



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

February 24, 2022

Balakrishnan Rajagopal

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
Geneva, Switzerland

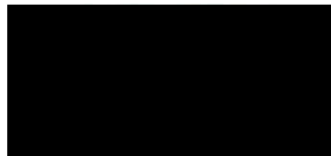
José Francisco Cali Tzay

Special Rapporteur on the rights of indigenous peoples
Geneva, Switzerland

Dear Special Procedures Mandate Holders:

Please find enclosed the U.S. response to your letter dated February 1, 2022.

Sincerely,



Deputy Permanent Representative
Human Rights

U.S. Response to UN Joint Communication Regarding Alleged Imminent Forced Evictions by the Nooksack Tribe

Thank you for your letter dated February 1, 2022, about the alleged imminent forced evictions by the Nooksack Tribe of individuals who self-identify as Tribal members or Tribal citizens. We are grateful for the work you do across the globe to promote respect for human rights, and for the opportunity to correspond with you.

Under the U.S. cooperative federalism system, governmental authority resides with the federal government, state and local governments, and Tribal governments. Notably, the relationship between federally recognized Tribes and the United States is one between sovereigns, i.e., between a government and a government. This “government-to-government” principle, which is deeply grounded in the United States’ Constitution, its statutes, and its common law, has helped to shape the long history of relations between the federal government and Tribal nations. Consistent with both Tribal sovereignty and the UN Declaration on the Rights of Indigenous Peoples, any decisions about tribes, their property, and citizens are made with their participation.

The United States takes the situation addressed in your letter seriously. The U.S. Department of the Interior (DOI) conducted its review in coordination with the Nooksack Tribal Council and, in the case of the first nine individuals facing eviction, thoroughly reviewed the allegations against the Nooksack Tribe for due process violations including any departure from the Tribe’s own administrative procedures. At this time, DOI has found the Tribe to be in compliance with its procedures but has implored the Tribe’s leaders to stop their planned evictions while also noting respect for Tribal sovereignty. Please see enclosed a letter DOI’s Bureau of Indian Affairs sent to the Chairman of the Nooksack Tribe.

The U.S. Department of Housing and Urban Development (HUD) also requested on multiple occasions that Tribal leaders reconsider their planned evictions. In case evictions were to take place, HUD has provided and will continue to provide information regarding housing resources to families, so they are aware of their options to keep them stably housed. HUD will also continue to monitor the situation. Should the Tribe initiate any evictions of additional families in the future, HUD will assess whether such evictions violate their housing program requirements and reserves the right to refer the matter to DOI for further investigation, if appropriate. Please see enclosed the most recent letter HUD’s Northwest Office of Native American Programs sent to the Tribal Chairman on February 14, 2022.

The U.S. government continues to urge the Nooksack government to take all reasonable measures to assure that due process of law is maintained, and to provide a reasonable opportunity for families facing potential eviction to find alternative secure housing.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office

911 Northeast 11th Avenue

Portland, Oregon 97232

The Honorable [REDACTED]
Chairman, Nooksack Tribe
P.O. Box 157
Deming, Washington 98244

Dear Chairman [REDACTED]

Last fall, the Department of Housing and Urban Development (HUD) notified the Department of the Interior (Department) of potential Indian Civil Rights Act violations surrounding the evictions of individuals from Nooksack tribal housing. The Department agreed to review the situation, looking particularly at compliance with applicable and relevant federal laws within the scope of the Department of the Interior's purview. (*Letter from AS-IA to Chairman [REDACTED] dated October 5, 2021*). Additional questions have been raised regarding compliance with Department of Housing and Urban Development regulations, policies, or funding agreements. These issues are beyond the scope of this Department's review.

In the Fall of 2021, an attorney for the individuals began sending emails and letters to various offices in the Department concerning the removal of nine individuals from Nooksack Indian Housing Authority (NIHA) homes. The emails and letters generally warned of potential Indian Civil Rights Act and due process violations by NIHA and the Tribe in their attempts to remove these individuals from tribal housing. I also discussed these allegations with you and Tribal Council, and on January 13, 2022, you agreed to delay any action on evictions for these nine individuals until February 1, 2022, to allow the Regional Office of the Bureau of Indian Affairs (BIA) to review the allegations.

Though numerous of Departmental employees have engaged on these issues over the past few months, multiple employees from the Northwest Region of BIA and the Portland Regional Solicitor's Office conducted an in-depth regional review over the last month. These offices reviewed the emails and letters sent by the individuals' attorney, documents provided by the Nooksack Tribe concerning the nine individuals proposed for eviction, tribal housing policies, Nooksack Tribal Code, Chapters 45 and 80, Title Status Reports and other title documents recorded with the BIA. The review was based only on examination of these documents and pertains only to the following nine individuals: Norma Aldredge, Cathalina Barril, Saturnino Javier, Alexander Nicol-Mills, Olive Oshiro, Francisca Rabang, Francisco Rabang, Michael Rabang, and Michelle Roberts, collectively, the "Tenants."

The Department's review found that the Tenants currently reside in NIHA developments located on trust land owned by the Nooksack Indian Tribe. Each of the nine Tenants entered into a Rental Agreement with NIHA for housing. The Tribe's process for removing tenants from tribal housing is a multi-step process. In addition to the termination process outlined in the terms of



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the Rental Agreements, the processes set out in the *Nooksack Indian Housing Authority Program Policy & Procedures* (June 15, 2021) (Procedures) also apply.

NIHA initially notified the nine Tenants that they were ineligible for tribal housing because they have been disenrolled from the Nooksack Tribe. After the Tenants failed to reestablish their eligibility for tribal housing, NIHA issued each Tenant a Notice of Termination. Some, but not all the Tenants, challenged those Notices of Termination pursuant to NIHA Procedures. The Procedures allow an individual to request a Resolution Conference to discuss with the Housing Director why their lease should not be terminated. (Procedures, Section XV, B.3.) The Housing Director issues a written decision after discussion with the tenant. (Procedures, Section XV, B.4.) If a tenant disagrees with the Housing Director's decision, the tenant may request a Grievance Hearing before the Housing Committee. (Procedures, Section XV, C.1.)

All Tenants who challenged their Notice of Termination are currently in the administrative review process; they are waiting for dates to be scheduled for a Resolution or Grievance Hearing or waiting for a decision on a Grievance Hearing. At this time, while the administrative process is not complete, it appears that NIHA has followed its Procedures and the process for removal of individuals from tribal housing. NIHA has not filed any complaints in tribal court for unlawful detainer at this time for any of the Tenants; accordingly, the Department is not commenting on the validity of any future tribal court actions concerning the Tenants.

Emails and letters received by the Department of the Interior over the past several months have made numerous claims of violations under the Indian Civil Rights Act (ICRA) 82 Stat. 77, 25 U.S.C. 1301 *et seq.* The Department's review of the ICRA claims was limited in scope to whether the Tribe's eviction process complied with the due process requirements of ICRA. Under ICRA, "[n]o Indian tribe in exercising powers of self-government shall ... deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." 25 U.S.C. § 1302(a)(8). From our review of the materials pertaining to the Tenants' proposed evictions, even though these eviction processes have not been finalized, NIHA has thus far, adhered to the terms of the Rental Agreements and NIHA Procedures.

We appreciate the Nooksack Tribe's cooperation in refraining from eviction actions in the last weeks to allow the Department to proceed with its review. We also recognize the detrimental effects that evictions can have on a community, particularly on the Tenants and their families. Though they lack tribal citizenship, they are members of the community, and we encourage the Tribe to treat them with dignity and respect their legal rights moving forward. In summary, as of the date of this letter, it appears that NIHA has complied with the Rental Agreements and NIHA procedures, as they relate to the eviction process, concerning these nine individuals: Norma Aldredge, Cathalina Barril, Saturnino Javier, Alexander Nicol-Mills, Olive Oshiro, Francisca Rabang, Francisco Rabang, Michael Rabang, and Michelle Roberts.



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The Department makes no conclusions on any future actions taken against the nine Tenants or on any eviction processes for any other individuals.

Sincerely,

[REDACTED]
Regional Director, Northwest Region, BIA

Cc: [REDACTED] Assistant Secretary – Indian Affairs
[REDACTED] Director, Bureau of Indian Affairs
[REDACTED] Deputy Assistant Secretary, Native American Programs, HUD



U.S. Department of Housing and Urban Development
Northwest Office of Native American Programs
Federal Office Building
909 First Avenue, Suite 300, OAPI
Seattle, WA 98104-1000

February 14, 2022

The Honorable [REDACTED]
Tribal Chairman
Nooksack Indian Tribe
PO Box 157
Deming, WA 98244-0157

SENT VIA ELECTRONIC MAIL

Dear Chairman [REDACTED]

Subject: Nooksack Pending Evictions

On December 17, 2021, the Northwest Office of Native American Programs (NwONAP) of the Department of Housing and Urban Development (HUD) sent you a letter advising you to delay any pending or planned evictions until the Department of the Interior (DOI) completed its investigation into alleged Indian Civil Rights Act (ICRA) violations. Part of that DOI investigation included a review of whether the evictions are being carried out in accordance with the terms of the rental agreements and Nooksack Indian Housing Authority (NIHA) procedures.

On February 3, 2022, NwONAP received correspondence from DOI which provided the results of its review of the alleged ICRA violations. DOI's limited review concluded that the Nooksack Tribe's eviction process has thus far been carried out in accordance with the terms of the rental agreements and NIHA procedures. DOI's review pertained only to nine specific individuals residing within the Tribe's rental units.¹

In response to additional complaints NwONAP received from individuals facing eviction, NwONAP also performed a limited review of available documents to determine if there was any indication of potential non-compliance with the Native American Housing Assistance and Self-Determination Act and its implementing regulations at 24 CFR Part 1000. NwONAP's review did not disclose any specific instances of statutory or regulatory non-compliance by the Nooksack Tribe in relation to the actions the Tribe has taken toward these nine individuals facing evictions.

Based on DOI's findings and NwONAP's limited review, NwONAP has concluded that the actions taken by the Tribe to date to evict the nine individuals have not violated HUD programmatic requirements. However, this conclusion is again limited to the nine individuals and does not preclude HUD from initiating future monitoring efforts, including with respect to any potential planned evictions of additional families.

¹ Norma Aldredge, Cathalina Barril, Saturnino Javier, Alexander Nicol-Mills, Olive Oshiro, Francisca Rabang, Francisco Rabang, Michael Rabang, and Michelle Roberts

NwONAP appreciates the Tribe's cooperation in delaying the eviction actions until DOI could complete its review and issue its determination. This has been a difficult and contentious situation for all involved.

NwONAP echoes the recent statement made by DOI asking the Tribe to stop these planned evictions. We respect and commit to upholding Tribal sovereignty. These evictions will have a substantial impact on the entire community, and even more so to these specific families. This request is with that in mind. It is our hope that the Nooksack Tribe exercises its sovereignty in a manner that treats its community members with dignity and respect.

If these evictions are executed and families need assistance, we respectfully request that the Tribe refer impacted families directly to our office. HUD can provide them with information on resources that may be available.

If you have any questions or comments, please contact me via email at [REDACTED]@hud.gov, or by phone at [REDACTED]

Sincerely,

[REDACTED]
[REDACTED]
Administrator

cc: [REDACTED] Senior Tribal Attorney
[REDACTED] Executive Director
Nooksack Indian Housing Authority
[REDACTED] General Manager

