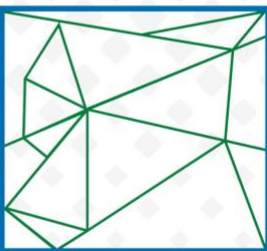


Syria: Understanding the Higher Judicial Committee for Elections' Inadequacy in Supervising Constitutional Obligations



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*The mechanism for appointing members of the Higher Judicial
Committee for Elections violates the principle of the Separation of
Powers and strips the Committee and its members from
independence and impartiality*

Due to the domination of the Executive Branch and its constant interference in the designation of the Higher Judicial Committee for Elections in Syria, the Committee is unable to practice its assigned role.

On 22 May 2022, the Syrian President issued Legislative Decree No.31, which names the appointed members of the Higher Judicial Committee for Elections in Syria. The decree is based on the [Syrian Constitution No. 94 of 2012](#), the [General Election Law No. 5 of 2014](#), and the Supreme Judicial Council Resolution No. 122 (of 25 April 2022).

According to Article No. 8(2)(3) of the General Election Law No. 5 of 2014, the Committee consists of seven ordinary judges, in addition to seven substitutes who perform the duties in the absence of the ordinary judges.

The Committee emerged from Law No. 5, the first General Election Law in Syria to be adopted under the current Syrian Constitution (2012 Constitution).

According to Decree No. 131, the designated judges of the Committee are:

Ordinary Judges	Substitute Judges
Jehad Mustafa Murad	Abdullah Berjus Mohamad
Hussam al-Deen Mahmoud Rahmoun	Mohamad Shehada Ghannam
Mohamad Mazen Mohamad Zuheir Khankan	Rabee Hameed Zahr al-Deen
Samer Ali Jumaa	Munira Mohamad Adham
Wael Fayadh Obeid	Farhan Mohamad al-Jasem
Basel Anwar Shahla (Basel Abu Shahla)	Ahmad Ghassan Zahra
Nisreen Abdullah Tulbah	Mohamad Jasem al-Abdullah

Previously, the Committee was composed of five ordinary judges and five substitutes, who worked as advisors of the Court of Cassation. Moreover, the Committee was designated by the Supreme Judicial Council, via a decree that states their names according to Article 9(B) of [Legislative Decree No. 101 of 2011](#) which was replaced by Law No. 5 of 2014.

The Consequences of Adopting the General Election Law

According to Law No. 5 issued on 24 March 2014, Article 128 **“All legislations contrary to or inconsistent with the provisions of this Law are repealed. Particularly, Legislative Decree No. 8 of 1973, Law No. 66 of 2006, Legislative Decree No. 101 of 2011 and Legislative Decree No. 125 of 2011”.**

Theoretically, Law No.5 of 2014 governs:

1. The general elections
2. The presidential elections

3. The parliamentary and the local administrative councils elections
4. The popular referendums
5. Providing for the regulation of campaign financing.
6. The mechanism for forming the Higher Judicial Committee for Elections and defining the duration of membership and the powers it enjoys, in accordance with Articles 8, 9, 10.
7. The mechanism for forming the Judicial Tripartite Subcommittees that emerge from the Higher Judicial Committee for Elections upon any electoral process or referendum, by a decision of the Committee in each governorate. According to Article 11, judges who compose these subcommittees act as Judges of Appeal and are headed by the most senior judge. Several committees may be formed in a single governorate.

The Syrian Government Benefits from the Amendments of the General Election Law

Law No. 5 of 2014 is the first General Election Law in Syria to be adopted under the current [Syrian Constitution issued by Decree No. 94 of 2012](#).

On 23 February 2016, several provisions of Law No. 5 were amended by [Law No. 8 of 2016](#). For example, Article 2(1) of the new law expanded the authority of the Higher Judicial Committee for Elections to include the power to change voting station locations from one (or more) electoral center/province to another.

STJ believes that one of the reasons for this amendment is the need of the Syrian Government to control the elections in Idlib, Deir ez-Zor, Raqqa, Hasakah, and Aleppo, as well as the Syrian territories occupied by the Turkish forces (Euphrates Shield/Azaz, Jarabulus, al-Bab, Olive Branch/Afrin, Spring of Peace/Tal Abyad and Ras al-Ain Serê Kaniyê).

Law No. 8 of 2016 allows for the relocation of voting stations from cities that the government has no control over, to other areas under its control. As a result, the government can manipulate the outcome of any voting which occurs in those cities, mainly because the automation system allows the employees of the Civil Registry in Damascus to access the data of people who live there.

Moreover, the Syrian Government can claim to have the majority of Syrian votes Syrian by transposing elections from Raqqa, for example, to Homs or Damascus, so that the latter will effectively represent the population of Raqqa.

[According to the Syrian Arab News Agency \(SANA\)](#), during the presidential elections in May 2021, the Government allocated 95 electoral centers in the countryside of Raqqa and 40 in the countryside of Idlib and Hama (which are under the control of the Government). Moreover, the Government established several committees to count the votes, ignoring the fact that more than four million Syrians live in the areas controlled by the opposition (Idlib governorate and the countryside of Aleppo), in addition to more than three million Syrians who live in the areas controlled by the Syrian Democratic Forces (SDF) across Northeast Syria.

Furthermore, a large number of citizens are either internally displaced or fugitives who cannot vote in the areas controlled by the Government.

Article 2(3) of Law No. 8 of 2016 grants the Committee greater authority to take all the decisions it deems appropriate **“to ensure the integrity, impartiality and freedom of the electoral process, and to monitor voting stations in which the electoral process is relocated”**.

The Lack of Independence of the Syrian Judiciary Due to the Powerful Hand of the Executive Branch

According to Article 8 of Law No. 5 of 2014, the Higher Judicial Committee for Elections consists of seven judges and seven substitutes (advisors of the Court of Cassation), designated by the Supreme Judicial Council. The Committee is based in Damascus and works independently. However, in practice, the Commission is not independent.

First, the Minister of Justice, the representative of the Executive Branch, holds the post of vice-president within the Supreme Judicial Council. Thus, he is responsible for promoting, deputizing, and transferring judges, as well as initiating public proceedings against them.

Second, the President of the Republic, the head of the Executive Branch, decides the way the Committee shall be formed, appoints its members, and determines their remuneration.

Therefore, the mechanism for appointing judges of the Committee constitutes a violation of the principle of Separation of Powers, and a domination of the head of the Executive Branch (the President of the Republic) on the Judiciary system, which violates the Constitution of 2012, Article 140. The powerful hand the Executive Branch has over the judiciary strips the Committee from any kind of independence or impartiality that is required to govern the presidential and parliament elections, the local administration elections, and referendums.

Moreover, this mechanism does not meet the standards required for fair and impartial elections, stipulated in Article 25 of the 1966 International Covenant on Civil and Political Rights.

Despite all existing legal provisions that guarantee the immunity of judges, the power of the head of the Supreme Judicial Council and his deputy lead to a pervasive atmosphere of fear and insecurity among judges. At any time, judges may arbitrarily be stripped of their profession, property, or even life (such as what happened to [Judge Futoun Khair Baik](#)).

Unlike the Supreme Constitutional Committee, members of the Higher Judicial Committee for Elections cannot renew the term of their four-year office, despite the fact that the work of this Committee requires the accumulation of experience in order to effectively govern the electoral processes (assuming for the sake of argument that these processes will adhere to the standards of impartiality, integrity, and transparency).

Conclusion

Due to the domination of the Executive Branch and the constant interference in the designation of the Higher Judicial Committee for Elections, the latter is unable to practice its assigned role.

The head of the Executive Branch (the President of the Republic), who enjoys broad legislative, judicial and executive powers, is the one who appoints the Committee. Moreover, Committee members are often obliged to seek the approval of the President because otherwise their professional and personal lives will be threatened.

How could such a committee challenge and question the integrity of Syrian presidential elections?

The judges appointed by the President of the Republic are mere administrative officials, and do not reflect the independence of a judicial body. With no conditions nor criteria to guarantee the independence of judges' decisions, the lack of impartiality and independence appears inevitable.

Moreover, Article 28-30 of [the Law of the Supreme Constitutional Court](#) gives the Court the right to supervise the work of the Higher Judicial Committee for Elections, the subcommittees and the committees of electoral centers, and to announce the results of presidential elections.

The President nominates and appoints the members of this Court. Bound to the president, Court members are thus deprived of their independence and objectivity, and its decisions are null and void. In addition, this Committee does not have any financial independence to carry out its tasks impartially and independently.

Finally, it is very difficult to summarize in one paper all the defects of the electoral process in Syria. Therefore, STJ aims to study this issue further in the future, and to analyze and discuss several related papers and documents, especially those linked to the General Election Law No. 5 and other oppressive laws that undermine any legal environment to conduct elections.

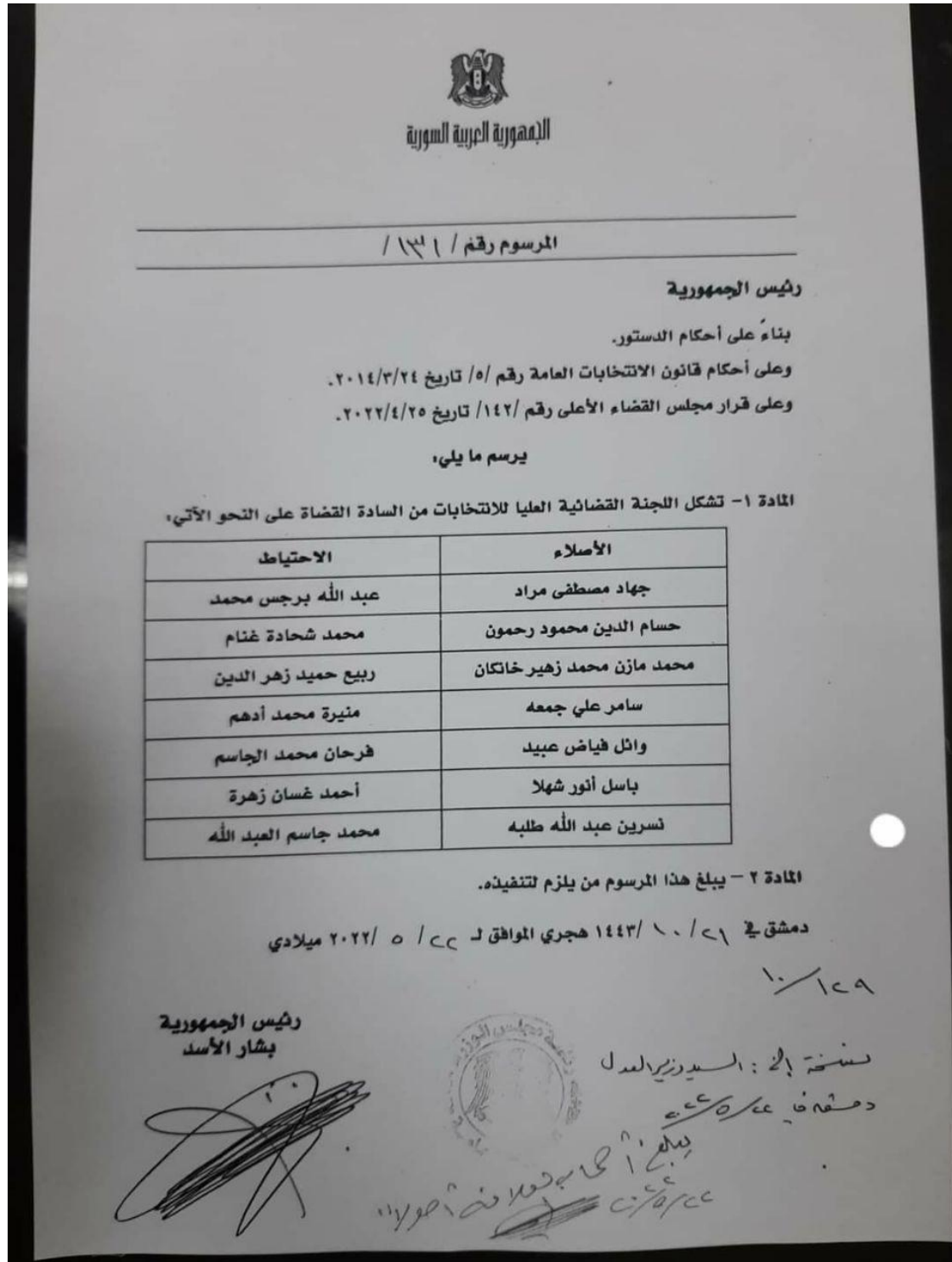
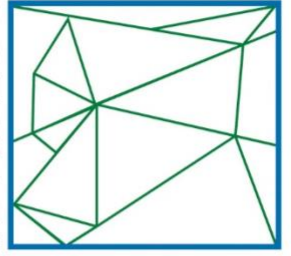


Image (1) - Decree No. 131 of 2022 that forms the Higher Judicial Committee for Elections.

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About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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