

Syrian Families at the Mercy of the Syrian Regime's Security Services Regarding the Issuing of Fateful Documents for their Deceased Relatives

The Syrian Regime Requires Security Approval in Cases of Death Confirmation

توزع مجاناً

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وزارة الداخلية - الشؤون المدنية

بيان وفاة

في محافظة:

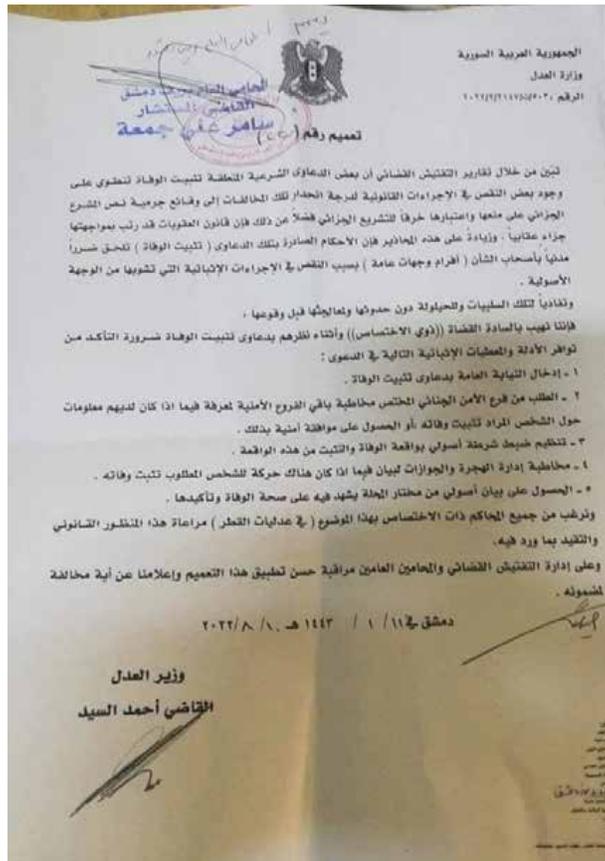
بيان صادر عن أمانة:

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Introduction

The Ministry of Justice in the government of the Syrian regime issued Circular No. 22 on August 10, 2022 which stipulates that the Sharia judges working in the courts of the Syrian regime must meet five conditions before confirming any death case, or issuing any death notice. Among those conditions imposed by the ministry is to request the relevant criminal security branch to address the rest of the security branches to find out if they have information about the person whose death is to be confirmed or **to obtain security approval for that**. In addition to the need to ensure that the Public Prosecution office is included in the claim of confirming someone's death, and organizing a police report regarding the death incident and verifying it. As well as requesting the Immigration and Passport Department to indicate whether there is a movement of the person being investigated to be proved dead, in addition to obtaining a statement from the mayor of the region related to the death incident.





Summary of the Legal Note

According to the Syrian law, a death case can usually be established and registered through administrative procedures. However, the Sharia court has jurisdiction to consider cases of proving the fact of death (Procedural Law No. 1 of 2016 Article 486)¹. This happens when administrative procedures are not available due to, for example, lack of paperwork or inability to reach management, or because the cause of death is due to unnatural circumstances according to the text of Article 37 of the Civil Status Law, in this case the next of kin shall request a court ruling to prove the fact of death. This is also possible when someone has been missing for a period specified by the law (usually four years in wartime) as stipulated in Articles 201 to 205 of the Personal Status Law², in such situations, relatives need to prove the fact of the missing person's death to proceed with inheritance or other pending cases.

We are concerned that the judiciary, in such cases, will be subject to the approval of the security branches to prove the death case, which contradicts firstly, with the principle of judicial independence in accordance with the text of Article 134 of the Syrian Constitution, which states that; Judges are independent and there is no authority over them in their judiciary except the law. Also, it does not comply with the principle of the rule of law, the basis of governance in the state stipulated in Article 50 of the Syrian Constitution.

Secondly, this measure will deprive thousands of Syrian families of their right to a fair litigation, as this behavior would hide the facts in the context of which thousands of human rights violations occurred by the Syrian regime and its military and security services. It also leads to building a narrative contrary to the truth, taking advantage of the need of Syrians to confirm the death of their relatives and follow up on their legal affairs.

What worries us even more, is that there are cases where the person was killed by the state agents themselves, for example, in hostilities, or in case that the

<http://www.parliament.gov.sy/arabic/index.php?node=201&nid=15810&ref=tree> ¹

<http://parliament.gov.sy/arabic/index.php?node=201&nid=11333&ref=tree> ²

deceased was a member of the opposition. In such cases, it is expected from the well-known Syrian context that the security branches will either not give the death statement, as revenge against the person's family, or they will manipulate the cause of death to evade the state's responsibility for the incident and obliterate the evidence. Consequently, the victim's family will likely be forced to accept the narrative of the security branches and the justification for death to proceed with the security clearance. This will certainly jeopardize any efforts toward accountability in the future. Moreover, such a newly required security clearance would also open the door to blackmailing the families of the deceased into giving them a permit in exchange for bribes.

What is remarkable about the circular is that it indirectly refers to the responsibility of the security branches for the crimes of enforced disappearance. In law, any detainee must appear before the competent judge within 24 hours, yet, after the issuance of Decree 55/2011³, those accused of state security crimes may be remanded in custody for up to 60 days, with the permission of the Public Prosecutor, therefore, it is certain that the Public Prosecution must be informed of the names of the detainees and their whereabouts. However, the new circular indicates that the Public Prosecution Office may not have this information, thus, information is obtained by communicating with the security branches that allegedly forcibly disappeared the victim in the first place.

In conclusion: the harm is not only caused by the violation of the human rights of the deceased and the change in the narrative and context of the violation, but also in the impact of this violation that continues on all members of the family of the deceased because the confirmation of death is linked to the right to property, civil status and personal status, and therefore it is a continuous violation of the right of every family of the deceased and undermines social and economic stability, consequently, the political solution and the voluntary return of refugees.

History of the Syrian Regime in Imposing Security Approvals

The issue of "security approval" is considered a basic behavior and one of the Syrian regime's methods of tightening security control, protecting its security

<http://www.parliament.gov.sy/arabic/index.php?node=201&nid=4443&ref=tree>³



agencies and intimidating Syrian people, which has affected all aspects of the daily life of the Syrian citizen. It suffices to review the cases in which the Syrian regime requires obtaining a security approval in order to know the extent of the security incursion into the lives of Syrians and the extent to which the Syrian regime relies on the security services to protect itself. In addition, the security services contribute to the continuation of the regime and its inheritance of the republic amid the dogmatic acceptance of the loyalists and the silence of the opponents for fear of their lives that is being monitored second by second by security services who have been monitoring the lives of Syrians from their birth until their death.

Linking the lives of Syrians to the security approval had a great impact in marginalizing the role of state institutions and limiting their tasks and powers, and it directly contributes to the revitalization and generalization of corruption.

Prior to the outbreak of the revolution in Syria, the Syrian regime had imposed security approval on every procedure or activity that the Syrian citizen thought of doing. Therefore, licensing any profession, students' acceptance in universities or any educational institute, establishing housing cooperative societies, licensing civil society organizations, employment confirmation, importing and exporting, and the list goes on. However, after the Syrian revolution, the Syrian regime deliberately increased the request for security approvals, but this time the aim was to restrict the Syrian people and blackmail them financially and morally, by intimidating them, strengthening its security authority, and reminding Syrians in all aspects of life that this authority decides the fate of their lives and controls their money. Several circulars were issued imposing security approvals, including, but not limited to:

- 1- In its decision No. 4554, issued on August 4, 2015, the government of the Syrian regime issued a circular to the Ministry of Local Administration to add real estate sales, renting and emptying homes and shops to cases that require prior security approval from competent authorities, which added burdens on the Syrian citizens, and limited their freedom to dispose of their property.
- 2- Resolution 689 of 2017, which stipulated that those wishing to conduct internal or external powers of attorney regarding any procedure related to real estate must obtain a security approval.



- 3- Circular issued by the Ministry of Justice No.30 dated 9/15/202, regarding “security approvals” for anyone who wants to obtain legal powers of attorney on behalf of someone who is absent or missing⁴, the thing that restricted the families who have such cases to dispose of their relatives’ money and property.
- 4- Ministry of Justice issued Circular No.16 dated 9/7/2019 related to the foreign agencies and security approvals in their regard. Buying and selling cars and vehicles, buying and selling real estate under a previous sale contract, receiving pensions, amending corporate contracts.
- 5- Security approval to organize banking procurations to review public and private banks to withdraw funds and renew ATM cards⁵.
- 6- Circular No. 22 dated 10/8/2022, which stipulated that the file of the death confirmation cases be referred to the security authorities to obtain security approval, which restricts the right of Syrian citizens to confirm the death of their relatives and obtain a death statement for the deceased person and follow up the legal procedures to obtain an inventory of the inheritance of the deceased person.

The Syrian Regime is the one who Deliberately Created the Problem

The root of the problem is that the Syrian citizen whose relatives died due to military operations or bombing, i.e. death due to an unnatural circumstance, has been restricted to verifying the death through specific procedures, as well as issuing a death statement. Legislative Decree No. 26 of 2007⁶ stipulated that in order to complete the death conformation procedures, there must be a statement issued by the mayor of the given area which states that the death happened **under natural circumstances**. However, after the outbreak of the Syrian revolution and the war waged by the Syrian regime against its people, thousands of civilians died as a result of the military operations. Despite the issuance of a new Civil

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<https://ar.rt.com/r782>⁵

<http://moia.gov.sy/portal/site/arabic/index.php?node=55444&cat=1833>⁶



Statues ⁷Law No.13 of 2021, that is, after 10 years of the ongoing conflict in Syria, the Syrian regime deliberately kept the same article mentioned in the Legislative Decree No.26 of 2007. According to the mentioned article, the mayor of the region, neighborhood, village or town is forbidden from issuing **death statements**⁸ in case the death was due to **unnatural circumstances**, i.e. due to the military operations or as a result of torture in prisons etc.

As a result, many Syrians were forced to resort to Sharia courts to prove the death of their relatives by filling death statements' cases before the Sharia judge and obtaining a court ruling in the event of death, including the obligation of the Secretariat and the Civil Registry Department to confirm a death incident and obtain a death statement for the deceased person⁹. In addition to the issuance of instructions and decisions issued by the concerned authorities (the security authorities) **to prevent the issuance of death statements by the mayor for those whose death was due to unnatural circumstances** in the period from March 18, 2011 to date, except for those whose death was due to natural circumstances such as elderly people, or those who have witnesses to prove that someone's death is due to natural circumstances, and any other scenario is prohibited.

Procedures Followed Before the Sharia Judges to Establish Death before the Issuance of the Circular

The families of the deceased person file a lawsuit before the Sharia judge, asking for confirmation of the death of their relatives, then, the Sharia judge routinely interrogates the relatives of the deceased person by asking questions about the time of the death, how it occurred and the cause of it. The Judge also listens to the witnesses' testimonies and requests a movement statement from the Immigration and Passports Department.

<https://sana.sy/?p=1344988> ⁷

<http://moia.gov.sy/portal/site/arabic/index.php?node=55444&cat=1833> ⁸

<http://moia.gov.sy/portal/site/arabic/index.php?node=55444&cat=1833> ⁹



The interrogation takes three or four sessions, i.e. an average of about three or four months, after which the submitted request is referred to the Directorate of Sub-district to which the civil registry, or place of residence of the deceased person's belong. In turn, the District Directorate refers the file to the police station of the deceased person's area in order to write a police report and conduct a study about the deceased person and the background information of his/her death.

In case the deceased person died due to natural circumstances, the family of the deceased person is referred to the mayor to get a death statement to complete the regular death procedures. However, their request to obtain a death statement may be rejected, if the deceased person died due to unnatural circumstances, i.e. as a result of bombing or military acts. In this case, the family of the deceased person is forced to give false information about the death incident, such as "s/he was killed by armed groups or by terrorists or by the explosion of a mine planted somewhere by these groups. On top of that, the family of the deceased person has to pay bribes for the police to agree on writing these reasons and then refer the investigation to the mayor so the family could finally obtain a death statement.

After that the statement is taken to the Sharia judge after it was examined by the Immigration and Passports Department that the deceased person is still inside the country, and did not leave Syria. The Sharia judge then gives the decision to confirm the death, and then take this decision to the Civil Registry Secretariat to which the deceased person belongs to implement it and obtain a death statement according to the deceased person's heirs can follow the legal procedures to limit the inheritance and follow their legal obligations.

The Syrian regime deliberately complicates these procedures in order to prevent and restrict citizens from obtaining a death statement for their relatives, and to hide the large number of civilian deaths who died in the bombing of the Syrian regime or its military operations. What exposes the Syrian regime's crimes against Syrian people is its intention to prevent the registration of death cases that occurred due to unnatural causes through administrative procedures and resorting to the judiciary to refer the case to the police.

These practices conducted by the Syrian regime contributes to concealing the facts that thousands of human rights violations were committed against the Syrian



people, and lead to building a narrative that contradicts the truth. These complications were a mean of bribes that benefited the workers of the security services and the police departments, as Syrian citizens were forced to pay sums of money to close the case and complete the burial procedures of their deceased relative.

Procedures Followed before the Sharia Judge to Prove a Death Incident after the Issuance of the Circular

In addition to the previously mentioned complex procedures, the security approval requirement has been added, and here we must point out that in the past, the report of the death cases was referred to the District Director or the competent police department of the place of the deceased person's residence. However, after adding the security approval requirement, the report is now referred to the Criminal Security Branch **which will refer it to all the other security branches** putting the relatives of the deceased person in a great security risk by exposing them to accountability before the security branches in two ways:

Firstly: the family member of the deceased person and who is following up the legal procedures of the death case might be wanted by these authorities, which exposes his/her to either being arrested or blackmailed by these authorities.

Secondly: in case the deceased person was wanted by the security forces or belonged to the opposition, his relatives who are trying to issue and complete the death statement will be pursued and they will be exposed to accountability by these authorities.

Here, it is impossible to write the real cause of the death if it was due to the bombing of the Syrian regime or its military operations, since these parties initially do not agree to grant the death certificate within these reasons, and then they will pursue the families of the deceased person on charges of terrorism and other charges that are fabricated by these devices. All of these above-mentioned practices by the security services confirms unequivocally that these parties will change the cause of death and make it absolve the Syrian regime of responsibility for the crimes it committed against the Syrian people.



The Legality of this Circular and its Compatibility with the Provisions of the Law, the Syrian Constitution and International Law

- 1- The request for the issue of security approvals as a whole lacks legal legitimacy and does not comply with **the principle of the rule of law** which is the basis of governance in the state stipulated in Article 50 of the Syrian Constitution¹⁰. Article 55 of the Syrian Constitution of 2012¹¹ stipulates: “The People’s Assembly shall assume the legislative authority in the manner indicated in the Constitution.” As such, this circular by the Minister of Justice constitutes a jump on the Syrian Personal Status Law itself and a violation of it.
- 2- It is a circular that is not a part of legislation or a law issued by the People's Assembly in order to violate the law and the constitution, which stipulates that the judiciary is independent and should not be subject to any other authority. According to this circular, the executive authority has become a guardian of its judicial counterpart, in violation of the text of Article 134 of the Syrian Constitution¹², which states that “judges are independent and there is no authority over them in their judgment except the law.”
- 3- The security approval, as we mentioned previously, makes the Sharia judge as an employee of the security authorities, so that his/her work is limited to referring cases to them, and they are the ones who make the final decision in agreeing to give the death statement or not. This leads to restricting people in filing these lawsuits and preventing them from mentioning the real causes of death, such as the bombing of the Syrian regime or fighting with the opposition or by the military operations of the Syrian regime in those areas, as this will expose them to accountability and arrest.
- 4- Opening a new door of extortion and bribery for the security authorities in which they blackmail Syrian citizens even in confirming the death of their

http://www.sana.sy/?page_id=1489¹⁰

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relatives and their families. The ultimate goal of such decisions is not to protect the rights of Syrian people, as their sources claim, but rather to rob their property by preventing them from disposing of it and then subjecting them to other laws and decisions that were issued, such as Law No. 10¹³ of 2018 and Decree No. 66 of 2012¹⁴. In the event that the heirs of the deceased person are unable to submit appeals or objections to their relatives, who are often reluctant to follow up on the matter of their relative because of the security approval, they will feel the fear of being accused of dealing with terrorists or wanted persons according to anti-terror laws, which reflects a mixture of repressive and bureaucratic methods aimed at preserving the Syrian society under pressure and financial blackmail.

- 5- Depriving the heirs of the deceased person from obtaining a death statement and then limiting the inheritance to transfer the property of the deceased person to his/her heirs is in violation of the individual property rights stipulated in Article 15 of the Syrian Constitution¹⁵, which affirms the right of the individual to freely dispose of his/her property and that it may not be confiscated.
- 6- The request for security approval and the legal consequences it has of preventing the heirs of the deceased person from disposing of their money they inherited are flagrant violations of human rights, as no one may be arbitrarily deprived of his/her property. Also, "the right to property" is guaranteed and may not be infringed except for a necessity or a public interest in accordance with the provisions of the laws issued in this regard and in accordance with both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights¹⁶. Moreover, Article 1 of the Additional Protocol to the European Convention on Human Rights defines the situation of depriving a person of his/her property in the public

<https://www.sana.sy/?p=733959>¹³

<http://parliament.gov.sy/arabic/index.php?node=5588&cat=4300>¹⁴

http://www.sana.sy/?page_id=1489¹⁵

<http://hrlibrary.umn.edu/arab/b003.html>¹⁶



interest and in accordance with legal conditions and principles of international law.

Article 8, Paragraph 2 of the Rome Statute of the International Criminal Court of 1998, which entered into force in 2001, considered the destruction and seizure of property without military necessity a war crime, especially when committed as part of a plan or public policy or as part of a large-scale act of commission and this applies whether it is an international armed conflict or a non-international armed conflict¹⁷.

The Danger of this Circular on the Issue of Detainees and Forcibly Disappeared Persons in the Prisons of the Syrian Regime

In light of the previously mentioned procedures and the interference of the security services in approving or rejecting the death statement and restricting the decision of the Sharia judge to this approval, the Syrian regime and its security services deliberately distort the facts. Especially in the issue of detainees and forcibly disappeared persons who died under torture in the prisons of the Syrian regime, and who their families wish to extract a death statement for them, the Syrian regime's security services will force the deceased person's relatives to write unreal reasons for death, for example, gangs, armed terrorist groups, natural death, or an accident. This procedure will deprive the rights of thousands of Syrian families from a fair trial, as this behavior would hide the facts in which thousands of human rights violations occurred by the Syrian regime and its military and security services. In addition to that it also leads to building a narrative that contradicts the truth, taking advantage of the Syrians' need to confirm the death of their relatives, and to follow up on their legal affairs, from limiting the inheritance and disposing of their money that they inherited, thus, depriving them in the future of the right to a fair litigation. This procedure will lead to manipulating the issue of detainees and forcibly disappeared persons who died under torture in the prisons of the Syrian regime, as the Syrian regime is working to evade criminal responsibility in accordance with international criminal law for committing crimes against detainees and forcibly disappeared persons in its

<https://www.icrc.org/ar/doc/resources/documents/misc/6e7ec5.htm>¹⁷



prisons that may amount to war crimes or crimes against humanity under international humanitarian law¹⁸.

The Syrian Regime Deliberately Defrauded the Death Statement Information

The Civil Status Law was issued pursuant to Legislative Decree 26 of 2007 and was amended after 10 years of conflict by Law No. 13 of 2021. After all cases of death that occurred due to the conflict, the Syrian regime deliberately stated that the cause of death must be mentioned in the death statement, and what is manipulative about it is that the regime did not explicitly mention this in the text of Article 35 to Article 43, but this condition was set in the executive instructions of the law in the paragraph of instructions of Article 37.¹⁹ This has a serious effect intended to deceive and conceal the facts, as the family of the deceased person or civil society organizations tried to obtain a death statement for a person who was proven to have died as a result of military operations or the bombing of the regime, The death statement will only include the word death without mentioning the reason. In such case, in order to know the reason of death, the death statement needs to be referred to the case file, and the decision of the Sharia judge must be printed to show the merits of the decision. However, this would be extremely difficult as there must be a legal power of attorney for the claimant, not to mention that such files are placed in the warehouses of the courts and it is difficult to have access to the old cases. The regime should have mentioned the cause of death in the death statement, or at least allow this right to the family of the deceased to decide if they wish to state the cause of death or not, which prevents fraud and concealment of the cause of death and shows the fact of the person's death in the death statement, whether it was due to natural circumstances or not.

<https://www.icrc.org/ar/document/what-international-humanitarian-law>¹⁸

¹⁹

<http://www.syriamoi.gov.sy/portal/site/arabic/index.php?node=55333&cat=1831>

A Legal Opinion on: The Negative Effects of Restricting Syrian People the Issuance of Death Related Documents

The issue of death confirmation is not related to the person who died, but rather other members of the deceased person's family are affected by that, as the failure to register the death, especially for males, creates a series of difficulties that will face the families of the deceased person, his wife and children, whose life may remain subject to obtaining the death statement. Among the negative effects of not registering the death incident:

- 1- Depriving the families of the deceased person, his wife and children, from extracting basic documents such as an inheritance determination document, thus, their inability to dispose of the deceased person's estate and money, and their inability to transfer his/her estate and property passed to them as inheritance after his /her death to their names and legal registration. Moreover, these properties remain suspended, and this deprives them of their right to dispose it.
- 2- As for its impact on the Syrian woman, who is a part of the vulnerable group in the Syrian society, especially in the period of the conflict that Syria has witnessed since 2011 to date. The failure to obtain a death statement for her deceased husband leads to depriving her of remarrying, if she wanted to, and having the chance to pay attention to her private life after the death of her husband. That is because the woman is registered in the same civil registration file as her deceased husband, thus, she remains a hostage to an expired marriage in reality but active on papers, which forces her to resort to the judiciary. And because such cases in Syria take a long time to be solved, the wife may have to file a divorce case for absence in the event of the husband's absence for more than three years according to Article 109 from the Syrian Personal Status Law, which deprives her of her right to inherit because the divorce took place before the fact of death was legally established.
- 3- The impact of this violation continues on all members of the family of the deceased because the death confirmation is linked to the right to property, civil status and personal status. Therefore, it is a continuous violation of the



right of every family of the deceased and undermines social and economic stability, thus, the political solution and the voluntary return of refugees.

Legal Recommendation

- 1- Article (14) of Chapter Three stipulates the provisions of registration in the civil registry²⁰ to the obligation to register incidents inside Syria within a period of three months from their occurrence if they occur within the country and nine months if they occur outside the country in the administrative record with the competent civil registrar, i.e. administrative procedures. Administrative Paragraph (12) of the instructions of (Article 20)²¹ stipulates that a “police report” must be opened after the one-year period has passed, with the exception of deaths that were proven by a judicial decision. Most of the cases of Syrian people trying to confirm the death of their relatives have exceeded the year, either because of the extension of military operations for a period of time that exceeded a year or because of the displacement of Syrians from their cities, villages and towns to escape from military operations and fear of arrest. Therefore, the period of one year would be exceeded, and accordingly, opening an “administrative report” is not a solution. It seems that the only way left is to try to obtain a judicial decision, therefore, Article 20 of Law No.13 of 2021 should be amended in terms of the time period, and the right of the deceased person’s relatives to register the death of their relatives even outside the legal period so as not to force people to resort to the judiciary and bear the hardships and costs of litigation, since the administrative path is the easiest, least complicated and most effortless and time.
- 2- The Civil Status Law, Article 37²², which restricts the issuance of a death statement by the mayor only to natural death, and prevents other cases in which the death happened due to unnatural reasons. It is not acceptable, after 10 years of non-international armed conflict, which has left thousands of deaths, that the mayor’s jurisdiction is only to grant a statement of natural death. Otherwise, the Syrians resort to the judiciary, and the

<https://sana.sy/?p=1344988>²⁰

<https://sana.sy/?p=1344988>²¹

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- financial cost and long and difficult procedures involved in this way to prove the death of their relatives instead of resorting to the administrative way to confirm the death cases.
- 3- The Syrian government and its executive bodies should provide clear and real guarantees to thousands of hesitant and frightened families by starting to establish the facts of death through a lawsuit before the judiciary. According to this lawsuit, it is clarified that the cause of death was not interfered with, as the insistence by the Syrian regime and its security services to record an unreal cause of death will prevent thousands of families from filing a claim to establish the fact of death. Consequently, the material rights of the deceased person's relatives are lost, and if the regime's procedures are approved by changing the cause of death, this will distort the facts of the context in which thousands of human rights violations occurred in Syria.
 - 4- Circular No. 22 dated 10/8/2022, requesting security approval, must be canceled as a main condition and procedure for confirming death before the Sharia judge, as it constitutes intimidation of the Syrians. This circular also forces the Syrian people to either falsely declare a change in the causes of the death of their relatives, or to refrain from completing the process of confirming the death of their relatives, and the fact that this circular violates the Syrian constitution and law and does not comply with the principle of the rule of law and contradicts the principle of the independence of the judiciary guaranteed by law and the Syrian constitution. The judiciary should be given wide authority to investigate the causes of death, according to which the real causes of death are recorded without pressure or intimidation from the security services on the relatives of the deceased.
 - 5- Working on forming a new process and mechanism to reveal the issue of missing and forcibly disappeared detainees in Syria that takes the humanitarian character and has powers to reveal their fate, and in the event of their death, a death statement is issued to their relatives, enabling them to know their fate. Thus, working to achieve social and economic justice, as justice must be comprehensive, its mechanisms should not be limited to criminal justice only, because ensuring comprehensive peace requires that the political transition be accompanied by comprehensive justice.
 - 6- This legal memorandum is considered as a notification to all the actors in the Syrian affairs to be wary of the attempts of the regime and its allies aimed at distorting the facts in the file of detainees and forcibly disappeared by



issuing decrees, legislation and circulars. Circular No. 22 of 2022 is one of these attempts aimed at blurring and falsifying facts and changing the context in which thousands of human rights violations occurred in Syria by the Syrian regime and its security services.