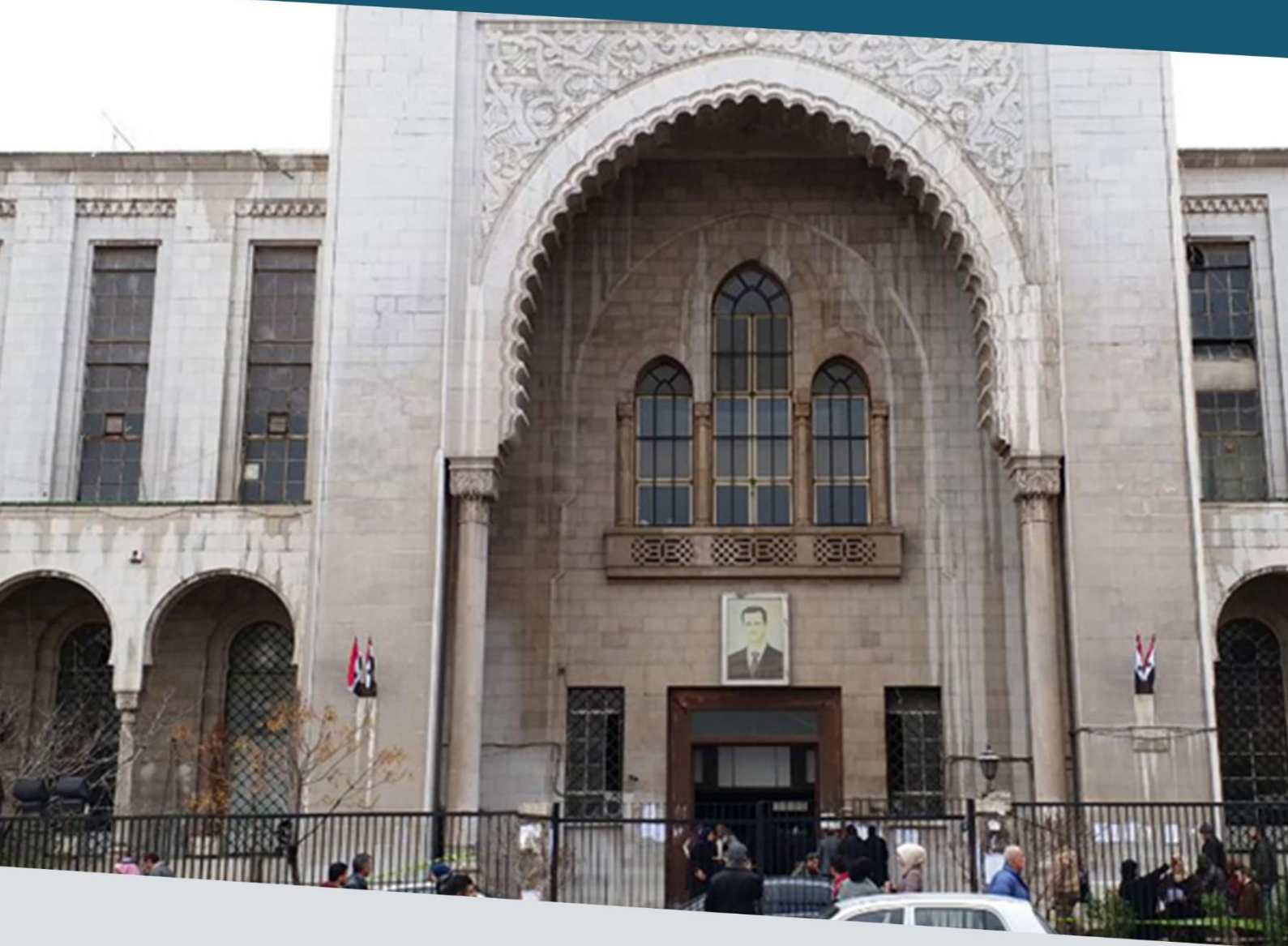


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سوريون
من أجل
الحقيقة
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Syrians
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Syria: The Ministry of Justice Newly Requires Security Clearances for Receiving Powers of Attorney for Missing and Absent Persons

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Circular 30, issued by the Syrian government's Minister of Justice, violates Syrian law, the Syrian Constitution of 2012, and the rights of the families of missing and absent persons

On 16 September 2021, the Syrian government's Ministry of issued Circular 30, which requires individuals obtain a security clearance to initiate power of attorney procedures for absent and missing persons.

Receiving powers of attorney for absent and missing persons is an important tool for the families of absent and missing persons, allowing them to receive the individual's salary and pension, as well as submit legal documents in their name. While this power is not absolute, as it is subjected to a sharia judge's discretionary power, over the past ten years, families could apply to receive the power of attorney without a security clearance —an ability which has now ended.

Ahmed al-Sayed, the Syrian Minister of Justice, justified the issuance of Circular 30 by citing the increased submissions for powers of attorney for missing and absent persons, who the Minister assumes are mostly wanted or dead. The Minister noted that in some cases, powers of attorney were being used in ways which harmed the interests of those missing.

In this report, Syrians for Truth and Justice (STJ) explores the legal implications of Circular 30 and its potential impact on the families of missing and absent persons across Syria.

Definitions of Missing and Absent Persons in the Syrian Law

War, unrest, and natural disasters result in numerous cases of missing persons whose status as alive or dead cannot be confirmed. These people's absences freeze their properties and transactions, affecting their families both emotionally and financially.

Syria's Personal Status Law attempted to address the financial challenges facing the families of missing and absent persons by rectifying the suspension of the disposal of the properties of missing and absent people. The Personal Status Law defines absent and missing persons in Articles 202 to 206 as:

- Article (202): A "missing person" is a person who has disappeared and whose status as alive or dead cannot be confirmed. This means that a person could still be alive, but their whereabouts remain unknown.
- Article (203): An "absentee" is defined as a person who is unable to return to his home due to unforeseen circumstances and is therefore unable to manage their affairs for a period more than one year and his/her absence causes serious prejudice to their other interests.

The Personal Status Law protects the interests of absent and missing persons and people who have financial links with them like creditors, debtors, heirs, or others. The Personal Status Law stipulates for the appointment of a legal counsel for the absent or missing person by the sharia judge in case the absent or missing person did not leave a general power of attorney for someone. In the event the absent or missing person gave a general power of attorney for someone before his disappearance the court is obligated to decide on the confirmation of this power of attorney, according to Article 204 of the Syrian Personal Status Law.

The Previous Requirements for Issuing a Power of Attorney for a Missing and Absent Persons

In August 2021, the former First Sharia Judge of Damascus Mohammad al-Ma'arawi established new requirements for issuing powers of attorney for missing and absent persons:

1. To submit for the power of attorney exclusively in the province of the missing or absent person.
2. To attach a residence permit proves the missing or absent person's old place of residence.
3. To grant powers of attorney only to the ascendants or descendants of the absent person, his/her spouse, and to brothers in some humanitarian cases.
4. To prove that the absent person is still alive by providing a Civil Registry Record for him/her or by bringing two witnesses to testify in case he/she resides outside regime-held areas.

The Syrian government's Ministry of Justice newly requested a Summary of Criminal Record, for both the agent/attorney and the absent/missing person to grant power of attorney, as well as a report of the check ins and outs for the agent from the Immigration and Passport Department. If the person is missing, those seeking powers of attorney must provide certified copies of the police report and the minutes (a semi-formal report) of the mukhtar who drafted the incident.

The process of obtaining these documents has been complicated since the onset of the Syrian war in 2011, especially when security clearances have become requirements for pursuing most legal proceedings.

The Consequences of Imposing the Security Clearance Requirement on the Families of Missing and Absent Persons

Since 2015, obtaining a security clearance has been a prerequisite for initiating almost all government transactions, including those related to marriage, employment, obtaining a passport, renting a house, establishing businesses, and selling real estate.

Issuing security clearance normally takes a period of up to three months or more. STJ spoke to several individuals who have applied for security clearances; some confirmed that they were not granted it for malicious purposes and others said that they were asked to pay sums of money to obtain it.

A. Women are the primary victims

Article 205 of the Personal Status Law states: "Any person missing for a period of four years, which was the case for many families throughout the conflict, can be declared legally dead by the courts". The absent or missing person requires his mother or wife to prove his status to initiate the transaction for getting a power of attorney for him. The proving status procedures

begins with filing a lawsuit which requires a police report and testimonies from two witnesses confirming that the person has been missing or absent for more than four years.

Circular 30 then requires wives or mothers of missing or absent men to obtain security clearances before initiating the status proving procedures. Notably, these procedures are complicated, and are made more challenging when the missing or absent person's family is outside the country.

In regime-held areas, most of the wives or mothers who attempted to obtain security clearances were subjected to insults, blackmail, and other abuses. The failure to obtain a security clearance impedes the subsequent legal actions, such as transferring inheritance, issuing identification papers, moving bank accounts, issuing bank cards, receiving salaries and pensions on behalf of the missing or absent person, and more.

B. Circular 30 is above the law

A legal scholar working with STJ argues that the Syrian Minister of Justice's Circular 30 violates the Personal Status Law, which alone does not require security clearances to submit for any type of power of attorney (Articles 202 to 206).

Furthermore, Circular 30 violates the [Syrian Constitution of 2012](#), specifically Article 50, which states: "The rule of law shall be the basis of governance in the state."

STJ's legal scholar confirmed that Circular 30 would affect the interests of millions of Syrians, especially those displaced outside the country, who are identified as absent or missing by the Syrian Personal Status Law, and those living in it outside the government-controlled areas.

Additionally, the aforementioned circular constitutes a blatant intervention by the Syrian security services in the work of the judicial authority, turning the judiciary into a subordinate to these services and their instructions (security clearance). For its part, this security subordination is an explicit violation of Article 132 of the operative 2012 Syrian Constitution, which states that: "The judicial authority is independent; and the President of the Republic insures this independence assisted by the Supreme Judicial Council."

The security controls enshrined by the circular also breach the constitution's Article 134, which states: "Judges are independent and there is no authority over them except that of the law".

In confirmation of this flagrant violation of the law, the First Sharia Judge in Damascus issued a letter dated 23 September 2021, stressing the necessity of adhering to the directives of the Minister of Justice's circular which establishes the hegemony of security services over the work of the Syrian judiciary, at odds with legal frames that emphasize the security services' subordination to the judiciary and its instructions, not the opposite.

The circular does not only run against local legal frames. It also undermines the Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in 1985. These principles highlight that:

1. The independence of the judiciary shall be guaranteed by the State . . . It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The hegemony granted to security services does not only reverse the dynamics of subordination. It also hampers the role of the judiciary. Should security services misuse the powers they are granted, which remains likely and expected, and refuse to issue security clearances arbitrarily and without legal justifications, the judiciary cannot initiate public prosecution proceedings against involved members of security and intelligence services. The judiciary can opt for such measures only after obtaining a permit from the Director of the Administration of the State Security. The permit is established in Article 16 of Legislative Decree No. 14, which laid the ground for the constitution of the State Security Administration and was issued on 25 January 1964.

Moreover, the circular breaches the principle of separation of powers because the justice minister, in addition to the president of the republic, is a member of the Council of Ministers, which is delegated the duties of executive authorities by Article 83 of the Syrian Constitution. This conflation warrants the executive authorities to interfere in the work of the judiciary, specifically to command judicial authorities.



الجمهورية العربية السورية
وزارة العدل

تعميم رقم ((٣٠))

نظراً لإصدار وكالات عن الغائب أو المفقود بشكل كبير في الآونة الأخيرة بسبب الأحداث التي حصلت في سورية خلال السنوات العشر المنصرمة، حيث تبين أن هناك وكالات كثيرة تصدر ويتبين بعد ذلك أن الشخص المدعى بفقدانه أو غيابه ميتاً أو ملاحقاً بجرائم خطيرة، كما أنه وردت حالات يستغل فيها الوكلاء حالة الغائب أو المفقود ويتصرفون بأمواله تصرفات تضر بمصالحه، وهذا ما يجعل التأكد من الأوضاع القانونية للوكلاء وللمفقودين أو الغائبين ضرورة ملحة، ويقتضي ذلك الاستحصال على الموافقات الأمنية اللازمة، لدى البدء في إجراءات الحصول على الوكالة أسوةً بباقي أنواع الوكالات، واعتبار الوثيقة المتضمنة لهذه الموافقة من الوثائق التي يجب إبرازها ابتداءً كمرفق أساسي من مرفقات طلب الحصول على الوكالة. وعلى إدارة التفتيش القضائي والمحامين العاملين مراقبة حسن تنفيذ هذا التعميم وإعلامنا عن أي مخالفة لضمونه.

دمشق في ٨ / ٢ / ١٤٤٣ هـ / ١٥ / ٩ / ٢٠٢١ م

وزير العدل

القاضي أحمد السيد

نسخة إلى:

- مكتب الوزير
- رئاسة محكمة النقض
- مكاتب معاوني الوزير
- إدارة التشريع
- إدارة التفتيش القضائي
- النائب العام للجمهورية
- المكتب الخاص
- المحامي العام في.....
- المعهد العالي للقضاء (للاطلاع وإبلاغ مشموله إلى الطلاب المتدربين في المعهد)
- رئيس إدارة قضايا الدولة
- الهيئة المركزية للرقابة والتفتيش
- نقابة المحامين
- مكتب التوثيق والأرشيف في رئاسة مجلس الوزراء
- مجلة القانون
- مجلة المحامين
- مكتب المتابعة
- المكتب الفني بمحكمة النقض
- المكتب الصحفي
- المكتب الإداري
- المحفوظات

Image 1- A photograph of Circular 30. Credit: The Syrian Ministry of Justice's Facebook official page.

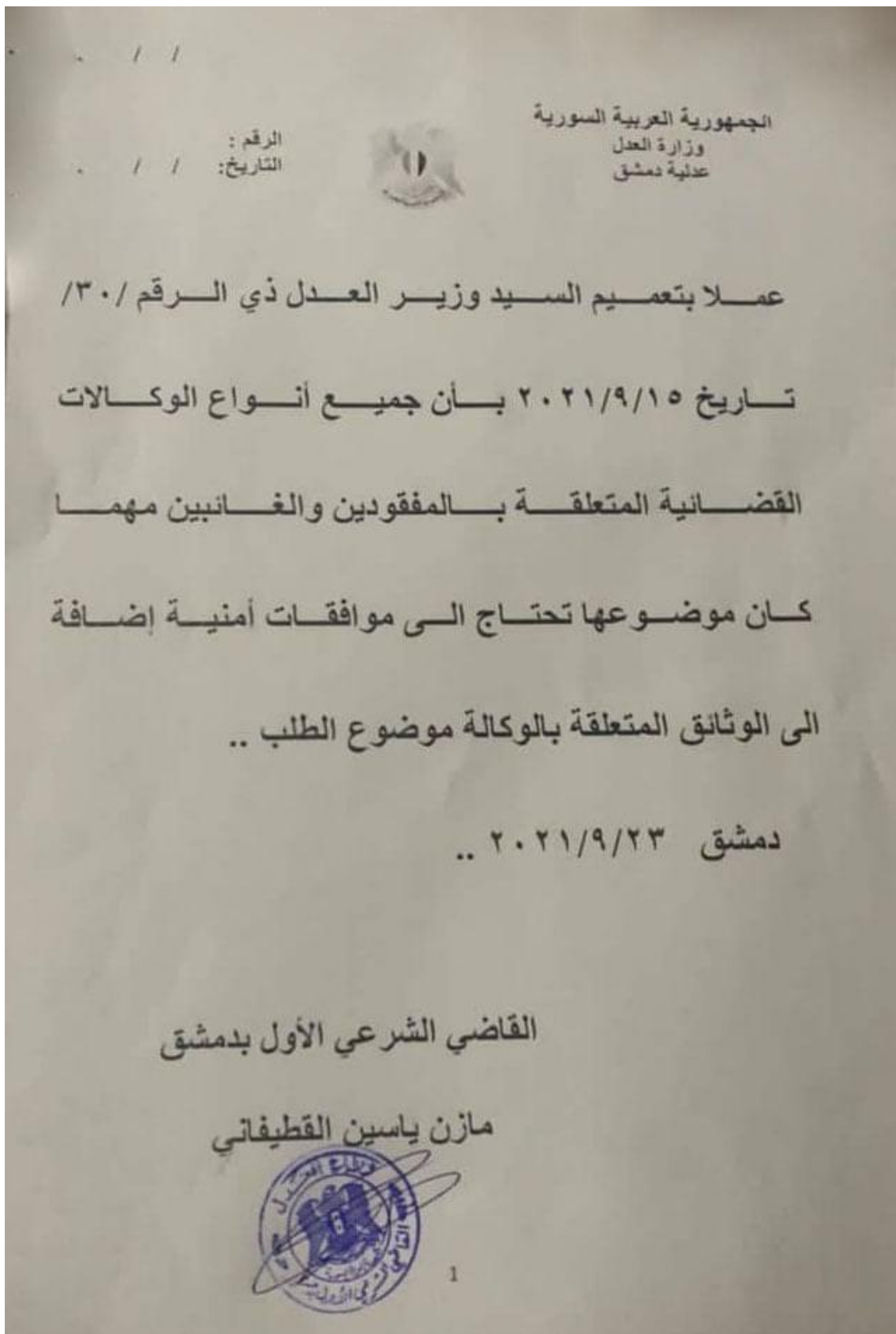


Image 2- A photograph of a declaration issued by the Syrian First Sharia Judge Mazen Yassin al-Qutaifani on the need to obtain a security clearance to submit for a power of attorney for a missing/absent person.

Update:

On 29 September 2021, Mazen al-Qutaifani, the First Sharia Judge of Damascus issued an administrative order amending the Minister of Justice's Circular 30 of 15 September 2021. Al-Qutaifani's order stipulates that obtaining security clearance is only required for the power of attorney meant to deal with financial issues related to the missing/absent persons.

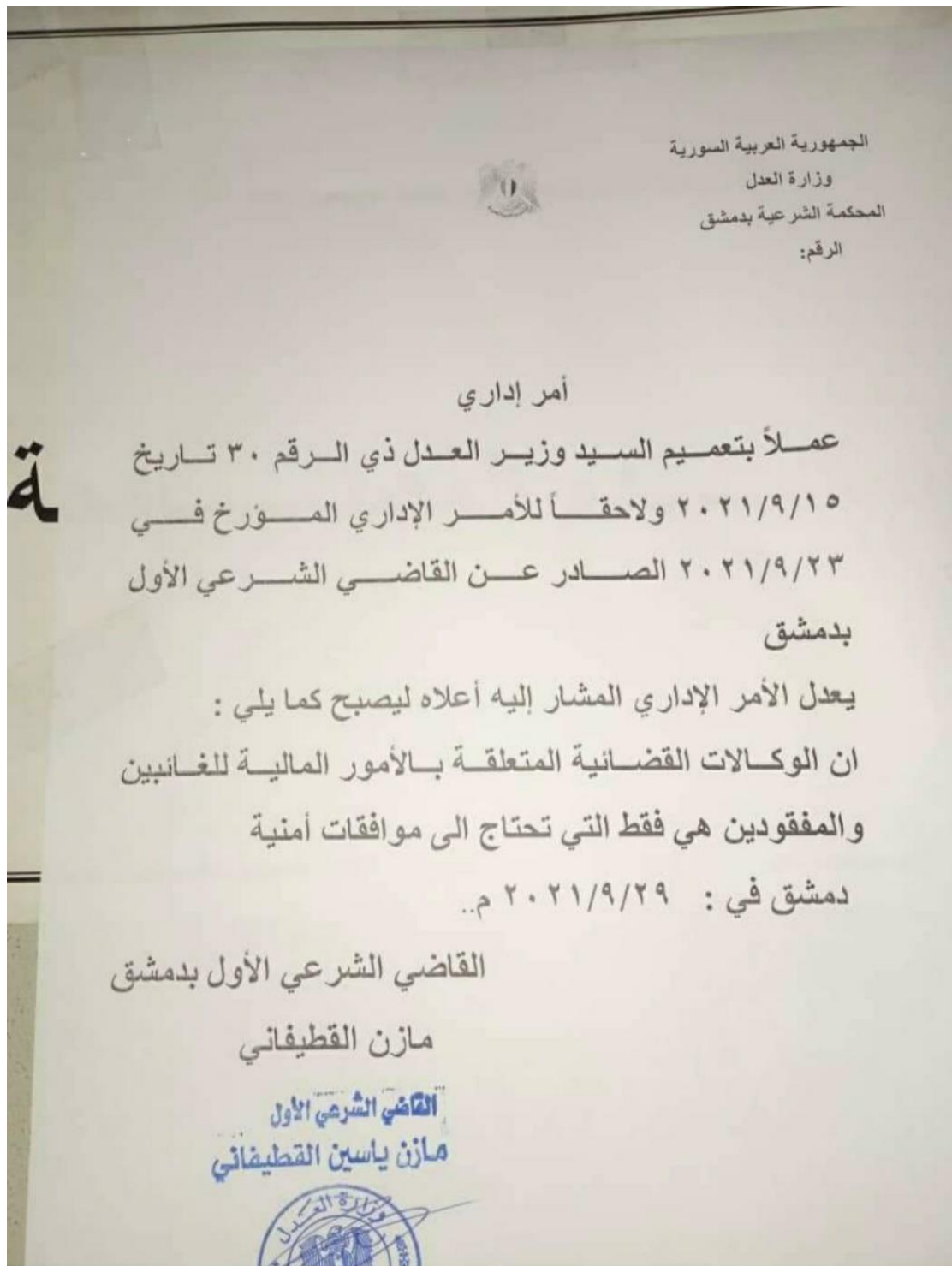
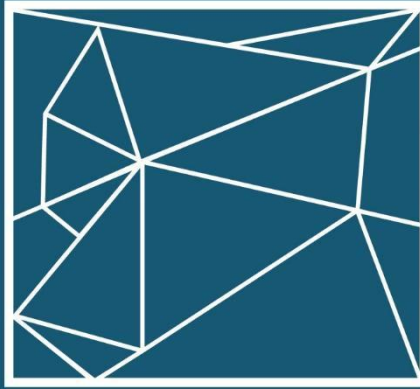


Image 3- A photograph of the Administrative Order by the First Sharia Judge of Damascus.

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History

Syrians for Truth and Justice was conceived during the participation of its co-founder in the Middle-East Partnership Initiative (MEPI) Leaders for Democracy Fellowship program, who was driven by a will to contribute to Syria's future. Starting as a humble project to tell the stories of Syrians experiencing enforced disappearances and torture, it grew into an established organisation committed to unveiling human rights violations of all sorts.

Convinced that the diversity that has historically defined Syria is a wealth, our team of researchers and volunteers works with dedication at uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled.

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