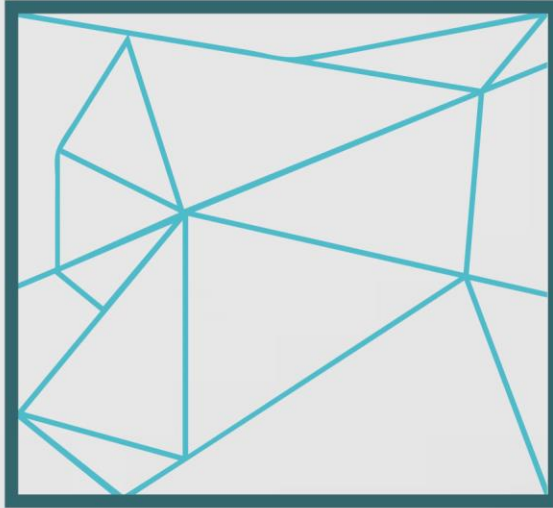


## Syria: Input to the Report of the High Commissioner for Human Rights on Administrative Measures in Counter Terrorism

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The Syrian government uses counter terrorism administrative measures as a pretext to violate human rights and fundamental freedoms



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[Syrians for Truth and Justice](#) (STJ) submits this paper in response to the [call for input](#) announced by the Office of the High Commissioner for Human Rights (OHCHR) to its report on the use of administrative measures in counter terrorism, scheduled for submission during the 57th session of the Human Rights Council (HRC). STJ aims to answer several questions on the application of administrative measures in counter terrorism in Syria focusing on two measures (1) security permits and impunity; and (2) seizure of property.

By these two examples, STJ addresses the regulatory framework to implement administrative measures in counter terrorism, the violations of human rights and fundamental freedoms by these measures, and the absence of accountability and access to remedies for these violations.

### **Seizure of Movable and Immovable Property:**

On 16 September 2012, Legislative Decree No. 63 was issued. Its first article stipulates that in the context of investigations of crimes against internal or external security and crimes mentioned in the Counterterrorism Law No. 19 of 2012,<sup>1</sup> judicial police have the right to request the Minister of Finance to take necessary precautionary measures on the movable and immovable property of the accused. The decree also states that public prosecution and investigating judges, while examining a case, may take these measures against the accused or defendant –including travel bans– until a final judicial ruling is issued.

Furthermore, this decree empowers judicial police to seize the assets of individuals pending investigation of their crimes as suspected terrorists even if they have not been charged with any crime. Moreover, the Public Prosecutor and the investigating judge have the right to impose precautionary seizure<sup>2</sup> prior to the final judicial ruling. Accordingly, this measure has been taken against thousands of defendants referred to the Counterterrorism Court<sup>3</sup> regardless of the charges.

It is worth mentioning that domestic laws and measures should not be used by the state to justify in compliance to its obligations under a treaty.<sup>4</sup> Depriving individuals of their right to property –including houses and lands– on the basis of measures that amount to coercion, contravenes the duty of the state stipulated in the [International Covenant on Economic, Social, and Cultural Rights](#), which obligates the state to use all appropriate means, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Such legislation should include measures which provide the greatest possible security of tenure to occupiers of houses and land.<sup>5</sup>

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<sup>1</sup> Article No. 11 of this law stipulates that to guarantee the rights of the state and those affected, Public Prosecutor or their authorized representative may order the freezing of movable and immovable properties for anyone who commits a crime related to financing terrorism or a crime stipulated in Counterterrorism Law No. 19 of 2012

<sup>2</sup> Precautionary seizure is a legal procedure whereby the judiciary freezes movable and immovable property, including money, real estate, cars, and shares, to prevent the owner from disposing of it.

<sup>3</sup> The Counterterrorism Court is established by Law No. 22 of 2012 which stipulates that the court investigates terrorism offenses and offenses referred to it by the Court's public prosecution. It does not adhere to the principles stipulated in the applicable legislation. This Court does not respect the standards of fair trial and violates fundamental human rights and freedom. For more information, see the report of the Violations Documentation Center in Syria. [Counter-Terrorism Court in Syria: a Tool for War Crimes](#). April 2015. Accessed on 29 March 2024.

<sup>4</sup> [Vienna Convention on the Law of Treaties](#). Article No. 27. Accessed on 29 March 2024.

<sup>5</sup> Committee on Economic, Social, and Cultural Rights. [General Comment No. 7: The right to adequate housing \(Art.11.1\): forced evictions](#). para. 9. 20 May 1997. Accessed on 29 March 2024.

Moreover, measures to seize property that can be terminated only after a final judicial ruling on a case that is not directly related to the deprived right (right to property) is a denial of the right to access effective remedies<sup>6</sup> related to those rights. This deprivation cannot be justified based on unrelated measures stated in the Counterterrorism Law No. 19 of 2012.

**Legislative Decree No. 63 of 2012** violates defendants' right of property stipulated in the [Syrian Constitution of 2012](#). Further, it violates the principle of separation of powers which is also stipulated in the Constitution. Moreover, it constitutes an infringement on the work of the judicial authority. Furthermore, crimes within the framework of state security and terrorism have a broad interpretation that is not explicitly defined in the law.<sup>7</sup>

On the other hand, the aforementioned decree does not respect due procedures as administrative decisions cannot be appealed and individuals are not notified when they are listed as "terrorists". Moreover, the decree is considered a collective punishment of people arbitrarily included on the list and their relatives whose properties are seized. These measures, regardless of their nature (criminal, punitive or administrative) target a group of people as a form of vengeance for an alleged act committed by a person of that group,<sup>8</sup> which is prohibited under international humanitarian and human rights law in all circumstances.<sup>9</sup>

All practices of national security, including those aimed at countering terrorism, must comply with international human rights law. Moreover, countering terrorism should not be used to suppress peaceful political opposition or as a basis for the prosecution of individuals engaged in peaceful advocacy. However, the Syrian government continues to use the Counterterrorism Law, and the laws and decrees related to it –including Decree No. 63 of 2012– against human rights defenders, activists, and opponents of the government and accuses them of terrorism acts without providing guarantees of a fair trial, which violates Articles No. 10 and 11 of the [Universal Declaration of Human rights](#) and Article 14 of the [International Covenant on Civil and Political Rights](#).

It is worth mentioning that Decree No. 63 of 2012 is not the only tool used by the Syrian government to seize property under the pretext of combating terrorism. In another example, on 24 November 2021, the Ministry of Finance published a statement which explained that imposing precautionary seizure on bank accounts is allowed to protect public funds and combat money laundering and "financing terrorism".

In other words, the Ministry has justified administrative seizure of bank accounts outside the framework of judicial procedures and in violation of the Constitution, all under the pretext of "countering terrorism".<sup>10</sup>

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<sup>6</sup> [Universal Declaration of Human Rights](#). Article No. 8. [International Covenant on Civil and Political Rights](#). Article No. 2(3). Also see UN Committee on Economic, Social, and Cultural Rights. [General Comment No. 9: The domestic application of the Covenant](#). 3 December 1998. Accessed on 29 March 2024.

<sup>7</sup> Human Rights Watch. [Syria: Counterterrorism Court Used to Stifle Dissent](#). 25 June 2013. Accessed on 19 March 2024.

<sup>8</sup> International Committee of the Red Cross. [Collective punishments](#). Accessed on 29 March 2024

<sup>9</sup> Human Rights Watch. [Syria: Suspects' Families Assets Seized](#). 16 July 2019. Accessed on 19 March 2024

<sup>10</sup> Syrians for Truth and Justice. [Syria: Laws Allow the Ministry of Finance to Seize Syrians' Property](#). 10 February 2022. Accessed on 19 March 2024

## Security Permits and Impunity:

In her [report](#) of February 2020, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed profound concern about the increased regulatory focus on thought and action in the so-called “pre-criminal” or, more accurately, “pre-terrorist” space, which criminalizes legitimately protected rights under international and domestic law, destabilizes fundamental tenets of the rule of law, including legal certainty, proportionality, and non-discrimination, and makes groups and individuals “suspect”.

The Special Rapporteur added that regulatory practices have moved from sanctioning the acts of individuals to anticipating those acts, in a sweep of pre-emptive criminal sanctions supported and extended by multi-pronged socio administrative regulation. According to the Special Rapporteur, some countries have shifted towards the increased use of administrative measures as the undergirding legal basis for managing and preventing terrorism and the establishment of a posteriori rather than a priori judicial review, which has substantial consequences for the protection of individual rights.

The aforementioned applies to Syria where security permits were enforced after the Arab Socialist Ba'ath Party took power in 1963. However, this measure was extensively applied in 1970 when President Hafez al-Assad seized power and after the issuance of the 1973 Constitution as a result of the dominance of the executive authority over the legislative and judicial branches. Under the pretext of confronting the banned Muslim Brotherhood in the 1980s, security permits became a condition for completing several civil procedures, such as employment, travel, and other civil and cultural activities.<sup>11</sup>

Since 2011, the list of matters that require security permits has expanded and today it includes almost all aspects of life in Syria. Syrians must obtain security permits to buy, sell, or rent an apartment, start and license a business, and get a passport or a graduation diploma.

The aforementioned permit has different names, including security permit, security clearance, and security check. Regardless of the name, it means that one or more security branches investigate a person and the decision to give permit or authorization depends on their “record” in the archive of the security services. This permit constitutes a tool for blackmail and exploitation, especially with the absence of an independent judiciary. In Syria, the judicial system is subject to the executive authority and security-led exceptional courts, such as the Counterterrorism Court.<sup>12</sup>

Security interference in the daily life of citizens is regulated by several laws. For example, Law No. 41 of 2004 and its amendments, which stipulates that it is not permissible to create, transfer, modify, or acquire any property right on land located in a border area except with prior

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<sup>11</sup> On 20 June 2011, President Bashar al-Assad [stated](#) that security permits are a mechanism used by the Syrian government “for three decades”. He described it as an “injustice” used for “various issues”. He added “There are things that have been accumulated for three decades since the fight with the Muslim Brotherhood. That was a black phase in the eighties. New generations are still paying the price. They are deprived of jobs or not given security permits... We have started to solve these problems... After three decades, we cannot continue living in the shadow of a dark phase. These issues which every citizen experiences are related to justice and injustice...”

<sup>12</sup> Syrians for Truth and Justice. [Security Permits in Syria: The Enduring Tools of Oppression](#). 5 January 2023. Accessed on 21 March 2024

authorization (security permit).<sup>13</sup> In other words, the purchase, sale, mortgage, possession, and use of real estate are subject to the condition of obtaining security permits.

Moreover, there are several circulars issued by the Presidency of the Council of Ministers or various ministries that require obtaining security permits as a condition to facilitate citizens' daily lives. Perhaps the most famous is Circular No. 30 issued on 16 September 2021 by the Ministry of Justice, which significantly affected the rights of Syrian citizens, especially detainees, forcibly disappeared, and internally displaced persons. The Circular requires individuals to obtain security permits to initiate power of attorney procedures for absent and missing persons, which violates the rights of the families of missing persons and infringe Syrian law and the 2012 Constitution.<sup>14</sup> The Ministry of Justice stated that one of the reasons for issuing the circular was the assumption that "the person alleged to be missing or absent is being pursued for serious crimes".

Furthermore, Circular No. 4554 issued on 4 August 2015 by the Presidency of the Council of Ministers and addressed to the Ministry of Local Administration, stipulated the necessity of adding the sale, rent, and vacancy of houses and shops to the list of procedures that require a prior security permit under the pretext of preventing "terrorists" from purchasing or renting properties or using them as headquarters. This came despite the existence of an explicit legal text that linked ownership of a real estate to its registration in the Cadaster. In other words, whoever acquires property by inheritance, expropriation, or a court ruling, owns it before its registration. However, the effect of this acquisition begins only after registration.<sup>15</sup> Accordingly, the law attributes an absolute evidentiary power on Cadastral documents as an official recognition of ownership. However, practically, these rights are undermined by the security permits.

All national policies and practices aimed at preventing and countering terrorism should be governed by a clear and human rights-compliant legal framework and subject to independent and periodic review. These measures and decisions must be subject to appeal before an impartial and independent judiciary. Moreover, anyone enforcing and implementing the measures must be held accountable if they commit a violation.

However, in Syria, the law is devoted to empowering security services and protecting them when committing violations in the context of their "fight against terrorism".

Several agencies that exercise judicial police duties and their members are excluded from judicial oversight. According to Decree No. 14 of 1969 establishing the State Security Department, legal proceedings cannot be initiated against security and intelligence personnel except with the permission of the Director of the State Security Department.<sup>16</sup> Moreover, police officers and the security forces enjoy immunity for crimes committed while performing the tasks entrusted to them. A prosecution is only possible by a decision of the General Command of the Army and Armed forces.<sup>17</sup> Also, members and officers of the Syrian army are immune

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<sup>13</sup> Article No. 1 of Law No. 41 of 2004 and its amendments

<sup>14</sup> Syrians for Truth and Justice. [Syria: The Ministry of Justice Newly Requires Security Clearances for Receiving Powers of Attorney for Missing and Absent Persons](#). 22 October 2021. Accessed on 21 March 2024

<sup>15</sup> Article No. 825(1)(3) of the Syrian Civil Code, Legislative Decree No. 84 of 1949

<sup>16</sup> Article No. 16 of Decree No. 14 of 1969 establishing the State Security Department

<sup>17</sup> Article No. 1 of Legislative Decree No. 64 of 2008

from prosecution except if the military public prosecution obtains a prosecution order pursuant to a decision or decree issued by the General Command of the Army and Armed forces.<sup>18</sup>

This immunity constitutes a violation of the rights to equality before the law and equality before the judiciary, which contributes to strengthening impunity and limits the ability to exercise basic rights.

In addition to what was stated in the aforementioned report of the Special Rapporteur regarding pre-emptive restrictions on fundamental rights and freedoms guaranteed in international human rights instruments under the pretext of combating terrorism, it must be emphasized that the power of states to impose such restrictions is subject to the conditions mentioned in Article No.4 of the International Covenant on Civil and Political Rights.

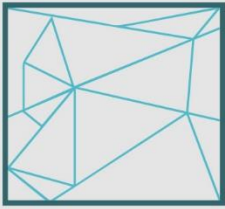
Any restrictions imposed by the state must be in the context of an officially declared state of emergency as an exceptional and temporary situation that amounts to a threat to the life of the nation. Any measures and procedures that restrict citizens' rights should be proportionate and strictly limited to the necessity imposed by the exigencies of the situation.<sup>19</sup>

In addition to the fact that Syria ended the state of emergency in 2011, imposing conditional measures that restrict a wide range of rights is not legitimate according to the requirements of Article 4 of the Covenant. The presupposition that an entire population poses a "terrorist" threat cannot be accepted as a threat to the life of the nation and does not authorize the state to take such restrictive measures. Moreover, if the state can prove a "terrorist" threat to the life of the nation, it is still obligated to impose proportionate restrictive measures and to address the reasons behind the threat in the first place. Forcing citizens to obtain security permits for all aspects of their lives for many decades cannot be considered a proportionate measure that contributes to eliminating the causes of the threat. All restrictive measures must be temporary, and effective in addressing the causes of the threat. Also, they should eventually lead to individuals enjoying their rights.

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<sup>18</sup> Article No. 53 of the Penal Code and Military Procedures, Legislative Decree No. 61 of 1950.

<sup>19</sup> UN Human Rights Committee. [General Comment No. 29: Article 4: Derogations during a State of Emergency](#). Para 2 and 4. 31 August 2001. Accessed on 29 March 2024



## ABOUT STJ

Syrians for Truth and Justice (STJ) started as an idea in a co-founder's mind while attending the U.S. Middle-East Partnership Initiative's (MEPI) Leaders for Democracy Fellowship program (LDF) in 2015. The idea became a reality and flourished into an independent, non-profit, impartial, non-governmental human rights organization.

STJ's beginnings were more than humble; initially, it only reported stories of Syrians who experienced arbitrary arrest, enforced disappearance, or torture. Planted in fertile soil, the seed of this project grew into an established human rights organization licensed in the Middle East and the European Union. STJ today undertakes to detect and uncover violations of all types committed in all Syrian parts by the various parties to the conflict.

Convinced that Syria's diversity is a wealth, our researchers and volunteers serve with unfailing dedication to monitor, expose, and document human rights violations that continue unabated in Syria since 2011, regardless of the affiliation of the victims or perpetrators.