment. However, the injunction orders from these courts were not enforced, leaving the situation of the families unresolved.

On 4 October 2021, Cathalina Barill and Michelle Roberts were each served at their homes by a Nooksack police officer with a notice of termination of their respective rental and home-buying agreements, due to alleged "Failure to maintain membership within the [Nooksack Indian] Tribe." On 31 October 2021, Cathalina Barill was served at her home by a Nooksack police officer with a notice of a "Resolution Conference/Informal Meeting" to be held on 4 November 2021. Ms. Barill was denied the right to have a lawyer represent her at that meeting.

On 1 November 2021, the 21 families filed an administrative appearance with the Nooksack Indian Housing Authority (NIHA), stating that it was not necessary to have an armed police officer serve the families at their homes. The next day, the NIHA responded by denying the appearance notice of the families' request and proceeded to deploy Nooksack police officers to the victims' homes.

On 5 November 2021, Olive Oshiro, Michael Rabang, Francisco Rabang, and Norma Aldredge were each served at their homes by a Nooksack police officer with a "Notice of Need to Re-Establish Eligibility" based on each of their "status as a Nooksack Tribal Member." Those notices were accompanied by an "Important Legal Notice-Notice of Involuntary Disenrollment" issued by the Tribal Council in March 2018.

On 6 November 2021, Michelle Roberts was served at her home by a Nooksack police officer with a "Notice of Need to Re-Establish Eligibility" based on her "status as a Nooksack Tribal Member." The notice was accompanied by an "Important Legal Notice-Notice of Involuntary Disenrollment" issued by the Tribal Council in March 2018.

On 9 November 2021, a notice entitled "Decision Following Resolution Conference/Informal Meeting" was affixed to the front door of Cathalina Barill's home, which provides that Ms. Barill's household "no longer" constituted a "Native family" due to her purported disenrollment by the Nooksack Tribal Council in November 2016, as ratified by the Tribal Council in March 2018.

By 23 November 2021, Francisco Rabang received a notice of a "Resolution Conference/Informal Meeting" scheduled for 2 December 2021. Mr. Rabang was denied any right to have a lawyer represent him at that meeting.

On 1 December 2021, Cathalina Barill was served at her home by a Nooksack police officer with a "Notice of Grievance Hearing."

By 7 December 2021, Olive Oshiro, Michael Rabang, Francisco Rabang, Norma Aldredge, Michelle Roberts, and Alex Mills were each served at their homes by a Nooksack police officer with a "Decision Following Resolution Conference/Informal Meeting" that provides that each of their households "no longer" constituted a "Native family" due to each of their purported disenrollment by the Nooksack Tribal Council in November 2016, as ratified by the Tribal Council in March 2018.

On 14 December 2021, Saturnino Javier Sr. was served at his home by a Nooksack police officer with a "14-Day Notice of Unlawful Occupancy/Notice to Vacate," which ordered him to vacate his home by 28 December 2021.

Evictions were due to begin on 28 December 2021. Severe snow and ice storms affected the region in late December 2021 and inhibited the tribal police officers charged with executing the evictions from reaching the homes scheduled for eviction. The evictions have been rescheduled to start on 1 February 2022.

The 21 families (63 persons, many of them older persons, women and children) threatened with evictions have been living in their homes for years, some of them for as many as 23 years. Their homes were constructed by the Tribe Council on Federal lands owned by the United States Government with funds from the HUD. The HUD provides the Tribe annual funding for public housing at Nooksack in part pursuant to the Native American Housing and Self-Determination Act (NAHASDA). The families are in varying stages of acquiring ownership of their homes, full home ownership being due in the current year for some of them. For example, one family of two older persons was undergoing a home buying process, with home ownership expected in October 2022. Another family of three including a person with disability was undergoing process of buying their home, with home ownership expected to be completed by December 2022.

The 21 families have built structures around their homes such as outdoor living areas and storage sheds and assembled personal belongings that cannot be

moved. They have raised children and grandchildren and created inter-generational family ties in those homes. They have also engaged in group cultural activities in the housing area for decades. Eviction would likely threaten the health of older persons like Olive Oshiro, who suffers from multiple health ailments; Mike Rabang, who suffers from dementia; Francisco Rabang, who has difficulty walking; and Norma Aldredge, who recovered from cancer and also has difficulty walking. It would also prevent Olive, Mike, and Francisco's adult children, who live with or near them, from caring for them. The forced evictions would be taking place during the COVID-19 pandemic, thus elevating the risks to health and life of the persons affected for whom there is no plan for alternative accommodation, nor adequate compensation for their lost homes.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our utmost concern regarding the imminent threat of forced evictions of 21 families, in disregard of their security of tenure acquired throughout the years of living in their homes and in disregard of a decision of the U.S. Federal Interior Department to the contrary.

We are also concerned that these 21 families have been denied the opportunity to challenge the decisions on their evictions in the tribal court, which effectively denied them access to justice and legal protection against forced evictions. It appears that these evictions may lack legal basis, as the only justification given is the revocation of tribal membership for the persons belonging to these 21 families, which has been successfully challenged in the Nooksack Tribal Court in 2014, in the Nooksack Court of Appeals in 2016, as well as by the U.S. Federal Department of Justice in 2017.

In addition, these forced evictions are being planned without any consultation with the affected people on alternatives and without plans for providing any compensation, in violation of international human rights standards, including those related to the right to an adequate standard of living, including adequate housing.

We wish to recall that the right to adequate housing is enshrined in article 25(1) of the Universal Declaration of Human Rights, as well as in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which state that everyone has the right to an adequate standard of living, including housing. In its General Comment No. 4 interpreting article 11(1) of ICESCR, the Committee on Economic, Social and Cultural Rights has stated that the right to housing should not be interpreted in a narrow or restrictive sense by assigning to it a meaning of "merely having a roof over one's head", but it should rather be seen as the right to live somewhere in security, peace and dignity. The Committee has also underscored the State's obligation to ensure the security of tenure and legal protection against forced eviction, harassment, and other threats, "notwithstanding the type of tenure," including "emergency housing and informal settlements" (paragraphs 7 and 8).

In its General Comment No.7, the Committee concluded that forced evictions are "prima facie incompatible with the requirements of the Covenant" and are performed "against the will of individuals, families and/or communities" and "without

the provision of, and access to, appropriate forms of legal or other protection" (General Comment No. 7, paragraphs 1 and 3). States shall furthermore ensure, prior to carrying out any evictions, that all feasible alternatives are explored in consultation with the affected persons (paragraph 13). In addition, it appears to us that required procedural protections, such as an opportunity for genuine consultation with those affected; and the provision of alternative land or housing for all affected persons may not have been respected (General Comment No. 7, paragraph 15). We are also concerned that the evictions are rendering individuals "homeless or vulnerable to the violation of other human rights" (paragraph 16).

We wish to draw your attention to the 2019 report to the Human Rights Council (A/HRC/40/61) on access to justice for the right to housing, in which the previous Special Rapporteur on the right to adequate housing stated that claimants must be provided a space in which their claim can be heard and adjudicated, and must be assured of effective remedies, fully implemented. We would also like to refer to the current Special Rapporteur's call for a zero-eviction commitment from Governments to avoid forced evictions, voiced in his report (A/75/148) on the COVID-19 pandemic and its impact on the right to adequate housing.

As highlighted recently by the Human Rights Committee, in the case of indigenous peoples, the notion of "home" must be understood in the context of the special relationship that they have with their territories and their ways of life. In this regard, we are concerned that the forced evictions would result in immeasurable loss to the 21 families as they would be denied the possibility of enjoying their own culture and of using their own language in community with others, protected under article 27 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 8 June 1992.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comments in relation to the above-mentioned allegations.
2. Please indicate the legal and factual basis for the eviction orders issued to the 21 families, the duration for which the eviction has been suspended, and provide information on any action taken.

3. Please indicate if and how all feasible alternatives to the forced evictions have been explored. If alternatives have been considered, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable. If no alternatives were considered, please explain why feasible alternatives were not explored.
4. Please elaborate on whether any specific action has been planned to protect the 63 persons at risk of forced evictions from falling into homelessness and in relation to any health risks in the context of the COVID-19 pandemic.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the evictions.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples