

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on minority issues

REFERENCE: AL
TUR 5/2016:

21 September 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 28/9, 32/32, 25/17, 32/11 and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged destruction of historic buildings and residential neighbourhoods in the Sur district and Diyarbakir city**, mainly Kurdish populated areas, which have been on-going since December 2015, and the **plan to expropriate the inhabitants of the city of their homes and lands for urban renewal and regeneration, which would drastically change the ethnic, social and cultural demographics of the region**. This situation was the subject of three urgent appeals, case no. 5/2015 dated 24 December 2015 by the Special Rapporteur on extrajudicial, summary or arbitrary executions, case no. 1/2016 dated 21 January 2016 from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on extrajudicial, summary or arbitrary executions about the same area and case no. 3/2016 dated 31 March 2016 by the Special Rapporteur on the promotion and protection of freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

According to the information received:

Since July 2015, the continuing violent clashes between the security forces and armed non-state Kurdish groups have intensified in the southeast of the country, predominantly in the districts of Cizre, Sirnak, Nusaybin, Sur and Diyarbakir. Between July 2015 and February 2016, the hostilities have caused massive destruction in residential areas: at least 355,000 people have been displaced and 1,642,000 residents in seven cities across Turkey's southeast have been affected by curfews of various lengths and coverage (in some instances, confinements) imposed by the Turkish authorities. From August 2015 to April 2016, at least 338 civilians lost their life during these curfews; more than half of these were children, women and elderly persons. The security operations in the region have put the

local population at risk of death, injury and displacement, leaving them in the crossfire or cutting them off from emergency and basic services. The High Commissioner for Human Rights repeatedly appealed to all parties that human rights be respected at all times and urged the Turkish authorities to give independent investigators, including UN staff¹, unimpeded access to the area to assess the situation and verify allegations received. Until now, such access to the main cities in the region has not been granted.

In early December 2015, the Turkish Military entered the Sur district with heavy artillery, with the alleged intent to root out young Kurdish militants. The operation displaced 23,000 of the 50,341 inhabitants of metropolitan Diyarbakir (the walled city, also called Suriçi), which is considered the historic and cultural centre for the Kurdish population who predominantly live in this geographical area. As of 20 April 2016, Suriçi was placed under 35 curfews declared by the Governor's Office, some of which are still ongoing. Six of the fifteen neighbourhoods of Suriçi have been placed under open-ended round-the-clock curfews (confinements). During the curfews, people were trapped in their homes (some of them in ruins), causing many casualties. Thus, the historical Sur district has effectively been under martial law - or special regime - with open-ended curfews imposed on its largely Kurdish civilian population, for several months. Since the hostilities resumed, further confinements have been imposed. At the beginning of August 2016, Suriçi was reportedly completely evacuated.

The destruction of heritage sites in Sur district and metropolitan Diyarbakir resulting from the violent clashes

The Sur district is located between Eastern Anatolia and the Mesopotamia plains. Traces of all the phases of its thousand years old history are still apparent, and the identity of the region integrates heritage from the passage of dozens of civilisations and religions – Roman, Persian, Sassanid, Byzantine, Jews, Muslims and Christians, Arabs, Armenians and Turks. This district, predominantly poor, includes the part of Diyarbakir city which contains Suriçi. Because of its cultural and historical significance - there are 595 registered cultural assets - the site is protected under Law 2863, namely the Law on the Conservation of Cultural and Natural Property. On 4 July 2015, UNESCO inscribed Diyarbakır Fortress, with its 40ft-high stone fortifications, and Hevsel Gardens Cultural Landscape, which lie between the walls and the Tigris River, on the World Heritage List. Suriçi and the Tigris valley, the area surrounding the inside of the Fortress, were registered as a first grade buffer zone of this world heritage site.

¹ See in particular, statements from the High commissioner on 10 March, 10 May and 13 June 2016.

Due to the clashes and the use of heavy weaponry by the security forces, serious devastation in the urban texture² of Sur district has been reported. It is alleged that some 1,100 buildings in Suriçi alone have been partially or completely destroyed largely by Turkish forces during and after the security operations. These include a disproportionate amount of property and key communal infrastructure as well as registered historical buildings located in the urban archaeological site. These include:

- The complete destruction of the Hasirli Mosque.
- The Kurşunlu Mosque, a registered cultural heritage site located in the Fatihpaşa neighbourhood, was irrevocably damaged on its northern front walls and stoop pillars within the mosque. The fire within the sanctuary distorted the walls, decorations and ornaments.
- The Sheikh Muhattar Mosque, well-known for its Minaret on the Four-Pillars. Two of four carrier pillars of the minaret were targeted by heavy weaponry and carrier lintels of the minaret were also damaged. Walls of the mosque were partially destroyed to facilitate the passage of armoured vehicles into the street, as were registered historical shops located at Yeni Kapı Street.
- The partial destruction of Saint Giragos and some of its historical surroundings including registered shops, as well as the Chaldean Church and the biggest Armenian Catholic Church in the Middle East.
- The partial destruction of Pasha Hamam, one of 7 historic public baths/hamams in Suriçi, which dated from the 16th century and had survived up until today.
- The partial destruction of Mehmed Uzun Museum House, an example of traditional civil architecture and a registered historical building. The parts destroyed include the kabaltı (also called “abbara”, typical elevated buildings with a passage under it), which provided rare examples of traditional street texture of Diyarbakır and enabled pedestrians to walk under the physical structure.
- The destruction of the Virgin Mary church, a 1,700-year-old building of religious significance.

As a result, the area characterised as “Suriçi Urban Archaeological Site” has lost its unique physical structure, and the destruction of these significant sites has disrupted the social fabric of the district in such a way that its restoration would be very difficult.

² The “urban texture” refers to the geometrical structure formed by the spatial distribution of urban elements as buildings, roads and green area (G. Ober, R. Tomasoni and F. Cella). It forms the particular character of a city.

The Culture and Tourism Ministry has reportedly piled up the large amount of ruins within Suriçi, without paying any specific attention to parts of the ruins that could be essential for restoration work of registered historical buildings or that should be preserved in their original locations as unique construction materials. Some of these materials have been carried out of the area without the necessary inspections. Since Suriçi region is a registered buffer area of World Heritage Site and protected under Law 2863, according to relevant national and international laws, any works carried out in the area must be carried out in collaboration with the Directorate of Diyarbakır Fortress and Hevsel Gardens Cultural Landscape Site Management, and any decision should be taken separately for each structure. Reportedly, neither the directorate nor the municipal bodies were included in the process of rehabilitation by the central government. The potential impact of such actions and omissions on cultural rights is very grave.

Destructions, evictions and expropriations during and after the clashes

Beyond the damage to registered heritage sites, the security operations have also impacted other architecturally valuable structures and residential buildings. In the curfew-affected Suriçi neighbourhoods, reportedly 70% of the buildings have been totally or partially destroyed, many completely demolished during the two months following the end of security operations (March 2016), as the confinement period continued. It is alleged that trucks were removing debris and workers moving in and out of the area while inhabitants were still denied access to the neighbourhoods, which may have already resulted in the destruction of material evidence relating to alleged unlawful acts of destruction.

There are also important impacts on the way of life in the neighbourhood. Under these harsh conditions, at least 23,000 people from Suriçi neighbourhoods were forced to flee before May 2016. These families have reportedly not been provided with any alternative housing by the State, not even emergency shelter. The displaced population is reported to have moved to neighbouring towns and villages, or to other regions within Turkey. Most of the families have sought shelter with friends and relatives, and now live in overcrowded apartments. They are facing lack of privacy and poor hygiene conditions. This situation is increasing the economic pressure on already very poor families. Some have rented new apartments in other parts of the city, often two or three families together in small spaces. Other families have had to split up between several apartments. Children have discontinued their education. In February 2016, the organized help from the municipalities included basic supplies and cash to pay for the rent for a period of one month. As the situation continued to worsen in Suriçi with the return of curfews, lack of safety and discontinuing of public services (for example electricity and water), people had no choice but to leave their houses. At the beginning of August 2016, it has been reported that Suriçi was completely evacuated and that the number of demolished buildings reached 1,277.

While the main motivation for the Government's security operations in Sur is reportedly to stop Kurdish militants, plans for the urban renewal of the region have also been discussed. On 1 February 2016, the then Turkish Prime Minister stated that the cities in this region have faced unplanned and uncontrolled growth since the 1990s and would have needed urban renewal even if these events had not happened. Reportedly, the Government has had plans to restore the region to increase employment and turn Diyarbakir into an international tourism destination since 2011, when a previous attempt to conduct urban renewal took place. At the time, the area was put under the application of Law 6306 by the Council of Ministers (decision 3900 of 22 October 2012). However, the initiative was denounced by strong protests all over Turkey, including complaints from civil society and NGOs, which led to a halt in the project in 2013.

On 21 March 2016, the Council of Ministers issued a decree ordering the immediate expropriation of all non-state-owned land parcels of Suriçi (decision 8 659). This amounts to a total of 6,292 of 7,714 parcels available in Suriçi (82%). The remaining 18% of the parcels either belong to the Housing Development Administration (TOKİ) or are already owned by the State Treasury. The implementation of this decree could therefore affect the entire population of Suriçi and result in the loss of their home for all the inhabitants of the city who have fled the violent clashes, continued curfews and insecurity and lack of basic services. Those who have left will not have the possibility to return to their homes. According to the authorities, this decree was issued in accordance with article 27 of the Expropriation Law no. 2942 to protect the area and speed up assistance. However, the residents of Suriçi and the Municipality of Diyarbakir were never involved in, nor informed about the expropriation plans and it is alleged that no provisions have been taken to provide alternative housing for already displaced inhabitants of Suriçi.

Residents, mainly belonging to the Kurdish minority, now fear being left out of reconstruction plans and not being able to return to their homes. Furthermore, because of the damage resulting from the clashes, the concern is that the Ministry will consider entire districts unsafe and begin demolitions, rather than doing a building-by-building risk analysis. It has been observed through satellite imagery that demolition and excavation works that started at the end of February 2016 have already caused irreversible damage to the original urban tissue and traces of the history of the city, completely destroying 18.7 out of the 75 hectares still under confinements, damage that could have been minimized with the necessary conservation interventions.

The scope of application of laws 5366 and 6306 and concentration of powers

Laws 5366 and 6306 and their scope of application raise a number of issues. Their potential negative impacts on human rights are made worst by their use in the context of the Sur district and metropolitan Diyarbakir. Following the 1999 earthquake and successive financial crisis, the Government of Turkey engaged in

a massive process of privatization of public lands and eradication of low-income housing. The Housing Development Administration (TOKI) was restructured in 2002 and was given powers to intervene in urban space without conducting environmental and social impact assessments or consulting with affected populations, disregarding the expropriation procedures set forth by the Turkish Constitution for the protection of property rights, and exempting it from review by the Supreme Court of Public Transactions and Accounts.

This restructuring was accompanied by the enactment or modifications of a series of urban laws, including Law 5366 from 2005 and Law 6306 in 2012. Law 5366 on “the Protection of Deteriorated Historic and Cultural Heritage through Renewal and Re-use” allows local authorities and TOKI to implement renewal projects without the consent of the property owners, including through forced eviction and without consultations.

Since its adoption in 2012, Law 6306 on “Transformation of Areas Under Disaster Risk” has been reportedly used to legitimize urban renewal and regeneration and implement large housing projects through forced evictions and displacements, affecting predominantly poor populations who cannot afford to remain after the projects are completed.³ This law gives the possibility to the Ministry of Public Works and Housing to intervene in all kinds of construction plans and projects in any urban settings considered ‘at risk of disaster’. This can include modifying existing construction plans, making new ones, and bypassing relevant construction regulations that ensure the completeness and aesthetics of the urban area. The plans made by this Ministry and its authority partners are not subject to the limitations of the Construction Law and other laws concerning construction.

The same Ministry is also entitled to determine which are the risk areas, or may ask municipalities to determine these areas under their jurisdiction. However, according to article 2 of the Law, collaboration with municipalities is not mandatory and the Ministry can choose not to involve the municipalities in the process.

Furthermore, the Ministry has the power to expropriate immovable properties or exchange them with others; to transfer immovable property rights and zoning rights to other areas; to divide and allocate shares forming the immovable

³ In Istanbul, the majority of neighborhoods of the Gaziosmanpasa district were taken under the law. In the Sarıgöl neighborhoods, it led to the expulsion of the Roma community; low income residents from other neighborhoods and district were threatened of the same faith. In Sulukule, Tarlabası and Ayvansaray, urban renewal has been conducted without consideration either of the social dimension and cultural practices or of the legal titles of ownership of the lands. In these cases, the majority of the population affected by the urban development was Roma or Kurdish belonging to the low-income sector of the population.

properties and to establish *rights in rem*⁴ on immovable properties located within the risk areas.

The law can be implemented in three types of situations, risk areas, risky buildings (defined under Art. 2(d)) and reserve areas (defined under Art. 2 (C)). However, the definitions of these areas are vague and do not meet objective, scientific criteria, leaving much room for interpretation.

The law enables the Ministry of Urban Affairs and Environment to rebuild according to new standards if it considers the buildings to be at-risk. No attention is dedicated to the social dimension.

Lack of democratic consultation and violent dispersal of protests in opposition to the urban renewal projects

It is alleged that neither laws foresee participation and consultations with affected citizens during the preparation and implementation of the projects. In previous instances, the residents of areas and neighbourhoods declared at risk were notified to evacuate and demolish their buildings by their own means within 60 days, in accordance with articles 5 (3) of the law and were not provided alternative housing. According to law 6306, if the decision is objected, the property owners lose their eligibility to financial support. Owners who do not evacuate their houses may have electricity, water and natural gas services discontinued, in accordance with article 4 (3) of Law 6306.

After the redevelopment plans are implemented, citizens are asked if they would accept the allotment that they are offered. Acceptance of the allotment also implies acceptance of a long-term debt program. However, for most of the affected population, the new housing projects, especially those at the centre of cities, are unaffordable. This is compelling them to leave the area they had inhabited and to move to the urban periphery, causing them to lose their social network and solidarity ties. It also results in a drastic change to the ethnic, social and cultural profile of the region, erasing traces of the presence of the Kurdish population.

It is alleged that the implementation of urban renewal projects have met peaceful opposition in almost all affected neighbourhoods. Whereas most demonstrations have been generally managed adequately by the police, it is alleged that in certain areas, mainly inhabited by Kurdish and Alevi people, the demonstrations have been violently dispersed by the riot police.

⁴ An action *in rem* is a proceeding that takes no notice of the owner of the property but determines rights in the property that are conclusive against all the world. The object of the lawsuit is to determine the disposition of the property, regardless of who the owner is or who else might have an interest in it. Interested parties might appear and make out a case one way or another, but the action is *in rem*, against the things.

While we do not wish to prejudge the accuracy of these allegations, we express serious concerns at what appears to be intentional destruction of urban architectural and living heritage, as well as homes and livelihoods of thousands of people, on grounds of threat to security and pursuance of development, in violation of international human rights law.

Specifically, we are concerned about the destructions of cultural heritage committed as a result of the violent clashes occurring in Sur district and Diyarbakir city. We are also concerned about what appears to be a systematic policy of destruction of urban heritage areas, regardless of their religious, historical and cultural values and of the protected sites within them, to pursue profitable urban developments, by the combined use of Laws 5366, 6306 and 2942 and the context of the violent clashes. This policy, applied without any consultation of the concerned persons, is reportedly forcing many thousands of people, disproportionately from poor, marginalized and minority groups, away from their homes, neighbourhoods, ways of life and heritage, in violation of the international human rights standards relating to the rights to adequate housing, non-discrimination and to participate in cultural life, including the right of access to cultural heritage, without discrimination. We are also concerned about the powers that seem to be concentrated in the TOKI and about the use of violence in the Sur district to expropriate thousands of people from their homes, destroy entire neighbourhoods and force displacement and homelessness, which are resulting in deep changes in the demographic structure and the cultural continuity of the area.

We express further concern about the alleged violent dispersal by the police of a number of peaceful protests in opposition to the urban renewal projects.

In connection with the above alleged facts and concerns, please refer to the **Reference to international human rights law Annex** attached to this letter which cites international human rights law instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore appreciate your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please explain the circumstances of the destruction of and damage to sites of religious, historical and cultural significance cited above, and whether and how the force used which resulted in such outcomes was compatible with the human rights standards mentioned in the Annex.
3. Please provide information concerning the measures taken to assess the damage related to the registered structures and other buildings in the protected areas before and during the current works to evacuate the debris and how these

respect the engagement in national and international law for the protection of cultural heritage.

4. Please indicate whether independent investigations have been carried out into each incident which is alleged to have resulted in destruction of cultural heritage sites, and what the methodology and results of any such investigations have been. If such investigations are planned, please indicate when and how they will be carried out.

5. Please indicate what measures are being taken to ensure that additional cultural heritage sites in the area will not be harmed going forward.

6. Please provide full details of the government's justification for the urban renewal plans and changes in legislation according to this priority, in line with its international human rights obligations.

7. Please provide information about the reasons leading to the issuance of the decree ordering the immediate expropriation of all private properties in Suriçi, as well as the compatibility with the international human rights standards on the right to housing described in the Annex. Please explain what administrative or judicial mechanisms are available for individuals to challenge decisions to expropriate their homes and properties under this decree, or their immediate eviction from them.

8. Please indicate whether and how concerned individuals and groups have been consulted about the plans of urban development entailing the described destruction and the alternatives provided to them.

9. Please indicate if all feasible alternatives to eviction and expropriation have been explored in consultation with individuals and communities, prior to decision made for urban renewal of such a large area, and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.

10. Please indicate the mechanisms the people concerned have to challenge the decision of expropriation the application of the decree would entail. If any such mechanisms exist, please provide details.

11. Please provide specific information on measures taken to protect and promote the existence and identity of the Kurdish minority, who are most affected by the current situation.

12. Please provide information on measures taken to ensure respect for the rights of all people concerned to access and enjoy cultural heritage, to participate in cultural life, to adequate housing and to protection against arbitrary eviction and displacement. Please specify in particular measures that have been taken to prevent poor, marginalized and minority persons from being disproportionately

impacted by the development projects and to ensure adequate alternatives and compensation.

13. Please explain the mechanisms and measures taken at the central level to provide guidance to municipalities and local governments in relation to their international human rights obligations in relation to large scale displacement and destruction due to urban renewal and regeneration of this area.

14. Please explain how the police response to the protests in opposition to the urban renewal projects complied with international human rights norms and standards.

We would appreciate a response within 60 days.

While awaiting a reply, and particularly in view of the irreparable nature of many of the harms alleged above, we urge that all necessary interim measures be taken to halt the alleged violations, to protect places of historic, cultural, social and religious significance that may be threatened and to prevent re-occurrence of these violations and further expropriations. In the event that the investigations support or suggest the allegations to be correct, we urge the Turkish authorities to hold accountable any person found responsible of the alleged violations.

In light of the serious implications of these allegations and the risk of ongoing and irreversible damage to the rich urban heritage, we are considering the possibility of expressing these concerns publicly in the near future. If a press release is issued, it will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Chaloka Beyani
Special Rapporteur on the human rights of internally displaced persons

Rita Izsák-Ndiaye

Special Rapporteur on minority issues

Annex
Reference to international human rights law

In connection with the above concerns, we would first like to recall Security Council resolution 1456 (2003) and later resolutions, in which the Council stated that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.

We would also like to refer your Excellency's Government to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. While taking note of Turkey's invocation of article 4 of the ICCPR on 21 July 2016, we would like to stress that no derogation can be made regarding article 6 and that any derogating measure from the obligations under the Covenant should not go beyond the extent strictly required by the exigencies of the situation, should not be inconsistent with other obligations under international law and must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

According to the Basic Principles and the Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated.

According to General Comment 21 (2009) of the Committee on Economic, Social and Cultural Rights, the right of everyone to take part in cultural life protects the rights of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States should take appropriate measures to support minorities or other groups in their efforts to preserve their culture. In addition, the Committee considers as a core obligation to allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other groups in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk. (E/C.12/GC/21, paragraphs 49 (a), 52 (f) and 55 (e)).

In the same General Observation, the Committee on Economic, Social and Cultural Rights also recalled that States have the obligation to respect and protect cultural heritage in all its forms, in times of war and peace and natural disasters. States should respect and protect cultural heritage of all groups, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between

cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

We would also like to recall the report of the former Special Rapporteur in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage. As cultural heritage represents values linked with the cultural identity of individuals and groups, access and enjoyment of cultural heritage also imply that States acknowledge, respect and protect the diversity of cultural heritages, as well as the rights of all concerned persons and groups to be consulted before deciding about sites of cultural or religious significance (A/HRC/17/38, para.58, 79 and 80 (a) and (b)). It also implies the responsibility to acknowledge, respect and protect the possible diverging interpretations that may arise over cultural heritage and the choices of individuals and groups to feel associated (or not) with specific elements of cultural heritages.

Cultural and religious sites are also critical resources for safeguarding, questioning and transmitting historical knowledge and narratives of the past. The Special Rapporteur in the field of cultural rights warns against the fact that “dominant homogenizing narrative blanches out diversity, ignoring the cultural heritage of everyone outside the group in power, simultaneously depriving the majority of the opportunity to understand the complexity of their country” (A/68/296, para.31).

The current Special Rapporteur, in her first report to the Human Rights Council underscored that while specific aspects of heritage may have particular resonance for and connections to particular human groups (see A/HRC/17/38 and Corr.1, para. 62), all of humanity has a link to such objects, which represent the cultural heritage of all humankind (A/HRC/31/59, para 48). As Judge Cançado Trindade explained in his opinion related to the 2011 order of the International Court of Justice regarding the case of the Temple of Preah Vihear, “the ultimate titulaires of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole”. Hence, the alleged destruction of cultural heritage has a very broad human rights impact, first and foremost on the local populations and groups, but also on the right to access cultural heritage, including the heritage of others, of people across Turkey and around the world.

States have a duty not to destroy damage or alter cultural heritage, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, in particular paras.78 and 80 and A/HRC/31/59, paras 52, 53, 60). The obligation to preserve and safeguard cultural heritage was also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage, “whether or not it is inscribed on a list maintained by UNESCO or another international organization” (Section VI). The UNESCO Declaration also stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, ratified by Turkey on 16 March 1983, and the 1976

Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (Section IV).

We would also like to recall articles 17 and 27 of the Universal Declaration of Human Rights (UDHR), article 11 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Government on 23 September 2003, which protect the rights of everyone to adequate standards of living, including adequate housing, and to take part in cultural life. The International Covenant on Economic, Social and Cultural Rights contains no derogation clause, and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies even in times of conflict or general emergency (E/2015/59, para 12-15). The Committee noted that “even during armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law...”⁵

Article 11.1 of the ICESCR on adequate housing as a component of the right to an adequate standard of living is to be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

In its General Comment No. 7 on forced evictions, the Committee clarified that “appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts”. The Committee has repeatedly expressed concern over forced evictions that have taken place without adequate compensation or alternative accommodations. The Committee has encouraged Turkey to review its legal framework regulating urbanization projects to ensure those affected receive adequate compensation.

As the former Special Rapporteur on adequate housing noted in her guiding principles on security of tenure for the poor in urban and peri-urban areas (A/HRC/25/54), States should improve security of tenure, especially for vulnerable and marginalized persons and groups, including by taking a number of measures to avoid the

⁵ Concluding Observations, Israel, E/C.12/2001/17, para. 703.

disruption caused by large scale displacement and evictions without adequate, participatory and effective mechanisms to prioritize in situ solutions. Principles 3 in particular underlines the need for regulations aimed at protecting public health and safety or at mitigating risk for the population, which should not be used as an excuse to undermine security of tenure. According to Principle 4, States should promote the social function of property, including land, and take measures to combat land speculation while ensuring access to secure and well located land for housing for the poor.

We would also like to refer your Excellency's government to the Guiding Principles on Internal Displacement, which restate and compile the rights of internally displaced persons as provided by the main international human rights and humanitarian instruments. Principle 5 stipulates that all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons. Principle 6 also recognizes the right of every human being to be protected against being arbitrarily displaced from his or her home or place of habitual residence. Principle 18 also provides that all internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation.

We would like to remind your Excellency's Government of Articles 19 and 21 of the ICCPR which guarantee the rights to freedom of opinion and expression and freedom of peaceful assembly respectively.

We would further like to refer your Excellency's Government to Human Rights Council resolution 24/5, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

We also recall the recommendations detailed in the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66).

We would also like to draw the attention of your Excellency's Government to international standards relevant to the protection and promotion of the rights of minorities. Article 27 of the ICCPR guarantees the right of persons belonging to ethnic, religious or linguistic minorities, in community with other members of the group, to

enjoy their own culture, to profess and practice their own religion or to use their own language. In its General Comment no.2, the Human Rights Committee expressed the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (paragraph 1), as well as in the non-derogable nature of article 18.

We would also like to refer to your Excellency's Government to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2.1 states that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning them or the regions in which they live, in a manner not incompatible with national legislation. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (article 4.2).

We also would like to recall the recommendations of the sixth session of the Forum on Minority Issues on "Guaranteeing the rights of religious minorities" (2013), in particular to recommendation number 34, which states that measures should be put in place to protect and maintain the cultural heritage of religious minorities — including buildings, monuments, burial grounds and other sites of religious significance, as well as the documents, records and artefacts belonging to religious minorities.