

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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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; and 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, pursuant to Human Rights Council resolutions 35/7 and 34/9.

We are writing to express our concern with respect to your Government's practice of adopting laws and policies which treat housing as a commodity and undermine the enjoyment of housing as a human right. We invite you to reflect on the following concerns with a view to developing a human rights based response.

Our chief concern lies with those laws and policies which have allowed unprecedented amounts of global capital to be invested in housing as security for financial instruments that are traded on global markets, and as a means of accumulating wealth. This expanding role and unprecedented dominance of unregulated financial markets and corporations in the housing sector is now generally referred to as the "financialization of housing" and it is having devastating consequences for tenants.

Contrary to international human rights obligations, investment in housing in the United States of America has disconnected housing from its core social purpose of providing people with a place to live in with security and dignity.

The current financial model attached to residential real estate in the United States of America has created insecurity for many people in the country, particularly minority groups. I am concerned in particular with the following three issues as inconsistent with international human rights law and standards:

1. The Government of the United States of America has provided financial support primarily through tax breaks and benefits to encourage the institutional investment in housing as an asset class and yet has failed to take measures to ensure access to adequate housing for the most vulnerable populations.

After the 2008 housing crisis, the federal government approved the discounted sale of large portfolios of distressed single-family mortgages to investor funds housed inside large private equity companies. In 2010, the United States Department of Housing and urban Development launched the Single-Family Loan Auction Program to sell 'severely delinquent' mortgages to private equity firms. By the end of 2016, the United

States Department of Housing and Urban Development, and the Government backed agencies of Fannie Mae and Freddy Mac, auctioned at least 176,760 delinquent mortgages at prices that were heavily discounted. As much as 95 percent of these mortgages were bought by private equity firms, and many were turned into private rental properties – creating an entirely new type of rental accommodation. Those firms had no binding requirement to protect those families affected by the foreclosure crisis and they had no mandate to keep families in place or make a certain number of homes available to low-income families. Single-family homes now represent 34.8% of the rental market in the United States of America, which constitutes a 4% increase from 2005 to 2016.

National government policy focused on deregulation and the provision of tax benefits, has facilitated the treatment of foreclosed homes as a means of wealth extraction for private equity firms and corporate landlords. Most of these actors, including Blackstone's subsidiary, Invitation Homes, organize single and multi-family dwellings they own as Real Estate Investment Trusts (REITs). As of August 2017, REITs on the New York Stock Exchange possessed a total value of over US\$1 trillion. In 2017, nearly 225 REITs were traded actively on the New York Stock Exchange and other markets.

The Government's favourable tax treatment of REITs and their designation as a separate asset class has led to their proliferation. The tax benefits of REITs include for example, that REITs pay no corporate tax as long as 90 percent of a REIT's profits are floated to the unit holder/shareholder; all expenses related to a REIT's rental activities can be deducted just as business expenses can be written off by a corporation; and while the dividend payments made by a REIT are taxed to the shareholder as ordinary income, a portion of the dividends paid by REITs may constitute a non-taxable return of capital, which not only reduces the unit holder's taxable income in the year the dividend is received, but also defers taxes on that portion until the capital asset is sold.

The Government has also contributed to the financialization of housing through direct fiscal support of private equity firms. In January 2017, Fannie Mae announced it would securitize US\$1 billion of the debt held by Blackstone Subsidiary, Invitation Homes', collateralized by their rental homes. Such favourable treatment has created a profit driven incentive for private equity firms and REITs to invest in the rental housing market.

On the whole, federal housing spending supports homeowners in the form of tax breaks, and among all homeowners it is the wealthiest that receive the largest share of federal subsidies. The richest one-fifth of homeowners, who do not face burdens of housing affordability, reap the greatest share at 72.6 percent of the US\$68.1 billion mortgage interest deduction benefits. Of all federal housing spending, which totaled US\$190 billion in 2015, high-income households with annual incomes of US\$200,000 or more received four times the amount of housing subsidies than low-income households.

2. The Government of the United States of America has failed to encourage sub-national governments to enact legislation that regulates rent increases, fines and

penalties leading to rental prices that are not commensurate with average wage increases.

Rents in the United States of America increased by 22 percent on average between 2006 and 2014, while average incomes decreased by six percent. In some places, the problem is more acute. In Oakland, California, for example, information received suggests that Invitation Homes is raising rents by 10 percent per year, which is twice the average rent increase in the rental market for that area. The increasing gap between rental prices and median wages is driving renters out of their homes, forcing them to relocate at some distance from their places of employment, extended family members, and communities and contributing to homelessness.

It has been reported that Invitation Homes and Starwood Waypoint impose a number of fees on tenants – regardless of whether they can afford these fees, and when the failure to pay can lead to an eviction. This includes fees for property maintenance (regardless of whether the property is well maintained), and late payment penalties. According to information received, Invitation Homes penalizes late payment of rent by up to US \$100, even if they are late by one minute, or was due to an error by invitation Homes’ computer system. Invitation Homes allegedly charges US\$30 for the use of debit cards to pay rent. While these punitive fees reduce housing security for many, they helped raise earnings for Invitation Homes by 20 to 30 percent a year.

3. All of these acts and omissions are disproportionately affecting African American households, and other minority groups contrary to the United States of America’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

CERD requires States to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, economic and social rights including the right to housing.

Corporate landlords, like Invitation Homes, are concentrating their property acquisitions in neighbourhoods of colour. In California and Fulton Georgia, for example, the highest levels of investments by private equity firms like Invitation Homes, were in communities that were over 70% African-American. Neighborhoods that have a higher concentration of African-Americans have a higher rate of tenants receiving eviction notices. Large corporate landlords are more likely to pursue evictions over a ‘mom and pop’ landlord. One corporation, Starwood Waypoint provided nearly one-third of all of its tenants with eviction notices. In Atlanta, Georgia, statistics show that the corporate landlords in that area were 18 percent more likely to issue eviction notices than the smaller firms. More than 7,400 families are evicted every day, resulting in the eviction of millions ever year.

The financialization of residential real estate undermines the enjoyment of the right to housing and non-discrimination in that context. Because the business model associated with financialization demands short-term high yield profits, there is extreme

pressure placed on locating and purchasing housing that is deemed “undervalued” which often means housing that is affordable and hence where the most vulnerable communities are located. Once purchased, financialization requires securing the highest possible return on investment through the persistent extraction of profits through monthly rents. The result of this is the constant escalation of housing costs for tenants. Turning housing into an investment leads to decision-making that is investor centric, rather than tenant centered. When the focus is on maximising profits, housing becomes less affordable, less available, less secure, and less habitable.

We would like to draw your attention to Art. 5(e) sub section (iii) of the Convention on the Elimination of all forms of Racial Discrimination, ratified by your Government on 21 October 1994, which requires States Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic and social rights, including the right to housing.

As you may know, according to international human rights law, your Government is required to take progressive measures, to the maximum of available resources, to ensure access to adequate housing for all without discrimination. It is not clear that your Government is currently meeting this standard.

We are encouraged to hear that in the 2019 Budget of the U.S. Government, there was a 26.5 per cent increase in funding for tenant-based rental assistance, including Section 8 rental vouchers. Nevertheless, it has been reported that your Government is seeking to rollback regulatory frameworks, like the Housing Protection Act, that serve to protect minority groups from discrimination in the rental housing sector. We are also concerned that recent decisions on certain regulatory frameworks fail to address the systemic issues leading to the financialization of housing. For example, the rollback on the Dodd-Frank Wall Street Reform and Consumer Protection Act, as well as the decision to no longer classify non-bank financial institutions like asset managers and private equity firms as ‘systemically important’ thereby not subjecting them to certain Government regulation will incentivize the financialization business model and lead to increase housing costs at the expense of the most vulnerable.

To address the issue of financialization and its impact on the enjoyment of the right to housing, your Government must develop policies and laws that include a full range of taxation, regulatory and planning measures in order to re-establish housing as a human right, promote an inclusive housing system, prevent speculation and limit the extraction of profits at the expense of tenants. This will require a transformation of the relationship between your Government and the financial sector, whereby human rights implementation becomes the overriding goal.

In this context, we would like to bring to your Excellency’s Government attention the UN Guiding Principles on Business and Human Rights (UNGPs) which remind States that they must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related

human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). In addition, business entities also have an independent responsibility to respect human rights, including the right to adequate housing, according to the UNGPs. In this regard, we would also like to draw your attention to the report of the Special Rapporteur on the financialization of housing (A/HRC/34/51).

Please note that a letter with a similar content has been sent to various countries concerned, and to the company Blackstone Group highlighting its human rights obligation as private actor to avoid any harm and to take positive steps to realize the right to housing.

We use this opportunity to encourage the United States of America to recognize the impact of the financialization of housing on the enjoyment of the right to adequate housing particularly for minority and vulnerable groups, and to take concerted steps towards returning housing to its core function as a social good. Failure to do so can only be regarded as a retrogressive step, and accordingly puts the State at odds with its obligations under international human rights law.

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 Excellency’s Government’s to clarify the issue/s in question.

This letter and any response received from your Excellency’s Government 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.

Please accept, Excellency, the assurances of our highest consideration.

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