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

REFERENCE:
OL OTH 17/2019

22 March 2019

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

Blackstone Group L.P.

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.

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[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.

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Leilani Farha
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

Blackstone

March 25, 2019

Beatriz Balbin
Chief
Special Procedures Branch
Palais des Nations
1211 Geneva 10, Switzerland

Dear Ms. Balbin:

We received your letter dated March 22, 2019. Unfortunately, the letter contains numerous false claims, significant factual errors and inaccurate conclusions. We are surprised and disappointed that you would send a communication without verifying your assertions and providing appropriate context. You asserted that Blackstone's investments in residential housing have had a "deleterious effect" on tenants in the United States and Europe and that Blackstone is undermining laws and policies that would improve access to housing. Nothing could be further from the truth. In fact, we share your concern about the chronic undersupply of housing in major metropolitan centers around the world, and are proud that Blackstone has contributed to the availability of well managed rental housing by bringing significant capital and expertise to the sector. We welcome the opportunity to respond to your letter.

There is no question that insufficient capital is flowing into the housing sector which has in turn caused a significant undersupply of housing. For example, over the last 12 years, construction of new housing is down 50% in the United States and 90% in Spain. Firms like Blackstone have provided relief to devastated communities, confidence to homeowners regarding the value of their homes, spurred local economic growth and created local jobs by bringing capital and expertise to the residential rental market. Additionally, Blackstone's investments have also attracted the interest of other private investors – further stimulating economic growth in these areas.

Blackstone has been part of the solution in helping to address the undersupply of housing by bringing capital, expertise and professional management to the residential housing sector – we are in fact increasing rental housing supply and providing the highest standard of service to our residents. For example, whether in the U.S. or Europe, our investments have:

- **Significantly improved housing through renovations.** Many of the homes we have purchased were vacant or in disrepair prior to our ownership. For example, Invitation Homes has invested $2 billion for renovations and improvements, representing $22,000 per home.

Blackstone
345 Park Avenue New York NY 10154
T 212 583 5000 F 212 583 5749
www.blackstone.com

- **Provided opportunities for people that can't afford to buy homes with safe, high-quality rental housing, and improved the overall living environment of our residents compared to the traditional residential rental industry**. As an example, Invitation Homes has a 96% occupancy rate, high levels of customer satisfaction (4.4 out of 5 average resident rating), and residents renew their leases and stay on average 50% longer compared to the multifamily industry.
- **Provided responsible, proactive and professional ownership**. We pride ourselves on being best in class owners and operators. Blackstone adheres to all local housing laws and regulations with respect to rents, tenant communications, property management and other local matters. Our decades of experience owning and managing properties around the world, and access to capital, allows us to consistently deliver professional, reliable, and responsive service. As an example, we are owners of one of the most significant residential rental properties in the world, Stuyvesant Town in New York City. This large scale property of over 11,000 units had previously been suffering under distress, poor management, and considerable underinvestment. As part of our investment, and with the support of residents and the community, Blackstone made a voluntary commitment to preserve 5,000 units of affordable housing. We have also invested almost $200 million to improve the property. We brought institutional management, and proactively engaged with tenants to improve their experience and create a thriving community. <u>Resident satisfaction has more than doubled among the 28,000 residents since our ownership.</u>
- **Benefitted the broader markets in which we operate.** As noted above, our capital helped to stabilize local housing markets following the financial crisis, provided relief to devastated communities and confidence to homeowners regarding the value of their homes, spurred local economic growth and created local jobs.

Your letter contains a number of inaccurate statements. It is important that you understand at least the following significant factual errors:

<u>Rental Housing Asset Class</u>

- The notion that the growth in institutionally owned single family home rental costs is outpacing the market is not supported by economic theory. In fact, single family rentals of institutional investors represent less than 2% of the total number of single family rental homes available today. The rest are owned by individuals.
- Rental housing has been an asset class that pension plans and charitable endowments, as well as individuals and other types of investors, have invested in for generations. Blackstone has brought capital and expertise to the rental housing sector, however, any expert will confirm that we did not make it an asset class for the first time. As noted above, investments in rental housing are absolutely critical to address the chronic undersupply of residential rental accommodations in major cities throughout the world – the answer to affordability is to increase the supply of housing.

<u>Invitation Homes ("IH")</u>

- You cite the "dominance" of Invitation Homes in the U.S. housing landscape and its ability to increase rents. Invitation Homes represents only 0.09% of the nearly 93 million homes in the United States, and just 0.5% of the nearly 16 million single-family homes for rent in the United States. IH has no ability to impact rents – it must follow market price or no one would rent from Invitation Homes. Indeed, IH charges rents in line with the broader market – otherwise it wouldn't have such high levels of occupancy (96%).

- Contrary to your assertion otherwise, in the vast majority of markets where Invitation Homes operates, it is actually cheaper to rent rather than own a home. In Southern California and Seattle for example, it is $818 and $759 less expensive respectively per month to do so. If these homes were not available for rent, there would be a negative impact on affordability of rental accommodations.
- You make multiple "apples to oranges" comparisons that are deeply misleading. For example, you compare average rents in Los Angeles to those of Invitation Homes in its *entire* Western market – without accounting for the large square footage (1,850 square foot average) and high quality of Invitation Homes's homes, as well as geographic diversity of those homes in various high-cost markets.
- Furthermore, you compare purported rates of late payment notices from Invitation Homes to completed evictions for other operators. However, the vast majority of individuals who receive such notices stay in their home after working with the company to get back on track. You further state that tenants who make late payments "face immediate eviction." This is absolutely false. Indeed, there is no jurisdiction in the United States where such a thing is true for any rental property owner, let alone Invitation Homes. There are fulsome consumer protections and often lengthy legal processes that Invitation Homes follows to the letter in the rare instances when an eviction becomes unfortunately necessary. Invitation Homes is in the business of housing families; eviction is never a course they want to pursue.

Residential Housing in Sweden

- Blackstone owns 61% of the shares in a publicly-listed company called Hembla (which owns homes in Sweden) alongside other shareholders including pension plans, insurance companies, and individual investors. Rents in Sweden are highly regulated and Hembla complies with all such regulations. The claim that Blackstone's actions led "tenants to move out because they could not afford to live there" is completely inaccurate. Leases in Sweden are indefinite for tenants, i.e., in no circumstance could the landlord increase rents by 50% forcing existing tenants to move out, as is stated in regards to homes in Uppsala. Furthermore, since our original investment in Hembla, 100% of all income from the company has been reinvested into its properties to provide a better living environment for its tenants.

Residential Housing in the Czech Republic

- The fact is, Residomo is not converting any building in Ostrava to seniors use, or evicting people as a result. All tenancies are operated in compliance with local laws and regulations. Independent analysts have concluded our rents are actually below the regional market average. In addition, our rent prices have been reviewed by local statutory bodies to ensure they are in line with fair practice.

California Proposition 10 ("Prop 10")

- You raised Prop 10 in California, which California voters rejected by a wide margin of 59% to 41%. As a general matter, we absolutely agree that steps should be taken to address housing affordability in both California, and more broadly. However, virtually all independent economists agreed that Prop 10 measure would have exacerbated California's existing shortage by discouraging new construction and reducing new investment in affordable housing. Again, the spurious claim that opposing such measures is "inconsistent with right to housing" is at odds with nearly every economist and multiple academic studies, who assert the contrary.

We take our responsibilities as residential landlords around the world incredibly seriously, and hold ourselves to the highest standards of fairness, transparency and empathy for our residents. The injection of private capital, like Blackstone's, is part of the solution to addressing the chronic undersupply of housing in major metropolitan centers around the world. We are deeply proud that our investments have helped to improve the lives of tenants in the communities in which we invest around the world.

We hope that we can move toward a thoughtful, productive and more accurate dialogue about this important topic.

Sincerely,

KAC KMcCarthy

Ken Caplan and Kathleen McCarthy
Global Co-Heads of Blackstone Real Estate

cc: Michelle Bachelet Jeria
United Nations High Commissioner for Human Rights