Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and 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

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Dear Mr. Schwarzman,

We are writing to you, in our capacity as the United Nations Special Rapporteur on the right to adequate housing and the Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 34/9 and 35/7.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.[1] Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

We would like to share with you our concern over recent structural developments that the Blackstone Group L.P. (Blackstone) helped to instigate whereby unprecedented amounts of global capital are being invested in housing as security for financial instruments and traded on global markets, which is having devastating consequences for people. We are referring to the "financialization of housing" and the dominant role you play in financial markets through residential real estate.

The financialization of housing is having a grave impact on the enjoyment of the right to adequate housing for millions of people across the world. As one of the largest

[1] Further information about the communication procedure is available at: http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx

real estate private equity firms in the world, with $136 billion of assets under management, operating in North America, Europe, Asia and Latin America, your practices are significantly contributing to this. Since 1991 Blackstone has been involved in the purchase, sale, and operation of real estate as an alternative asset class. Whilst Blackstone engages in the purchase and management of real estate assets across sectors, it is its actions within residential real estate markets (single and multi-family dwellings) commencing in 2012 that is the subject of this letter.

We would like you to be aware of our principle concerns with respect to Blackstone's engagement in residential real estate, from the perspective of human rights.

First, in the aftermath of the 2008 global financial crisis, Blackstone, through its Invitation Homes unit, significantly increased its presence in the residential real estate sector, particularly in the US, by purchasing an extraordinary and unprecedented number of foreclosed single-family properties, which were then converted into rental accommodation. This large-scale ownership has made it possible for single family rentals (SFR) to become, for the first time, an asset class[2] and has had deleterious effects on the enjoyment of the right to housing.

Second, Blackstone and its subsidiaries have also been purchasing multi-family rentals (MFR) at unprecedented rates across the world, which is also having deleterious effects on the right to housing.

Third, Blackstone is using its significant resources and political leverage to undermine domestic laws and policies that would in fact improve access to adequate housing consistent with international human rights law.

1. Blackstone's Single Family Rental holdings

In 2017, Invitation Homes merged with Starwood Waypoint Homes to form the largest single family rental company in the United States of America. Invitation Homes, is now a public company in which Blackstone Group L.P. owns a majority of voting shares. It has a portfolio of 82,260 single family rental homes across 17 markets in the United States of America, with a focus on the Western US (28,663 homes) and Florida (25,682 homes). While these holdings only represent a small percentage of single family homes across the United States of America, Invitation Homes holdings are significant for the number attributed to a single corporate owner. Though these houses are home to the tenants who reside within them, in the financial world they are understood as "rent-backed structured securities" and as such have become financial products. To do this, Blackstone sells bonds to investors – backed by the rental payments of properties and using the mortgages on the properties as collateral.

A number of concerns with respect to Invitation Homes' dominance in the US SFR market have been brought to our attention.

[2] Desiree Fields, Constructing a New Asset Class: Property-led Financial Accumulation after the Crisis, 2017.

SFRs with institutional owners are associated with undue rent increases making housing unaffordable for many existing tenants and reducing the availability of affordable housing stock. In many cases tenants renting from Invitation Homes are now making rental payments that are higher than were their mortgage payments, without the benefit of accruing equity. And rent increases in institutionally owned homes are higher than overall averages. In Los Angeles, for example, in the first quarter of 2017 rents increased overall by 3.9% but Invitation Homes reports almost double that, with rent increase of 7% in Western States for the 3rd quarter of 2017. Increasing rents beyond the scope of household income is inconsistent with the right to housing.

We understand that Invitation Homes has introduced a number of measures and policies that are contributing to increased costs for tenants. This is resulting in heightened insecurity for Invitation Homes SFR tenants, who face immediate eviction if they make a late payment.

According to the information we have received, Invitation Homes has initiated a "national lease" policy which "standardizes rental fees across the portfolio," and has designed a system to "track resident delinquency on a daily basis" in order to continually assess late fees. In the first quarter of 2017, Invitation Homes credited its national lease and automated tenant-charge system with driving a 22% increase in ancillary income, resulting in $2 million of additional revenue. These earnings for Invitation Homes and its investors come directly from tenants having to pay fees for a number of infractions or services, some of which are described below.

Tenants told us that when they ask Invitation Homes to undertake ordinary repairs or maintenance, such as to address plumbing household insect problems, they are charged directly for any undertakings on top of their rent. They also reported that Invitation Homes – through an automated system – is quick to threaten eviction or file eviction notices due to late payment of rent or late of payment of fees (95 USD per incident), no matter the circumstances. If a tenant cannot pay the late fee and if Invitation Homes does not evict, that fee is added to the tenant's rent. If in the following month the tenant can pay their rent but not the additional charge, the tenant may be evicted for partial payment of rent. When tenants choose to challenge the eviction with Invitation Homes they incur additional fees and penalties.

In neighbourhoods heavily invested by private equity firms including Invitation Homes, more than 7,400 families and individuals are evicted every day. In Charlotte, North Carolina, for example, it was found that in 2013 Invitation Homes filed eviction proceedings against 10 percent of its renters.[3] This is a relatively high rate, even compared to the eviction rates of other investor housing providers, such as Camden Property Trust, with a rate of 2.5 percent over the same period.[4] The high rate of evictions is noted to be a direct result of the securitized bond model of real estate investment that is

[3] Rebecca Burns, Michael Donley and Carmilla Manzanet, 'Game of Homes' (31st March 2014) In These Times, online at: http://inthesetimes.com/article/16424/game_of_homes
[4] ibid

operated by Invitation Homes, and which requires the company to maintain a 94 percent paying occupancy rate across its properties in order to satisfy investors.[5]

Tenants have indicated they feel insecure living in these conditions, where above average rent increases, exorbitant fees or the smallest infraction can result in arrears and lead to eviction and the threat of homelessness.

The financialization of SFR may also have a discriminatory impact on African Americans in the USA contrary to international human rights standards. It is now known that the US census tracts with greater exposure to the financialized and institutionalized single-family rental market have a dramatically higher percentage of African-American residents. This is because companies like Invitation Homes purchased SFRs in areas with high rates of foreclosures resulting from subprime loans. In California, for example, these areas were disproportionately located in low- and moderate-income communities of color and in places outside of city centers. In Los Angeles census tracts where the largest SFR companies own more than 15 percent of homes have an average Black population of approximately 30 percent. In contrast, census tracts with no homes owned by large single-family rental companies have an average Black population of only 6 percent. This trend is similar for California as a whole. For the 18 census block groups and 120 census tracts in California with more than 20 homes owned by large single-family rental companies, the percent of African-Americans is nearly three times that of block groups or census tracts with no homes owned by the largest companies.[6]

This is not to suggest that Invitation Homes is targeting African Americans directly, but that their practices and corporate decisions regarding late payment and other fees and high eviction rates will have a disproportionate impact amounting to indirect discrimination.

Lastly, we are concerned that within the SFR market Invitation Homes is not taking any steps to ensure it is actually contributing to the realization of the right to housing for vulnerable populations. For example, only 1 percent of Invitation Homes SFRs are allocated to lowest income tenants - those in receipt of Section 8 vouchers. In our opinion, in light of Invitation Homes dominance in the rental housing sector, it could and should play a role in ensuring access to affordable housing for the most vulnerable populations.

2. Blackstone and its subsidiaries purchase of Multi-Family Residences (MFR)

In many countries around the world including Czech Republic, Denmark, Germany, Spain, Sweden and the United States, Blackstone and its subsidiaries have been targeting and purchasing multi-family residences in neighbourhoods deemed to be

[5] Rebecca Burns, 'Wall Street's teetering new rental empire' (13th September 2014) Al Jazeera America, online at: http://america.aljazeera.com/opinions/2014/9/wall-street-economyfinancialcrisisrentbackedsecurities.html

[6] Meredith Abood, "Securitizing Suburbia: The Financialization of Single-Family Rental Housing and The Need to Redefine "Risk" (2017), Masters Thesis, Massachusetts Institution of Technology, online at: https://dspace.mit.edu/handle/1721.1/111349

"undervalued". In each case the pattern is similar. A building or several buildings are determined to be located in an undervalued area, which often means they house poor and low-income tenants. Blackstone purchases the building, undertakes repairs or refurbishment, and then increases the rents - often exorbitantly - driving existing tenants out, and replacing them with higher income tenants.

The Special Rapporteur on the right to housing has visited and learned of a number of buildings in Sweden where this pattern has played itself out. In Uppsala, which is considered an undervalued neighbourhood about 45 minutes outside of Stockholm, she visited tenants whose homes had been sold to Carnegie, a subsidiary of Blackstone at the time. Tenants living in apartments with rents set at a level they deemed affordable, indicated that one by one their units were being renovated, rents were then increased by up to 50 percent causing tenants to move out because they could no longer afford to live there.

We recently learned of a building in the City of Ostrava in the Czech Republic that is owned by RESIDOMO, a subsidiary of Blackstone. This building currently houses mostly Roma. It is reported that many of the tenants received eviction notices for non-payment of rent, though tenants dispute the allegations. The tenants have been told that the building will be converted to a seniors' residence and that regardless of their rental status the tenants will be evicted without any alternative accommodation.

We are aware that in Madrid Blackstone purchased over 1,800 units of social housing from the local government. Once tenants' housing contracts expired, Blackstone raised rents to levels that were unaffordable for those who lived there, forcing many of them to leave their homes. With the huge decrease in the amount of social housing in Madrid, caused in part by its privatisation, those who have had to leave have struggled to find new, affordable accommodation.

3. Blackstone's political influence in the area of housing

We are equally concerned that Blackstone has used its considerable resources and political leverage to influence housing policy in a manner that is inconsistent with the right to housing. In particular it has been reported publicly that Blackstone Partners provided at least $6.2 million USD to help defeat "Proposition 10" in California. If Proposition 10 had been passed it would have struck down the 1995 Costa Hawkins law, and enabled cities to enact rent control in their jurisdictions. As it stands, single family homes generally do not benefit from rent control provisions but in light of the growth of SFRs in California, the exclusion of SFRs from rent control legislation would certainly have been questioned had Proposition 10 been passed.

Rent control is a measure that generally serves the interests of tenants, assisting in maintaining affordable rent levels despite market fluctuations.

Blackstone's and its subsidiaries' business model is pushing low-income, and increasingly middle-income people from their homes. Blackstone's practices, as noted

above, have abruptly increased the rental payments of SFRs, making them unaffordable for millions of the existing residents, decreased the availability and affordability of social housing, and has undertook aggressive evictions to protect rental income streams to satisfy investors.

Under international human rights law, governments have an obligation to ensure access to affordable housing for the most vulnerable populations. When a private actor performs a social function that falls within human rights protections, that actor assumes the human rights obligations of the State.

In turn, we draw your attention to the fact that a number of your policies and measures are inconsistent with international human rights law and norms. The threat of eviction creates fear, anxiety and housing insecurity, inconsistent with requirements of the right to housing. Evictions which result in homelessness are a violation of the right to housing under international human rights law. Furthermore, access to affordable housing – with affordability defined by level of household income, not what the market can bear – is a cornerstone obligation of the right to adequate housing under international human rights law. International human rights law also imposes a positive obligation to ensure access to affordable housing for the most vulnerable populations. Furthermore, housing policies that may be neutral on their face, must not have a discriminatory effect. The Special Rapporteur has written extensively on these issues and would be happy to furnish you with relevant materials.

Business entities also have direct human rights responsibilities to respect and facilitate human rights, including the right to housing. This means Blackstone should refrain from taking any actions that will cause harm to tenants as well as taking positive steps to ensure the realization of the right to housing. In this context we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community. The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent, mitigate and address the negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights. "The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding Principle 13). To fulfill their responsibility to respect human rights, business enterprises should have in place: “(a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the

remediation of any adverse human rights impacts they cause or to which they contribute."(Guiding Principles 15)

As you may not be aware of human rights standards, we invite you to have a discussion with us about our common interest in housing.

For your information, we have also sent letters expressing similar concerns to the Czech Republic, Denmark, Ireland, Spain, Sweden and the United States of America where Blackstone and other private equity firms operate.

We intend to publicly express our concerns in the near future, as we believe that the wider public should be alerted to the potential implications of the above-mentioned policies. The press release will indicate that we have been in contact with your company to discuss the issues in question.

This letter and any response received from your Company will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Blackstone is by no means the only financial actor adopting the business model mentioned above. However, because Blackstone is a leader in implementing the new residential real estate business model and one of the largest global actors in residential real estate we believe that your engagement in this discussion could help to change the global narrative around housing. It would also assist identifying suitable business strategies and policies to reduce adverse human rights impacts of real estate investments.

We look forward hearing from you.

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