



HOUSING AND LAND RIGHTS NETWORK

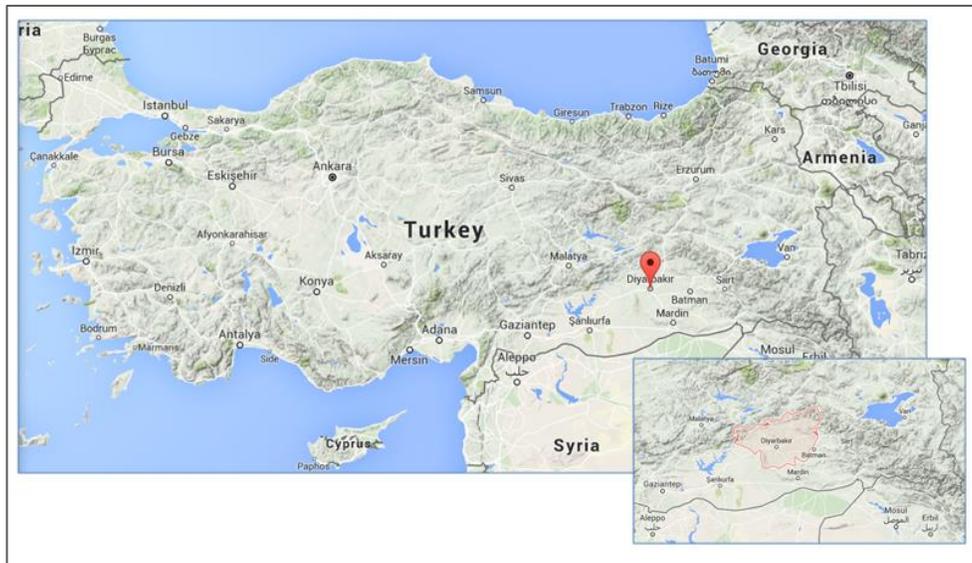
Habitat International Coalition

URGENT ACTION APPEAL

DIYARBAKIR: TUR-260516

EXPROPRIATION, EVICTION AND DEMOLITIONS IN SURIÇI, DIYARBAKIR, TURKEY

Mass dispossession, 23,000 people displaced, 27,000 facing forced eviction, 1,100 buildings, including world heritage sites, already demolished



Map of Turkey showing location of City of Diyarbakir with detail indicating the Province of Diyarbakir (pop. 1,528,958).

I. Summary

Following large-scale military operations since December 2015 that displaced **23,000 inhabitants** in the historic fortress area of Metropolitan Diyarbakir known as Suriçi (Walled City), the Council of Ministers of Turkey have issued a decree ordering the immediate expropriation of all non-state-owned parcels of Suriçi¹. The mass dispossession would appropriate a total of **6,292 land parcels**. Application of the Decree will entail the forced eviction and dispossession of **another 27,000 inhabitants** of Suriçi, affecting **14,764 households** and Suriçi's entire **population of 50,341**.

Since the cease-fire between the Government of Turkey and the outlawed Kurdish Workers Party (PKK) ended in July 2015, armed conflict has displaced at least **355,000 people** (February 2016) and curfews have affected some **1,642,000 residents** in at least 22 districts of seven cities across Turkey's southeast.

¹ Turkish Official Gazette, *Karar Sayısı : 2016/8659*, 21st March 2016, at: <http://www.resmigazete.gov.tr/eskiler/2016/03/20160325-15.pdf>

Suriçi, and currently Metropolitan Diyarbakır, is considered to be the historic and cultural capital of Turkish Kurdistan. Demolition of the quarter is ongoing, with some 1,100 buildings partially or completely destroyed in the military operations, including precious world heritage. These acts contravene international law, including treaties ratified by Turkey and raise the specter of ethnic cleansing. In light of Turkey's urban transformation history under the ruling Justice and Development Party (AKP) since 2002 and the historic conflict between Turkish governments and citizens in Kurdish-populated areas, two party doctrines converge in the dispossession and destruction of Suriçi. Local inhabitants have expressed their conviction that the security operations seek to empty the historic center of its indigenous population ahead of an urban-transformation drive, rather than battling the PKK.

II. Victims

During the military operations on spring 2016, curfews were declared in six neighborhoods of the 15 total neighbourhoods of Suriçi (Cevat Paşa, Dabanoğlu, Fatih Paşa, Hasırlı, Cemal Yılmaz and Savaş). The Sur District's all-day-long open-ended curfews (confinements) were declared on 11 December 2015 and still partly ongoing. The Municipality of Diyarbakır estimates 50,000 displaced people from Sur District. Particularly 23,000 people from Suriçi fled their homes when the curfew was lifted for a few hours before the still ongoing confinement. After military operations in confined areas 70% of the buildings of the curfew's affected Suriçi neighborhoods were totally or partially destroyed. The expropriation decree affects the whole Suriçi area and the total 50,341 inhabitants; hence, its immediate victims are **23,000 already displaced** and a **potential 27,000 forcibly evicted**. Concerning the whole southeastern region, at least 1,642,000 residents have been affected by the 65 round-the-clock curfews declared and carried out in at least 22 districts of seven cities in the region. During curfews and confinements, fundamental rights of the inhabitants are violated, such as right to life and right to health. Moreover, according to the Ministry of Health on 27 February 2016, at least 355,000 residents were forced to leave the cities and districts they lived in. From August 2015 to April 2016, at least 338 civilians (78 children, 69 females, 30 elderly people) lost their lives under curfew, 46 of whom are from the Metropolitan Diyarbakır, and 21 of those in Suriçi.

III. Perpetrators of Violations and Duty Holders

The party responsible for the potential evictions and actual dispossession is the Government of Turkey and, more specifically, the signatories on the Expropriation Decree, the Cabinet of Ministers of Turkey, headed by the President of Turkey Mr. Recep Tayyip Erdoğan, the former Prime Minister of Turkey Mr. Ahmet Davutoğlu –who resigned on May 2016 and was substituted by Mr. Binali Yıldırım. The subsidiary entities responsible for the expropriation and envisaged development of Suriçi are the Ministry of Development, Ministry of Culture and Tourism, Ministry of Environment and Urban Planning and the Housing Development Administration of Turkey (TOKI). The authority responsible for declaring the curfews are the presidentially appointed provincial governors; hence, in the case of Suriçi and wider Sur District, the Governor of Diyarbakır Mr. Hüseyin Aksoy.

Concerning the destruction of the cities, the entities directly responsible are the security forces such as the Police anti-terror combat Team, Police Special Forces, Gendarmerie Special Forces, Military Forces and Riot Police, led by Ministry of Interior and Ministry of Defense of Turkey. In addition, unofficial militant squads including the "Gendarmerie Intelligence and Counter-Terrorism" or "Gendarmerie Intelligence Organization" (JİTEM), Hançer, Fatihler and Esedullah teams, also led by Ministry of Interior and Ministry of Defense of Turkey. The last of these cited is allegedly linked to Islamic State of Iraq and Levant (ISIL). Also, the opposing combatants including PKK guerrillas such as the YDG-H.

IV. Events, Consequences and Developments

The current events in Diyarbakir and the expropriation of Suriçi are entangled with the wider political context of the Kurdish-majority provinces in Turkey. Since the end of the Turkey-PKK ceasefire in July 2015 and after months of increasing tensions, violence spread throughout Turkey, particularly, in the southeastern provinces. As clashes continued between the PKK and the Turkish army, Turkish authorities imposed curfews on several cities, followed by demonstrations. An unknown number of Kurdish citizens joined the armed struggle, mainly led by youth allegedly linked to YDG-H, the youth branch of PKK. In a dozen cities, local youth took up arms in what they brand a “self-defense” strategy, and took control of the cities by patrolling their streets. They dug trenches built barricades to prevent the police and army entry into the neighborhoods to avoid the conduct arbitrary arrests, as had been happening since the ceasefire.²

In response, Turkish authorities expanded the curfews and launched a large-scale military operation in southeastern Turkey, killing 338 civilians, displacing 355,000 and causing massive destruction in residential areas. Turkish forces totally demolished 1,100 buildings in Suriçi alone. Between 16 August 2015 and 20 April 2016, authorities officially imposed 65 open-ended and all-day-long curfews in at least 22 districts of seven cities in the region, affecting at least 1,642,000 residents. As mentioned, protests and vigils took place frequently outside the curfew areas, which police routinely dispersed with tear gas and water cannons, detaining protestors. As per 20 April, the Metropolitan Diyarbakir had undergone 35 curfews.³

Moreover, security operations in the region have put up to 200,000 people at risk of death, injury and displacement, placing them in the crossfire or cutting them off from emergency and basic services such as water as they have been confined indoors. The New Year 2016 saw the seasonal escalation in combat activity, and 103 days of security operations left the Suriçi in ruins by early March. Yet the curfew remained in place and was partially active as of June 2016, with confinement in some areas exceeding 160 days. As trucks moved in to remove debris, locals were still banned from their neighborhoods.

According to local informants, the inhabitants are convinced that the security operations were more for the purpose of emptying Suriçi ahead of an urban-transformation drive, rather than battling the PKK.⁴ Confirming this premonition in late March, the government issued a decree for the immediate expropriation of 6,292 of 7,714 parcels available, 82% of total parcels in Suriçi. Residents and the Municipality of Diyarbakir never were involved in, nor informed about the expropriation plans, and now fear being left out of any reconstruction plan, losing homes and shops in return for low compensation and resulting with the destruction of the area’s social fabric.

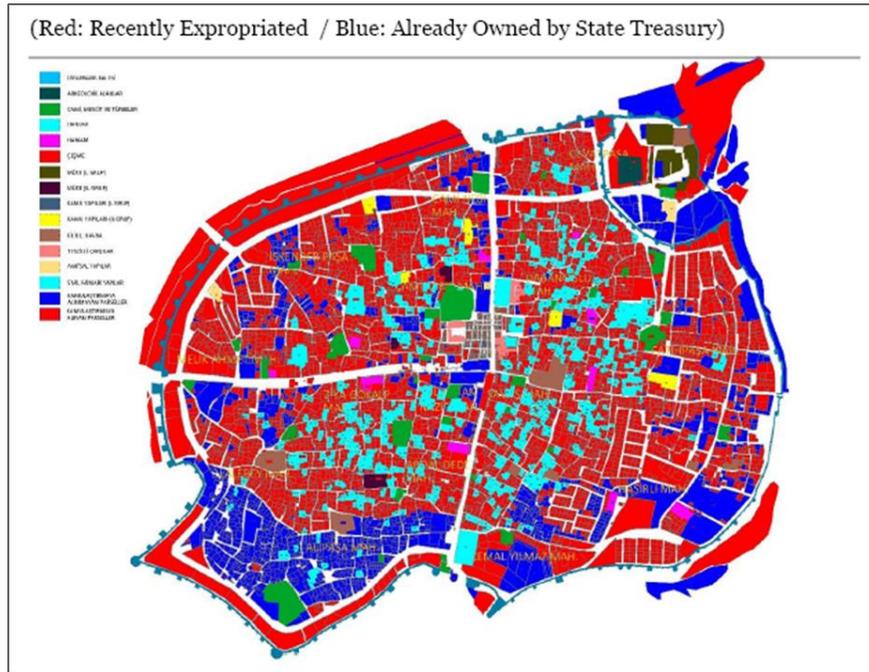
Valuable urban assets form the physical context of the destruction and dispossession campaign. The Diyarbakir Fortress and the adjacent Hevsel Gardens form a cultural landscape that extends between the city and the River Tigris. The site was recognized as world heritage by UNESCO in 2012, acknowledging the city’s heritage dating back thousands of years. The Municipality of Diyarbakir has been reporting the damage and devastation caused by the use of heavy weaponry in armed clashes that were particularly violent from 27 January to 3 February 2016 in urban areas of Sur and in registered historical buildings. Consequently, the Suriçi Urban Archeological Site has been seriously damaged

² Humeyra Pamuk, “A new generation of Kurdish militants takes fight to Turkey’s cities,” *Reuters* (27 September 2015), at: <http://www.reuters.com/article/us-turkey-kurds-youth-idUSKCNORRODS20150927>

³ Human Rights Foundation of Turkey, “Fact sheet on declared curfews between August, 16, 2015 and April 20, 2016 and civilians who lost their lives according to the data of Human Rights Foundation of Turkey Documentation Center”, April 2016, Ankara.

⁴ Mahmut Bozarlan, “How Turkey seeks to kill two birds with one stone in Diyarbakir,” *Al Monitor* (5 April 2016), at: <http://www.al-monitor.com/pulse/originals/2016/04/turkey-pkk-clashes-ankara-pledges-urban-renewal.html>.

architecturally valuable urban structures and buildings, as well and disrupted the indigenous social system and life cycle in the district.



Map of the expropriation affecting the total 50,341 inhabitants of Suriçi

Protected buildings, such as Kurşunlu Mosque, Sheikh Muhattar Mosque, Pasha Hamam, Mehmed Uzun Museum House and other historical civil buildings and historic shops at Yeni Kapı Street were partially or totally destroyed. The Directorate of Environmental Protection (Municipality of Metropolitan Diyarbakir) officially reported that the Culture and Tourism Ministry formed a commission with local institutions and extracted ruins without any examination of the demolitions, including physical parts of registered historical buildings, and removed and piled them in an area that is not officially a dump site. Moreover, according to the Municipality, around 70% of the buildings in the eastern part of the old city, composed by six neighborhoods have been destroyed fully or partially by the police and military operations between August 2015 and March 2016.⁵ Estimates determine that 1,100 buildings, partly damaged during the clashed, were demolished during the following two months after the end of the operations. The process of removing wreckage still continues as per end of May 2016, and the toll is expected to increase day by day. As the area is still under confinement, it is not possible to know the exact extent of the destruction or to determine the distribution of registered historical buildings, civilian architecture and households among those 1,100 demolished buildings. Hence, any assessment of the damage is done through analyzing satellite images.

The recent Turkish history of urban-development plans of cities augurs the harmful trajectory of the government as well.⁶ Through top-down planning without consulting affected communities or consideration of the social dimensions and cultural practices, historical neighbourhoods whose residents own legal titles, such as happened in Sulukule, Tarlabası or Ayvansaray, became subject to destruction through urban renewal. In these examples, the areas targeted for urban development hosted Roma and

⁵ Diyarbakir Fortress and Hevsel Gardens Cultural Landscape site management, *Damage Assessment Report on Sur, Diyarbakir*, 30 March 2016, Diyarbakir.

⁶ See Cihan Uzunçarşılı Baysal and HIC-HLRN, "Privatizing the Land in Turkey," in *The Land and Its People: Civil Society Voices Address the Crisis over Natural Resources in the Middle East/North Africa* (Cairo: HIC-HLRN, 2015), at: http://www.hlrn.org/publication_det.php?id=o2ps.

Kurdish populations. Planners and developers have replaced those communities with unaffordable luxurious projects on local populations, compelling the original low-income inhabitants to leave. Because they now cannot pay the inflated prices of their properties and those in the development project, they cannot contract to sell to third parties and simply leave in order not to face expropriation. They end up impoverished, further deprived and, eventually, displaced.

While the centres of cities are redesigned for high-income groups, wealthy, transitory tourists and CEOs, it is not exaggerated to state that 70% of the population living in the redeveloped areas is expected to migrate to the periphery. Concerning the development plans of slums, often the inhabitants are moved from so called “unhealthy, “unsafe” and “filthy” places, turning “development” into a latent forced-eviction mechanism, since the relocated populations, unable to pay the housing in the “redeveloped” areas end up by moving out, most probably more impoverished than before and also losing all their social networks and solidarity ties, vital mechanisms of their survival.



16 January 2016: The historic walls around the Suriçi of Diyarbakır damaged during the security operations and clashes between Turkish security forces and Kurdish militants (Sertac Kayar/Reuters).

Taking into account the recent Turkish urban transformation history and the historic conflict between Turkish governments and citizens in Kurdish-populated areas, it is not unthinkable that the intentions of the central Government of Turkey are to change the demographic character of Diyarbakır.

V. Official Reasons and Critique

The expropriation decree of Sur on 21 March 2016 relies mainly on the Article 27 of the Expropriation Law No. 2942. The law allows the Cabinet of Ministers to issue a so-called Immediate Expropriation Decree, pleading national defense or an emergency. In this case, seemingly the decree was request by the Ministry of Environment and Urban Planning. According to the Minister of Environment and Urban Planning, the decision was made as a “last resort” to protect the area.⁷ In addition, Turkish authorities also expressed that the decree was issued to speed up assistance.⁸ However, the immediate expropriation does not protect nor assist the owners and the inhabitants of Suriçi and, what is more, the Turkish authorities did not speed up any provision of alternate housing for displaced inhabitants of Sur and the Metropolitan Diyarbakır, which would have been an indicator of the intent to render assistance instead of dispossession.

Another publicized reason for the operations is urban transformation of Suriçi. While urban transformation and development are legitimate reasons when carried out in meaningful consultation with, and participation of local inhabitants and their representative bodies, among human rights-related preconditions, authorities who pursue such transformation through displacement caused by armed conflict commit illegal forced evictions that aggravate the conditions of displacement, poverty and homelessness.

⁷ “Turkey seizes six churches as state property in volatile southeast,” *World Watch Monitor* (6 April 2016), at: <https://www.worldwatchmonitor.org/2016/04/4392638/>

⁸ Commissioner for Human Rights, *Turkey: Security trumping human rights, free expression under threat*, Council of Europe (April 2016), at: <http://www.coe.int/en/web/commissioner/-/turkey-security-trumping-human-rights-free-expression-under-threat>

VI. Minorities and Indigenous Peoples

According to the last census data (1965) by language the majority of population of Turkey is ethnically Turkish, but the state's territory is inhabited by 26 linguistic groups, the largest of which minority groups is Kurdish.⁹ Smaller minorities are the Armenians, Greeks and several Caucasian peoples. All ethnic groups are discussed below. As already mentioned, the Diyarbakır is considered the cultural and historical capital of the Kurdish-ethnic provinces in Turkey. Turkey's Kurdish citizens represent around the 20% of the country's total population, and mostly inhabit the eastern and southeastern regions of the country. In fact, for millennia, the Kurdish people have inhabited areas that extend beyond Turkey, covering mainly northern Syria, northern Iraq, northwestern Iran and parts of Azerbaijan. The Kurdish people's civil status and recent history differ from one country to another. Nevertheless, Kurdish self-determination aspirations and national claims have prevailed in all of countries with Kurdish population.

Historically, successive Turkish-dominated government relations with the region's minorities (non-Sunni Muslim and/or non-Turkish) have been characterized by population transfer, demographic manipulation and institutionalized discrimination.¹⁰ In the modern Republic of Turkey, the Human Rights Council's Universal Periodic Review has exposed several times its concern on treatment and relations with minorities. Also Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee have urged Turkey to recognize all the minorities in its territory, including Kurds, and expressed concern for the lack of mechanisms to protect their rights and prevent hate speech and crimes against them and the existing discrimination particularly on the right to enjoy their own culture.¹¹ Concerning the right to education, these human rights treaty bodies have encouraged Turkey to take further measures to promote education and improve quality of education, particularly mentioning eastern regions of Turkey. Moreover, other human rights bodies have expressed concern at the lack of monitoring to ensure access to education by ethnic groups and the unavailability of education in languages other than Turkish¹² and have recommended further amendments to its legislation to allow the teaching of languages traditionally used in Turkey¹³ in the general public education system.¹⁴ Moreover, Turkey has neither signed nor ratified the Council of Europe's rights protection mechanisms and frameworks of minorities, the *Framework Convention for the Protection of National Minorities* and the *European Charter for Regional or Minority Languages*.

The current violence in the Kurdish provinces of Turkey suggests that the region's recent conflict history as a direct consequence of such discrimination and displacement. Taking into account the UN Special Representative (SR) on internally displaced persons' country mission report, the PKK insurgency and the

⁹ Peter A. Andrews, "Ethnic groups in the Republic of Turkey," Beiheft Nr. B 60, *Tübinger Atlas des Vorderen Orients* (Wiesbaden: Reichert Publications, 1989, and 2nd enlarged edition in 2 vols., 2002).

¹⁰ Nesim Şeker, "Forced Population Movements in the Ottoman Empire and the Early Turkish Republic: An Attempt at Reassessment through Demographic Engineering," *European Journal of Turkish Studies*, No. 16 (2013), at: <https://ejts.revues.org/4396>; Joseph Schechla, "Ideological Roots of Population Transfer," *Third World Quarterly*, vol. 14, n° 2 (1993), pp. 239–75, at: <http://dx.doi.org/10.1080/01436599308420324>; Iliia Xypolia, "Racist Aspects of Modern Turkish Nationalism," *Journal of Balkan and Near Eastern Studies*, Vol. 18, Issue 2 (2016), pp. 1–14, at: <http://www.tandfonline.com/doi/pdf/10.1080/19448953.2016.1141580>; Deniz Gökalp, *Beyond Ethnopolitical Contention: The State, Citizenship and Violence in the "New" Kurdish Question in Turkey*, p. 23; "'Prospective-Turks' or 'Pseudo-Citizens': Kurds in Turkey," *The Middle East Journal* 63(4) (October 2009), pp. 597–615; Cultural Survival, "Speaking Kurdish in Turkey," <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/speaking-kurdish-turkey>.

¹¹ Human Rights Council, op. cit., paras. 30, 82 and 83.

¹² Article 42 of the Constitution of the Republic of Turkey.

¹³ International Covenant on Economic, Social and Cultural Rights, Declarations and Reservations: Turkey, at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec.

¹⁴ Human Rights Council, "Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Turkey," A/HRC/WG.6/21/TUR/2, November 2014, para. 78.

government's counter-insurgency operation in the southeast of the country from 1985 to 1999 has claimed over 35,000 lives and caused displacement, estimates of which range widely between 378,000 and 4.5 million persons, predominantly of ethnic Kurds.¹⁵

In the context of the 2nd UN Conference on Human Settlements (Habitat II), at Istanbul in 1996, Habitat International Coalition conducted a fact-finding mission to southeastern Turkey to investigate the demolition of Kurdish villages by the Turkish military over the previous six years. It reported that the Turkish military had destroyed and burnt over 3,000 Kurdish villages during the period 1991–96 alone.¹⁶

At the end of 1999, a total of 378,000 persons had been “evacuated” by the security forces from 3,165 rural settlements in the southeast. Nevertheless, it is feared that the number of displaced might be higher as this figure does not include persons who left their homes as a result of the general situation of insecurity. In this sense, Turkish NGOs reports claim that between 2 and 4.5 million Kurds have been displaced, and outside observers contend that a “credible estimate” of the number of persons who remained displaced in 2001 was around 1 million. Also in his 2002 mission report, the SR cited several reports that indicated:

“(D)isplaced persons had not been provided with shelter or food in the immediate aftermath of their displacement and that the Government did not arrange temporary accommodation for those evacuated by the security forces. As a result, the majority of the displaced moved into provincial cities, such as Diyarbakir and Batman, where they reportedly lived in conditions of extreme poverty, with inadequate heating, sanitation and infrastructure. Their situation was further compounded by a lack of financial assets, having received no compensation for lost property, and the need to seek employment in overcrowded cities and towns, where unemployment levels were described as “disastrous.” Moreover, many of the displaced, who had previously been engaged in animal husbandry and small-plot agriculture, lived in urban settings to which they were unable to adapt.”¹⁷

Moreover, the 2014 UPR report states that Turkish legislation has defined of terror crimes vaguely and that the continued use of anti-terrorist clauses has enabled the politically motivated prosecution of large numbers of persons. The Special Rapporteur on executions recommended the amendment of legislation to reflect the international interpretation of the term “proportionality” and to stipulate that lethal force shall only be used as a last resort where there is an imminent threat to life.¹⁸ In fact, serious concerns remain over deaths resulting from excessive use of force by security officers and the lack of independent, impartial and effective investigation into reports of excessive use of force by police.¹⁹

In its interim monitoring cycle, the Council of Europe's Commission against Racism and Intolerance also has reiterated the need for Turkey to establish “a body, independent of the police and other security forces and of the prosecution authorities, entrusted with the investigation of alleged cases of misconduct by the members of the police or other security forces, including ill treatment directed against members of minority groups.”²⁰ Also concerning counter-terrorism operations and policies, the Committee against Torture (CAT) has raised its concerns about allegations of torture and ill-treatment of

¹⁵ Commission on Human Rights, “Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2002/56 – Turkey,” E/CN.4/2003/86/Add.2, 27 November 2002, at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2003/86/Add.2&Lang=E>.

¹⁶ Habitat International Coalition, *Impact of War and Forced Evictions on Urbanization in Turkey: Violations of Housing Rights, Fact-finding Report No. 1* (Istanbul: Habitat International Coalition, June, 1996), at: http://www.hlrn.org/publication_det.php?id=qm8=#.V0s2ztJIN4.

¹⁷ Deng, *op. cit.*

¹⁸ Human Rights Council, *op. cit.*, para. 89.

¹⁹ Human Rights Council, *op. cit.*, paras. 5, 31, 32, 33, 42, 63 and 83.

²⁰ European Commission against Racism and Intolerance, “ECRI Conclusions on the implementation of the Recommendations in Respect of Turkey Subject to Interim Follow-up,” CRI(2014)6, 5 December 2013, para. 167, at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Turkey/TUR-IFU-IV-2014-006-ENG.pdf>.

detainees, extrajudicial killings and ill-treatment in the context of counter-terrorism operations. CAT cites numerous credible reports of law-enforcement officials engaging in such acts while responding to perceived and alleged threats and carrying out counterterrorism operations in the southeastern part of the country following the breakdown of the peace process in 2015. In addition, CAT regretted the reported impunity enjoyed by the perpetrators of such acts, the failure by the State party to ensure accountability for the perpetrators of killings in cases previously raised by the Committee, and the Turkish government's reported denial to retrieve the bodies of those killed in clashes between security forces and members or armed groups by their families, hence impeding investigations into the circumstances surrounding those deaths. Moreover, the Committee expressed its serious concern at reports that the imposition of curfews in areas in which security operations have taken place has restricted the affected populations' ability to access basic goods and services such as health care and food, causing severe pain and suffering.²¹

VII. The State's Duty under International Law

Since the ruling Justice and Development Party (AKP) came to power in 2002, government has failed to uphold its economic and social rights obligations and take necessary steps to ensure non-discrimination in the continuous improvement of living conditions for the state's population. The programs of privatization and structural adjustment have particularly harmed the poor, while especially targeting minorities, such as Kurds and marginalized segments of society, for removal in favour of private real-estate investment schemes.²²

Regarding the legislative framework in Turkey, the Turkish Constitution recognizes (Articles 56, 57) that Turkish citizens have the right to decent housing, and the state bears a responsibility to help meet those needs and rights. Moreover, Turkey ratified the International Covenant on Economic, Social and Cultural Rights on 2003, which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Therefore, Turkey is obliged to give effect to the rights recognized therein and implement the recommendations developed in the General Comments of CESCR, such as the General Comment No. 4 on the right to adequate housing and General Comment No. 7 on forced evictions.

Turkey also ratified the European Social Charter, of which Article 31 on the Right to housing requires State Parties to take measures designed to promote access to housing of an adequate standard, prevent and reduce homelessness with a view to its gradual elimination and, make the price of housing accessible to those without adequate resources. Furthermore, Article 1 of the European Convention on Human Rights protocol provides that "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law," quoting and reiterating a statement of the Universal Declaration of Human Rights: "no one shall be arbitrarily deprived of his property."²³

The human right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance to the enjoyment of all economic, social and cultural (ESC) rights and, as CESCR also has stated, is indivisible from many civil and political rights. As stated in General Comment 4 "the right to housing" should not be interpreted in a narrow or restrictive sense, rather, it should be seen as

²¹ Committee against Torture, "Concluding observations on the fourth periodic report of Turkey," 11 May 2016, paras. 11–14, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCOC%2fTUR%2f23920&Lang=en.

²² Habitat International Coalition and Urban Movements Istanbul/HIC, "Stakeholder submission to the Universal Periodic Review of the Republic of Turkey- 2014," 9 July 2014, at: http://www.hlrn.org/img/documents/HIC-HLRN_Submission_UPR_2014_FINAL.pdf.

²³ Article 17.

the right to live somewhere in security, peace and dignity. Adequate housing is composed by seven main elements: legal security of tenure; availability of services, materials, facilities and infrastructures; affordability; habitability; accessibility; location; and cultural adequacy.

Like all ESC rights, implementation must take place with States' assurance of self-determination, nondiscrimination, gender equality, rule of law, the maximum of available resources, progressive realization (nonretrogression) and international cooperation. Correspondingly, policies and legislation should not benefit already-advantaged social groups at the expense of others, but rather prioritize disadvantaged groups such as minorities. At governance level, human rights treaties require States to take steps to ensure coordination among the various spheres of public authorities, including local authorities and local governments, in order to reconcile related policies and fulfill the right to adequate housing.

In its resolution 43/181, the UN General Assembly recognized the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" and that "people should be protected by law against unfair eviction from their homes or land." The UN Commission on Human Rights also has affirmed that, "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing," and "urges governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction."²⁴

International standards also affirm the right to a remedy and reparation "for victims of gross violations of human rights."²⁵ CESCR considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most-exceptional circumstances, and in accordance with the relevant principles of international law. The practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to noninterference with privacy, family and home and the right to the peaceful enjoyment of possessions.

General Comment No. 7 on forced evictions recognizes that forced eviction often takes place in connection with forced population transfers, internal displacement and forced relocations in the context of armed conflict. It states that, in all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. In this sense, many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence, in fact indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction.

Other instances of forced eviction occur in the name of development, for development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation and city beautification programs. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant, General Comment No. 7 recalls the obligations enshrined in the Geneva Conventions of 1949 and its 1977 Protocols that prohibit the displacement of the civilian population and the destruction of private property outside of strict military necessity.²⁶ The 4th Geneva Convention's

²⁴ Commission on Human Rights, *forced eviction*, 1993/77, 10 March 1993, at: <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>.

²⁵ United Nations General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf.

²⁶ Turkey has ratified all of the humanitarian Geneva Conventions, but not the 1977 Protocols, which extend the application of the Convention to all armed conflicts, including internal conflicts and actions of High Contracting Parties toward their own population. Nonetheless, the Protocols are widely considered to have entered customary law. Michael J. Matheson, "The

Article 49 forbids the transfer of persons outside military imperatives and orders that such persons “shall be transferred back to their homes as soon as hostilities in the area in question have ceased” so as to ensure that proper accommodation is provided to the greatest practicable extent during evacuation period.

In light of these norms, CESCR repeatedly has expressed its concern over forced evictions that have taken place without adequate compensation or alternative accommodation. CESCR has encouraged Turkey to review its legal framework regulating urbanization projects to ensure those affected received adequate compensation and/or relocation.²⁷ This reform is urgently needed to comply with ICESCR, consistent with General Comment No. 9, as well as with the Vienna Convention on the Law of Treaties (1969), which Turkey has not yet ratified.²⁸

The Turkish Cabinet ministers’ March 2016 Expropriation Decree is inconsistent with these norms and constitutes a form of cruel, inhuman and degrading treatment to all inhabitants of Suriçi. This is not only a punishment to persons charged, or alleged to be responsible for armed clashes. Article 33 of the 4th Geneva Convention, Articles 26 and 67 of Geneva Convention III, Article 20(f)(ii) of the 1996 ILC Draft Code of Crimes against the Peace and Security of Mankind and Article 75(2)(d) of 1977 Additional Protocol I. Paragraph 5 of the 1974 UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict explicitly ban collective punishment and determines that “destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.”²⁹ Turkey has not taken legislative or administrative action to forswear collective punishment or criminalize forced eviction.

In this connection, the 4th Geneva Convention’s Article 33 provides that nobody may be punished for an offence he or she has not personally committed and declares that collective penalties are prohibited. Concerning property, Article 53, prohibits any destruction of personal property belonging individually or collectively to private persons, or to the sovereign, or to other public authorities, or to social or cooperative organizations. Finally, Article 147 considers grave breaches extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. The destruction and demolition of at least 1,100 buildings and the expropriation of 6,392 land parcels of Suriçi could fit the description of extensive destruction and appropriation of property and would represent a grave breach of the Convention.

The Republic of Turkey violates all seven elements of the human right to adequate housing as pronounced in General Comment No. 4, while conducting forced evictions in violation of its obligations provided in General Comment No. 7. The Republic of Turkey is also violating the affected population’s right to enjoy a bundle of Esc rights, as well as their right to live in their land in security, peace and dignity.

United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Convention,” The Sixth Annual American Red Cross Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, *American University International Law Review*, Vol. 2, No. 2 (1987), pp. 419–39, at: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1660&context=auilr>.

²⁷ Human Rights Council, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Turkey*, A/HRC/WG.6/21/TUR/2, November 2014, para. 72.

²⁸ Articles 27 and 53, *Vienna Convention on the Law of Treaties i(1969)*, at: https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en.

²⁹ International Committee of the Red Cross, “Practice Relating to Rule 103. Collective Punishments,” at: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule103.

VIII. Actions Already Undertaken

As response to the situation in Diyarbakir, political entities, NGOs and local, Regional and International institutions reacted and mobilize to denounce the events and the expropriation process and developments.

During a March 2016 parliament session, People's Democratic Party (HDP) parliamentarians challenged the Turkish government's executive branch to reveal the real reasons of the Expropriation Decree, as it was clearly not justifiable under the rule of law.³⁰ Lawmakers from President Recep Tayyip Erdogan's governing AKP party responded by pushing through an amendment to the Turkish Constitution that would strip members of Parliament of their immunity from prosecution, a move that is likely to lead to the ouster of Kurdish deputies. On the very day their parliamentary immunity was lifted, HDP leaders issued a letter to UN Secretary-General Ban Ki-moon appealing that he pay attention to the situation in Sur, ahead of his opening the First World Humanitarian Summit at Istanbul.³¹

The Municipality of Diyarbakir has produced several reports on the destruction of Sur District's cultural heritage. The Municipality presented its reports and studies to the attention of the Turkish's Ministry of Culture and Tourism, Turkish National Commission for UNESCO, Turkish National Commission for International Council on Monuments and Sites ([ICOMOS](#)), Turkish National Committee of the International Commission for Risk Preparedness ([ICORP](#)) with the demand for inclusion of the Directorate of Site Management of the Municipality of Diyarbakir in all assessment, rehabilitation and adjustment processes. To wit, the current practices flout ICORP's 2012 Istanbul Statement on Cultural Heritage Protection in Times of Risk 2012.³²

More than 300 nongovernmental groups and civic leaders issued a [joint statement](#) on 30 March denouncing the expropriation. Serefhan Aydin, chairman of the Diyarbakir Architects Chamber and signatory of the joint statement, announced that the chamber would initiate a lawsuit to cancel the expropriation decree.

Concerning the development of the events, Diyarbakir Bar Association - Girasun prepared an application to the Council of Europe's European Court of Human Rights (ECHR) on behalf of families under curfew to have the curfews in Sur and other southeastern cities condemned as illegal. Having first sought to do the same in Turkish courts, and having had the case dismissed within hours, he and his team filed at the ECHR in September. The ECHR has condemned individual abuses committed by the Turkish state during the curfews, but has not yet declared the curfews themselves illegal.³³

The Commissioner for Human Rights of the Council of Europe visited Diyarbakir on mid-April 2016 and decried the shocking scale of destruction in some of the zones. The report of the mission will be published soon. Moreover, the Venice Commission and the European Court of Human Rights of the Council of Europe are in process to examine the legality of the curfews, following as well the application from Diyarbakir Association.

³⁰ "HDP co-chair slams decision to expropriate Sur," *Hurriyet Daily News* (29 March 2016), at: <http://www.hurriyetdailynews.com/hdp-co-chair-slams-decision-to-expropriate-sur.aspx?pageID=238&nID=97067&NewsCatID=338>.

³¹ Letter of Co-Chairs Ms. Figen Yüksekdağ and Mr. Selahattin Demirtaş to UN Secretary-General Ban Ki Moon on the occasion of the First World Humanitarian Summit on 20 May 2016, at: <https://hdpenglish.wordpress.com/>.

³² Statement by Yildiz Technical University and ICOMOS-ICORP from the International Symposium on Cultural Heritage Protection in Times of Risk: Challenges and Opportunities, 15–17 November 2012 at Yildiz Technical University, Istanbul, Turkey, at: <http://icorp.icomos.org/index.php/news/39-the-istanbul-statement-2012>.

³³ Tom Stevenson, *Death and destruction in Diyarbakir*, DW, 21 January 2016; at: <http://www.dw.com/en/death-and-destruction-in-diyarbakir/a-19009781>

Amnesty International (AI) conducted a mission to Diyarbakır on late May 2016 and witnessed the population displacement from Sur and the bulldozing of the Sur District. The London-based organization has raised alarm about the conduct of the curfews,³⁴ but not yet reported on the ESC rights consequences of the Turkish military operations.

Conclusion

In light of the reports received from local parties, including the Municipality of Metropolitan Diyarbakır, the situation in Suriçi appears to be dire not only for the tens of thousands of displaced and dispossessed residents of the district, but also for the wider conduct of statecraft in the Republic of Turkey. The preservation of the Suriçi of Diyarbakır, the establishment of human rights-based governance and the reparation of victims are essential to avoiding wider conflict.

Members of the Habitat International Coalition (HIC) regret the need to return to the scene of human settlements destruction as a policy of the Republic of Turkey. The case of Suriçi may be decisive to the direction of the wider community in an already explosive region of conflict where forced displacement and destruction of habitat threaten to become the norm.

In advance of a return fact-finding mission to the region at this auspicious return of the Habitat Agenda cycle, ahead of Habitat III (October 2016), HIC takes this opportunity to urge all parties to end the violence and work to eliminate discriminatory ideologies and practices that lie at the root of the present resurgence of conflict.

In particular, the responsible Turkish authorities identified above to:

- Immediately cease demolitions occurring in Suriçi and cancel the curfews;
- Cancel the Expropriation Decree and reverse any measure undertaken to implement it;
- Provide reparations for the displaced population for damaged property and suffering endured during forced evictions;
- Undertake investigations and ensure accountability and liability of security forces and political authorities for their human rights and humanitarian law violations and consequences;
- Take urgent measures to guarantee the adequate alternate housing for those who lost their homes;
- Uphold all obligations in accordance with international law with respect to the rights of all citizens and residents, including respect, protection and fulfillment of the human right to adequate housing, as the right to live in security, peace and dignity;
- Engage in a frank dialogue with the affected communities and local authorities (the local sphere of government) in accordance with the principles of human rights, especially CESCR General Comment No. 7 and principles of the right to the city;
- Take the necessary steps to protect heritage buildings, investigating and remedying damage and destructive procedures undertaken within the international law norms of reparation for such gross violations;

³⁴ Amnesty International, "Turkey: Indefinite 24-hour curfew, over 200,000 in danger," EUR 44/3178/2016, 11 January 2016, at: <https://www.amnesty.org/en/documents/eur44/3178/2016/en/>.