

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; the Special Rapporteur on the rights of indigenous peoples and the Independent Expert on the enjoyment of all human rights by older persons

Ref.: AL USA 1/2023
(Please use this reference in your reply)

31 March 2023

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on the rights of indigenous peoples and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 43/14, 51/16 and 51/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the allegation of threats of forced evictions of seven families who self-identify as Indigenous Nooksack, without due process and plans for providing compensation, despite accrued rights towards home ownership. The majority of these are households with older persons, some with disabilities or chronic health issues.**

Some of the undersigning special procedures mandate-holders have previously issued a communication (UA USA 3/2022) raising concerns over the imminent forced evictions of 21 families (63 persons) who self-identify as belonging to the Nooksack indigenous Tribe and live in homes funded by the Federal Department of Housing and Urban Development. The families were in various stages of acquiring home ownership, which for some of them was due in 2022. The families received notices of termination (eviction) justified with their loss of tribal membership, following their disenrollment approved by Nooksack Tribal Council with resolution 13-02 of 2013. The revocation of tribal membership for the persons belonging to these 21 families was successfully challenged in the Nooksack Tribal Court in 2014, in the Nooksack Court of Appeals in September 2016, as well as by the U.S. Federal Department of Justice in 2017. In February 2016, the legal representatives of all the families were disbarred from practicing the law at Nooksack without any prior notice or opportunity to change the decision. They could still practice law at the Court of Appeals for a while after. In March 2018, the Nooksack Tribal Council again sought to disenroll all persons belonging to the 21 families by undertaking a "phone poll" to "ratify" its 2016 decision. In October 2021, the Nooksack Tribe started notifying some of the heads of households among the 21 families that they have been involuntarily disenrolled from the Tribe, or have failed to maintain membership of the Tribe and were served notices of termination of their respective rental agreements. The evictions were due to begin on 28 December 2021 and then were rescheduled to start on 1 February 2022. They have allegedly been planned without any consultation with the affected people on alternatives and without plans for providing any compensation. They have allegedly not been able to effectively challenge evictions in the tribal court. As of February 2022, there were only 11 legal representatives licensed to practice law at Nooksack and they were all lawyers for or employees of the Nooksack Tribal Council.

We thank the Government for the information provided in its letter dated 24 February 2022, which we consider to be a partial response. We note that, according to the review conducted by the US Department of Interior (DOI) in coordination with the Nooksack Tribal Council, in the case of the first nine individuals facing eviction, the Tribe was in compliance with its procedures. However, the DOI has “implored the Tribe’s leaders to stop their planned evictions”. The US Department of Housing and Urban Development (HUD) also conducted a limited review of available documents concerning the nine individuals and concluded that the actions taken by the Tribe to evict them had not violated HUD programmatic requirements. It however requested that Tribal leaders reconsider their planned evictions. We also note the clarification provided by the Government that: i) under the US cooperative federalism system, governmental authority resides with the federal government, state and local governments, and Tribal governments; and ii) the relationship between federally recognized Tribes and the United States is one between sovereigns, i.e. between a government and a government.

We consider that the Government response was only partial, as it did not fully respond to the questions posed by the special procedure mandate holders. As far as international human rights obligations are concerned, the State is the primary duty bearer. This entails that all level of state authorities, national, regional, local, Parish, Tribe and any other, have to abide by national and internationally recognized human rights law and standards and that the national Government has the duty to oversee that this takes place.

According to the information received:

In March 2022, Ms. Cat Barril, a 50-year-old single mother of two who had lived in her rented apartment on Nooksack tribal land for almost 10 years, received a 14-day eviction notice and decided to move out, without receiving assistance to find an alternative housing solution.

On 16 March 2022, seven Nooksack heads of household, the majority of them being older persons, sued to prevent their evictions in the Thurston County Superior Court of Washington State. By June 2022, their case ended up before the Washington State Supreme Court, which, on 8 June 2022, enjoined their eviction. The Washington State Supreme Court also considered that the petitioners’ argument concerning an ownership interest in their rental units is worthy of further exploration. Reportedly, the Court refused to enforce the injunction in July 2022, citing “difficult issues and delicate issues of tribal sovereignty” and, on 16 September 2022, vacated the injunction, without offering explanations.

In the meanwhile, starting in May 2022, the seven Nooksack individuals received papers for Nooksack tribal court eviction proceedings. Allegedly, they were denied administrative due process, including the right to counsel, prior to the commencement of the tribal court process since no lawyer allowed to practice in the tribe’s court would agree to represent them. Despite the State Supreme Court’s injunction of 8 June, the Nooksack tribal authorities pressed forward with the evictions.

On 17 November 2022, HUD, which has a funding and regulatory relationship with the Nooksack Tribe pursuant to the Native American Housing and Self-

Determination Act (NAHASDA), wrote to the tribal authorities that the Nooksack Indian Tribe is denying administrative due process hearings to the seven heads of households. Under the Indian Civil Rights Act, 25 U.S.C. 1302(a)(8), no tribal government shall “deprive any person of property without due process of law.” 25 U.S.C. 1302(a)(5) also provides that no tribal government shall “take any private property for a public use without just compensation.”

Home-ownership claims

The seven heads of households have been renting their current homes for a number of years, understanding that this is rent-to-own housing, constructed or rehabilitated under the federal Low-Income Housing Tax Credit (LIHTC) programme. LIHTC places affordability restrictions on the properties expiring 15-30 years later and, since 2000, gives tax-allocation preference to development projects that included a plan for tenancies to be converted to homeownership at the conclusion of a mandatory compliance period.

The LIHTC programme, under the jurisdiction of the Treasury Department and its Internal Revenue Service, is administered at state level by state housing finance agencies. Washington State Legislature formed the Washington State Housing Finance Commission (WSFHC) “to assist in making affordable and decent housing throughout the state” for “[o]lder persons, disabled persons and low- and moderate-income families”¹.

The Nooksack Tribe partnered with a private consultant, Travois, Inc., and formed Washington State limited partnerships (Nooksack Housing Limited Partnerships No. 2, 3, and 4) with the multinational independent investment bank and financial services company Raymond James. In their applications to benefit from the LIHTC scheme, the Limited Partnerships stated that the homes were “intended for eventual tenant ownership after the initial 15-year Compliance Period”. The WSFHC awarded them points based on this declaration, signing with them extended use regulatory agreements, under which Raymond James has received annual tax credits.

As per the regulatory agreements, the Limited Partnerships had committed to provide reports at least once every five years, containing “an accounting of balances in any tenant homeownership reserve accounts, [and the] number of homeownership counselling sessions held with tenants”. Such reports were never submitted and WSFHC has not enforced this reporting requirement. In the Nooksack Indian Housing Authority (NIHA)’s own admission, the ownership reserve accounts “were not funded based on a determination made by the tax credit investor that the funding of those accounts would result in a tax liability to the partnership”². The WSFHC has said that “no other tribe in Washington State has yet successfully implemented this program”. It is alleged that there are at least 22 other tribal LIHTC-benefiting projects in Washington State.

¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=43.180.010&pdf=true>

² Letter from WSFHC to the Nooksack Indian Housing Authority, dated 15 March 2022

The individual cases

Ms. Olive Oshiro is 86 years old. She is wheelchair-bound, suffers from dementia, and can barely speak. She lives in her home with her daughter and son-in-law who provide her with daily care and support. Her home buyership commenced in 1999. Her home under the federal Low-Income Housing Tax Credit (LIHTC) Program at Nooksack is owned by Nooksack Limited Partnership #2, a limited partnership formed under Washington state law and 99.99 percent owned by Native American Housing Fund IV, LLC, a Delaware limited liability company that is a subsidiary of Raymond James Financial, Inc., of Florida. As her home has been in the Nooksack LIHTC Program for over 15 years, a deed to the home is past due to her. Nooksack Indian Housing Authority (NIHA) denied her right to counsel in administrative termination proceedings, on 2 November 2021. She was subject to Tribal Court unlawful detainer proceedings. On 23 February 2023, the Nooksack Tribal Court issued a writ of restitution and order of eviction, asking her to vacate her home by 7 March 2023.

Ms. Norma Aldredge is 74 years old. Her home buyership commenced in 2005. Her LIHTC home is owned by Nooksack Limited Partnership #2. As her home has been in the Nooksack LIHTC Program for over 15 years, a deed to the home is past due to her. NIHA also denied her right to counsel in administrative termination proceedings, on 2 November 2021. She was also subject to Tribal Court unlawful detainer proceedings. On 23 February 2023, the Nooksack Tribal Court issued a writ of restitution and order of eviction, asking her to vacate her home by 7 March 2023.

Mr. Franciso Rabang is 80 years old. His home buyership commenced in 2007. His LIHTC home is owned by Nooksack Limited Partnership #4, a limited partnership formed under Washington state law and 99.99 percent owned by Native American Housing Fund V, LLC, a Delaware limited liability company that is also a subsidiary of Raymond James. To the extent his home has been in the Nooksack LIHTC Program for at least 15 years, a deed to the home is past due to him; otherwise, it is due to him by no later than this year. NIHA also denied his right to counsel in administrative termination proceedings, on 2 November 2021. He was also denied his right to a Grievance Hearing required by NIHA policy, before receiving a 14-day Notice to Vacate on 2 May 2022. His Grievance Hearing was scheduled for 27 April 2022, but that hearing was cancelled and stricken by NIHA without prior notice. On 8 June 2022, and again on 29 June 2022, he inquired of NIHA about the process for protesting the denial of his Grievance Hearing but NIHA treated his inquiries as a “complaint” and summarily rejected them.

Mr. Mike Rabang is 79 years old. He suffers from dementia. His home buyership commenced in 2007. His LIHTC home is owned by Nooksack Limited Partnership #2. To the extent his home has been in the Nooksack LIHTC Program for at least 15 years, as discussed below, a deed to the home is past due to him; otherwise, it is due to him by no later than this year. NIHA also denied his right to counsel in administrative termination proceedings, on 2 November 2021. He was also denied his right to a Grievance Hearing required by NIHA policy, before receiving a 14-day Notice to Vacate on 2 May 2022. His 27 April 2022 Grievance Hearing was also cancelled and

stricken by NIHA without prior notice, and his 8 June 2022 and 29 June 2022 inquiries were also summarily rejected.

Ms. Michelle Roberts is 57 years old. Her home buyership commenced in 2007. Her LIHTC home is owned by Nooksack Limited Partnership #3, a limited partnership formed under Washington state law and 99.99 percent owned by Raymond James Tax Credit Fund XXX, LLC, a Delaware limited liability company that is also a subsidiary of Raymond James. To the extent her home has been in the Nooksack LIHTC Program for at least 15 years, a deed to the home is past due to her; otherwise, it is due to her by no later than this year. NIHA also denied her right to counsel in administrative termination proceedings, on 2 November 2021. She was also denied her right to a Grievance Hearing required by NIHA policy, before receiving a 14-day Notice to Vacate on 2 May 2022. Her 27 April 2022 Grievance Hearing was also cancelled and stricken by NIHA without prior notice, and her 8 June 2022 and 29 June 2022 inquiries were also summarily rejected.

Mr. Saturnino Javier, Sr. is 49 years old; his three children live with him. His home buyership commenced in 2008. His LIHTC home is owned by Nooksack Limited Partnership #4. To the extent his home has been in the Nooksack LIHTC Program for at least 15 years, a deed to the home is past due to him; otherwise, it is due to him by no later than next year. NIHA also denied his right to counsel in administrative termination proceedings, on 2 November 2021. He was also subject to Tribal Court unlawful detainer proceedings. On 24 August 2022, his Motion for Legal Representation was denied, rendering him unrepresented. On 14 March 2023, the Nooksack Tribal Court issued a writ of restitution and order of eviction, asking him to vacate his home by 28 March 2023.

Mr. Alex Nicol-Mills is 31 years old; his four children live with him. His home buyership commenced in 2008. His LIHTC home is owned by Nooksack Limited Partnership #4. To the extent his home has been in the Nooksack LIHTC Program for at least 15 years, a deed to the home is past due to him; otherwise, it is due to him by no later than next year. NIHA also denied his right to counsel in administrative termination proceedings, on 2 November 2021. He was also being subject to Tribal Court unlawful detainer proceedings. On 24 August 2022, his Motion for Legal Representation was denied too. On 14 March 2023, the Nooksack Tribal Court issued a writ of restitution and order of eviction, asking him to vacate his home by 28 March 2023.

To date, the seven families remain under threat of forced evictions.

Without prejudging the accuracy of the information received, we wish to express our concerns about the threat of eviction faced by the seven individuals mentioned above and their families allegedly without due process and compensation, in violation of international human rights law. While tribal membership may have been a pre-condition for the construction or rehabilitation of their homes under the LIHTC programme, we find that 15 (or more) years later, they have accrued security of tenure and possibly home ownership rights, which are no longer linked to their tribal membership but rather to their tenant relations with the Limited Partnerships.

We are also alarmed that these evictions mainly target households with older persons, some with disabilities or chronic health issues. The forced evictions of these older residents would considerably impact on the enjoyment of all their human rights, violating the core content of the right to adequate housing and undermining their right to equality and non-discrimination based on their older age and disability. If such evictions are carried out, this may seriously affect older indigenous peoples' health and well-being as well to their right to security, due to the harsh weather conditions and in the absence of support to find alternate housing solutions. We are further concerned that some of the affected older persons with intellectual or psychosocial disabilities may be exposed to insecure tenure and denied legal capacity in this situation, based on ageist and ableist assumptions.

We wish to recall that under international human rights law, whereas some evictions may be justifiable, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by law and that all the legal recourses and remedies are available to those affected. We emphasize that appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes the rights to life, to non-interference with privacy, family and home and to enjoy one's culture.

Moreover, while noting from the Government's reply dated 24 February 2022 that the HUD has offered its assistance to these families in case the evictions are executed, we are concerned that the individuals concerned have not been offered any compensation and we would like to recall that they have a right to adequate compensation for any property, both personal and real, which has been subject to expropriation.

We note the Government's indication that in "the US cooperative federalism system, governmental authority resides with the federal government, state and local governments, and Tribal governments". However, we would like to emphasize that States and indigenous authorities share the responsibility for ensuring that processes and decisions by indigenous authorities accord with international human rights, particularly in the context of possible conflicts between the rights and interests of individual indigenous members and the collective rights and interest of an indigenous people or community.³ We also wish to recall that indigenous institutions and justice systems have an obligation to comply with international human rights standards.

Finally, we would like to draw the attention of your excellency's Government to potential interferences with the right of the seven individuals and their families to "enjoy their own culture, to profess and practise their own religion, or to use their own language" in community with other members of their group in case there is no place outside Nooksack where such a community exists.⁴

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

³ A/HRC/42/37, especially para. 119.

⁴ Sandra Lovelace v. Canada, Communication No. 24/1977, CCPR/C/OP/1 at 83

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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures taken to ensure that the persons threatened with the evictions enjoy legal protection and due process guarantees, including age and disability appropriate legal support, have access to legal remedies, receive adequate compensation and do not face any risk of falling into homelessness, taking into consideration the older age and disabilities of some of the concerned persons.
3. Please explain if any Federal or Washington State authority has investigated the homeownership claims of Olive Oshiro, Norma Aldredge, Franciso Rabang, Mike Rabang, Michelle Roberts, Saturnino Javier, Sr., and Alex Nicol-Mills, and if so, what was the outcome of the investigation. If home ownership was foreseen after 15 years of rent under the LIHTC Program, what is the reason that this has not been granted upon the completion of 15 years of renting for these 7 tenants?
4. Please provide information on all the LIHTC projects benefiting indigenous peoples in Washington State, including but not limited to the Nooksack Indian Tribe, identifying: their project owners, number of beneficiaries, whether or not they contain home-to-rent clauses, and on how many occasions they have resulted in home ownership.
5. Please explain how the LIHTC programme guarantees continued rent protection and, if applicable, home ownership after the initial 15 years of rent.
6. Please provide information on the measures taken by your Excellency's Government and the Nooksack authorities, through dialogue and cooperation, to ensure compliance with international human rights obligations, including in relation to the right to adequate housing, with regard to the families threatened with forced evictions, including through exploring feasible alternatives to the forced evictions.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on this subject matter is also being sent to the Nooksack Indian Tribe, regarding their involvement in the abovementioned allegations.

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

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to draw the attention of your Excellency's Government's to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1992, on the rights to life, including the right to life with dignity, and to non-interference with privacy, family, home or correspondence. We would also like to draw the attention of your Excellency's Government to article 2.3, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

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 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has clarified that the right to housing should not be interpreted in a narrow or restrictive sense, such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity.

Additionally, we wish to recall that, as clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Paragraph 15 of the same General Comment indicates that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. Additionally, we wish to refer to the Basic Principles and Guidelines on Development Based Evictions and Displacement, which emphasizes that evictions must not take place in inclement weather (A/HRC/4/18, para. 49).

In the above mentioned case, several of the persons at risk of eviction are older persons with disabilities. The housing eviction would raise serious questions relating to its compliance with provisions of the Convention on the Rights of Persons with Disabilities (see, *inter alia*, article 28 on adequate standard of living and social protection, and article 19 on living independently and being included in the

community), signed by the United States of America on 30 July 2009. In particular, article 19 allows individuals with disabilities a right to live (and to continue to live) connected to their communities and underscores the importance of community connectedness in housing.

The abovementioned actions taken by the Nooksack Tribal Council, along with the lack of effective dispute resolution from the state and Federal authorities have deprived these seven indigenous households from security of tenure as provided by the right to adequate housing under international human rights law. As analysed by the Independent Expert on the enjoyment of all human rights by older persons in her 2022 thematic report (A/77/239), “Older persons with disabilities, in particular those with an intellectual or psychosocial disability, may be exposed to insecure tenure if they have been denied legal capacity and if this has led to difficulties in entering formal housing contracts. In such cases, these individuals may have to resort to informal arrangements, which make them more vulnerable to forced evictions” (para. 30).

We also recall that, in her report (A/74/183), the previous Special Rapporteur on the right to adequate housing stated that “The indivisibility and interdependence of the United Nations Declaration on the Rights of Indigenous Peoples and the right to housing under international human rights law should inform all housing-related laws, policies and programmes that affect indigenous peoples”.

Moreover, we wish to recall that the United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law (article 1). It recognizes indigenous peoples right to self-determination (articles 3-5). It also declares that Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards (article 34).

In this connection, we wish to recall that the former UN Special Rapporteur on indigenous peoples, in her 2019 report (A/HRC/42/37) on “Access to justice in ordinary and indigenous justice system” has indicated that “State and indigenous authorities have to work together to achieve these ends in a harmonious way. How they can most effectively do so and what can be done when one or the other side does not engage remains to be addressed in most countries” (para. 82). The Rapporteur has emphasized that “Stronger links between State and indigenous laws and institutions, based on mutual respect and understanding, or even integrated review or appeal bodies with equal representation of indigenous and non-indigenous judges, could contribute to ensuring respect for human rights in both indigenous and State legal systems” (para. 79). The Rapporteur has furthermore indicated that “Indigenous authorities should ensure safe and inclusive spaces for all in the community to discuss the appropriateness of norms and practices and their consistency with constitutional or international human rights, and to argue for their reform or modification. They should give due consideration to the arguments presented in such discussions. Other stakeholders may support such internal discussions, as well as offering relevant capacity-building or other awareness-building activities both to indigenous leaders and other members of indigenous communities. Any engagement by non-indigenous

actors with indigenous communities and leadership on such issues should be sensitive to the social, cultural, political and historical context and cohesion of indigenous peoples and the risk that outside interventions may be perceived as perpetuating actions and attitudes reminiscent of colonialist eras and related historically oppressive connotations” (para. 120).

Finally, we wish to draw your Excellency’s Government attention to its obligations under article 27 of the International Covenant on Civil and Political Rights, concerning, the rights to enjoy one’s culture in community with the other members of one’s group.