

GALANDA BROADMAN

December 15, 2021

TO: UN Special Rapporteur on adequate housing, Mr. Balakrishnan Rajagopal, Office of the High Commissioner for Human Rights, Special Procedures Branch, Palais Wilson CH – 1211 Geneva, Switzerland

Via Email: srhousing@ohchr.org

RE: *URGENT APPEAL – Request for the urgent intervention of the Special Rapporteur regarding the imminent, unjust, and illegal eviction of 63 Nooksack tribal members from tribal housing under the authority of the U.S. Department of Housing and Urban Development, in violation of international standards of the human right to adequate housing*

Respectful Greetings,

Complainants¹ submit this Urgent Appeal to the United Nations Special Rapporteur on adequate housing regarding the failure of the United States Department of Housing and Urban Development (“HUD” or “State”) to protect 63 members of the Nooksack Tribe (“Nooksack 63”)² from imminent eviction actions. These evictions violate United States law, policy and procedure, and the Nooksack 63’s human right to adequate housing, including access to their “native culture and language ‘in community with the other members’” of their group.³

In support hereof, Complainants assert the following:

1. The Nooksack 63 are Indigenous persons living in 22 HUD-funded homes situated on Federal lands owned by the United States government located in the northern part of the state of Washington in the United States. The Nooksack 63 belong to the Nooksack Tribe (“Tribe” or “Nooksack”). These

¹ Olive Oshiro, Robert and Margretty Rabang, Michael Rabang, Michelle Roberts, Francisco Rabang, Norma Aldredge, Alex Mills, Saturnino Javier, Sr., and Cathalina Barril.

² Olive Oshiro, age 85, has lived in her State-funded home for the last 23 consecutive years. Her daughter Elizabeth Oshiro, age 57, son-in-law Jack Fidow, and granddaughter Olivia Oshiro, age 28, also live in the home. Robert and Margretty Rabang, ages 78 and 60, have lived in their State-funded home for the last 23 consecutive years. Complainant Michael Rabang, age 79, and his daughter Michelle Roberts, age 56, have lived in their respective State-funded homes for fifteen consecutive years. Ms. Roberts’ husband Rupert, age 57, and son Raddinanc, age 26, also live in the home. Norma Aldredge, age 74, has lived in her State-funded home for fifteen consecutive years. Her husband Eugene, age 84, also lives in the home. Francisco Rabang, age 80, has lived in his State-funded home for thirteen consecutive years. His wife Wilma Rabang, age 78, also lives in the home. Alex Mills, age 30, has lived in his State-funded home for 12 consecutive years. His spouse Caril Mills, age 30, and four sons Noel Mills, age 12, Jayden Mills, age 11, Maximo Mills, age 4, and Kai Mills, age 2. Saturnino Javier, Sr., age 49, has lived in his State-funded home for 11 consecutive years. His spouse, son Saturnino Javier, Jr., age 16, daughter Alycia Javier, age 14, and son Louis Javier, age 4, also live in the home. Cathalina Barril, age 49, has lived in her State-funded home for nine consecutive years. Her daughter Olivia Barril, age 28, also lives in the home. There are 14 other households similarly situated to Complainants. In total, there are 22 households comprised of 63 Nooksack members who are facing or will face eviction.

³ Sandra Lovelace v. Canada, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981), at p. 15.

individuals, many of whom are elders and have lived in their homes for decades, are under imminent threat of eviction by armed tribal government officers, without ever receiving due process of law. These violations of their human rights are occurring during a global pandemic without protection from the Federal Government that would suspend the evictions pending investigation.

2. 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 Tribe also receives funding for other assistance through various other Federal programs.

3. HUD grant funding for tribal public housing is discretionary. To be eligible for and receive HUD grant funding under NAHASDA, tribal governments must annually submit an “Indian housing plan” for approval by the HUD Secretary. To be approved, the housing plan must certify compliance with the Indian Civil Rights Act (“ICRA”). One of ICRA’s mandates is “[n]o Indian tribe in exercising powers of self-government shall . . . deprive any person of liberty or property without due process of law.”⁴

4. If the HUD Secretary finds that a recipient of funding has deprived a person of liberty or property without due process of law, or has failed to comply substantially with any requirements of NAHASDA, including compliance with ICRA as incorporated by the Act, the Secretary *must* take certain actions: (a) terminate payments to the recipient; (b) reduce payments to the recipient in an amount equal to the amount of payments expended in a noncompliant manner; (c) limit availability of payments to only those programs not affected by the Tribe’s failure to comply; or (d) if the Tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance, the Secretary can remove the tribally designated housing entity and provide a replacement entity for the recipient.⁵

5. Moreover, if the HUD Secretary has reason to believe that a recipient has failed to comply substantially with requirements of NAHASDA, the Secretary may refer the matter to the U.S. Attorney General with a recommendation that an appropriate civil action be instated.⁶

6. In failing to assure that the requirements of the NAHASDA have been substantially complied with, HUD has *violated Complainants’ human right to housing under international standards.*

7. Complainants’ fundamental human right to housing is enshrined in the Universal Declaration of Human Rights.⁷ Their right to housing includes security of tenure and protection against forced evictions.⁸

8. Under Article 25.1 of the Universal Declaration of Human Rights, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing[.]” Likewise, all are guaranteed the right to adequate housing under Article 11.1 of the

⁴ 25 U.S.C. § 4161(c).

⁵ 25 U.S.C. § 4161(a).

⁶ 25 U.S.C. § 4161(c).

⁷ Universal Declaration of Human Rights art. 25.1.

⁸ *Fact Sheet No. 21*, Office of the United Nations High Commissioner for Human Rights, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf (last visited Dec. 9, 2021, 5:13 PM).

International Covenant on Economic, Social and Cultural Rights, to which the United States is a signatory. “The human right to adequate housing, which is . . . derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.”⁹

9. The U.N. Committee on Economic, Social Cultural Rights (CESCR) in General Comment No. 4 states that “the right to housing should not be interpreted in a narrow or restrictive sense . . . rather it should be seen as the right to live somewhere in security, peace and dignity.”¹⁰ The right to housing “is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised.”¹¹ Paragraph 8(a) states that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”¹²

10. The right to abode has also been enforced via Article 27 of the International Covenant on Civil and Political Rights, to which the United States is a state party. In *Lovelace v. Canada*,¹³ the Human Rights Committee found that Canada violated Article 27 by denying a Maliseet Indian the right to live on the Tobique Reserve. If evicted, Complainants are thus not only faced with the imminent loss of their rights to housing and abode, but also their right to access to their “native culture and language ‘in community with the other members’” of their group.¹⁴

11. Here, Complainants’ human rights dispute arose in 2012, when a Tribal Council sought to summarily eject Complainants from their homes and from the Tribe. In 2016, after protracted litigation, the Tribal Council was enjoined from ejecting Complainants by orders from the Nooksack Tribal Court and Court of Appeals,¹⁵ as well as a State administrative stay of proceedings.¹⁶

12. In late November of 2016, the U.S. Department of the Interior (“DOI”) issued a proclamation refusing to recognize “any actions taken since March 24, 2016” by the Tribal Council.

13. Despite Tribal and State court proceedings and administrative actions, in 2017, the Tribal Council

⁹ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 4: The Right to Adequate Housing* (adopted Dec. 13, 1991) [hereinafter “General Comment No. 4”].

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.* at 8(a).

¹³ *Sandra Lovelace v. Canada*, *supra* note 3, at 166.

¹⁴ *General Comment No. 4*, *supra* note 9, at 15.

¹⁵ *Belmont v. Kelly*, Court No. 2014-CI-CL-007, Order (Nooksack Tr. Ct. Feb. 26, 2015); *Roberts v. Kelly*, No. 2013-CI-CL-003, Order Enjoining Disenrollment Proceedings (Nooksack Tr. Ct. Mar. 31, 2014); *Belmont v. Kelly*, No. 2013-CI-APL-001, Order Regarding the Petition for Writ of Mandamus (Nooksack Ct. App. June 18, 2016), at 3; *Belmont v. Kelly*, No. 2013-CI-APL-001, Order Denying Motion To Expand Jurisdiction, at 1 (Nooksack Ct. App. Aug. 29, 2016); *Belmont v. Kelly*, No. 2013-CI-APL-001, Order Granting Requests to Join April 15, 2016 Motion and Be Subject to June 28, 2016 Order (Nooksack Ct. App. Sept. 21, 2016); *Belmont v. Kelly*, No. 2013-CI-APL-001, Second Amended Order Granting Requests to Join April 15, 2016 Motion and Be Subject to June 28, 2016 Order (Nooksack Ct. App. Sept. 22, 2016).

¹⁶ 25 C.F.R. §§ 2.6(a), (b); 43 C.F.R. § 4.314(a); *St. Germain v. Acting Northwest Regional Director, IBIA No. 16-022* (Apr. 18, 2019); *Roberts*, No. 2013-CI-CL-003, at 9.

commenced proceedings to eject Complainants from their State-funded homes.¹⁷ Complainants were not afforded due process during these eviction proceedings as required by both Tribal and Federal law.

14. On April 4, 2017, HUD demanded the Tribe rescind Notices of Termination (eviction) to Complainants, “the sole basis for [which was] the purported disenrollment of these individuals” in November of 2016.¹⁸ In response, the Tribal Council delayed its efforts to evict Complainants.

15. In July of 2021, the Tribal Council resumed efforts to evict Complainants from their State-funded homes.¹⁹ Again, Complainants were not afforded due process during the eviction proceedings.²⁰ By October of 2021, the Tribal Council issued new eviction notices to Complainants. The Tribal Council deployed armed Nooksack police officers to serve Complainants with those notices at their doorsteps, during evenings and weekends, including one holiday,²¹ harassing and intimidating Complainants. This occurred notwithstanding Federal and local COVID-19 pandemic, eviction moratoria imposed by the State and local governments, respectively.

16. In September of 2021, Complainants filed an administrative complaint with HUD, which initiated an inquiry into the Tribe’s violation of the State Title VIII of the Civil Rights Act of 1968, as amended, also known as the Fair Housing Act.²² HUD’s Office of Native American Programs (“ONAP”) “request[ed] that the Tribe refrain from any eviction for affected residents of HUD-assisted housing until . . . any eviction action carried out is consistent with any court order on this matter.”²³

17. On December 1, 6, 7, and 14, 2021, the Tribal Council again deployed armed Nooksack police officers to serve Complainants with eviction notices at their doorsteps.²⁴ Complainants’ deprivation of their right to housing is imminent, as is the potential for violence.²⁵

18. Understanding that customary international law requires exhaustion of local remedies before a claim can be heard by an international or foreign body,²⁶ Complainants have sought but have been denied any legal or equitable domestic remedy that would prevent their evictions, including through the Nooksack

¹⁷ See Letter from Ken Bowring, Administrator, U.S. Dep’t of Housing and Urban Dev., to Hon. Robert Kelly, Chairman, Nooksack Tribe (Apr. 4, 2017).

¹⁸ *Id.*

¹⁹ See Letter from Malori Klushkan, Director of Nooksack Housing Dep’t to Complainant Cathalina Barril (Jul. 22, 2021).

²⁰ Letter from Gabriel S. Galanda, Managing Lawyer of Galanda Broadman, PLLC to Nooksack Indian Tribal Council (Dec. 5, 2016).

²¹ Letter from Gabriel S. Galanda, Managing Lawyer of Galanda Broadman, PLLC to Jeremy Hoyle, Nooksack Police Officer (Nov. 1, 2021).

²² Letter from Thomas H. Carney, Administrator of Northwest Office of Native American Programs, U.S. Dep’t of Housing and Urban Dev. to Roswell Cline, Sr., Chairman, Nooksack Tribe (Sept. 1, 2021).

²³ *Id.*

²⁴ See, e.g., Letter from Gabriel S. Galanda, Managing Lawyer of Galanda Broadman, PLLC to Gordon Alves, Nooksack Police Officer (Dec. 7, 2021).

²⁵ See Declaration of Deborah Alexander at 1–2, *Tageant v. Ashby*, No. 2:19-cv-01082-JLR (W.D. Wash. Sept. 4, 2019); *Adams v. Dodge*, No. 2:19-cv-01263-JCC-MLP, at *12–14 (W.D. Wash. Oct. 18, 2019); see also Letter from Lawrence S. Roberts, Principal Deputy Assistant Sec’y, Indian Affairs, U.S. Dep’t of the Interior to Hon. Robert Kelly, Chairman, Nooksack Tribe (Dec. 23, 2016).

²⁶ *Sarei v. Rio Tinto, PLC*, 550 F.3d 822, 829 (9th Cir. 2008) (citing *Restatement (Third) Foreign Relations Law of the United States* § 713 cmt. f (1987)).

Tribe's Housing Department and the Tribal Court,²⁷ the State of Washington and its Superior Court,²⁸ and the United States and its District Court.²⁹

19. Though HUD's Office of Native American Programs requested that the Tribe refrain from any eviction of Complainants, HUD has failed to take adequate, sufficient, or appropriate action as authorized and required by United States law, to protect Complainants' human right to housing and prevent the evictions from taking place. Again, the evictions are illegal because they at least lack due process as required under state and Federal law.

20. The Tribe has ignored HUD's request to suspend evictions. Thus, HUD is required by law to act.³⁰ Instead, HUD has failed to remove and replace the tribal housing authority, initiate a civil action against the Tribe to prevent Complainants' evictions, or refer the matter to the U.S. Attorney General's Office.³¹

21. HUD must act immediately to stop the eviction actions until the State has properly ensured that the Nooksack 63 receive due process of law; and that all other rights and remedies to which they are entitled under Federal law have been afforded and extended to them, specifically human rights to housing, security of tenure, protection against forced eviction, an adequate standard of living, and access to Indigenous culture in group community.

22. Complainants, therefore, urgently request that the U.N. Special Rapporteur on the right to adequate housing call on the United States to urge HUD to enforce the law and prohibit Complainants' evictions in violation of U.S. law and international standards of human rights law.

23. Specifically, Complainants' request that you:

- a. Urge HUD take all steps to stop the evictions;
- b. Urge HUD take all steps to stop police harassment and intimidation; and
- c. Urge HUD take all steps to assure that Complainants' rights to due process of law are respected and guaranteed prior to any action taken by the Tribal Council to force their eviction.

We respectfully request that you undertake an immediate review of the Nooksack 63's treatment under the Urgent Appeal procedure. We request that you advise the United States to exercise its authority in a manner that takes into account the Nooksack 63's rights and needs consistent with international human rights law and standards.

²⁷ See *supra* ¶¶ 13–17.

²⁸ See Revised Code of Washington § 37.12.060; *Rabang v. Gilliland*, No. 17-2-00163-1 (Wash. Sup. Ct. Oct. 26, 2021).

²⁹ See Memorandum, *Doucette v. U.S. Department of the Interior*, Nos. 19-35743, 20-35269 (9th Cir. Mar. 21, 2021).

³⁰ See *supra* notes 4–5 and accompanying text.

³¹ *Id.*

If you require any supporting information or have any questions, please do not hesitate to contact us.
Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Galanda".

Gabriel S. Galanda
Attorney at Law