

# Law 105

## Law on Missing and Forcibly Disappeared Persons



### Parliament passes law on disappeared

MPs object to article in landmark bill, say it could lead to indictment of officials

MP Minister Cesar Abi Khalil. The contract would effectively keep IDZ, supplying electricity to Zahr residents for two years without renewing IDZ's concession, which was a controversial measure.

MP Hadi Hobeish objected to extra spending on the commission, MP Paula Yacoubian hit back that "a million dollars" to clear the minds of families with missing loved ones was worth it.

Other times he did not justify the move, in total causing over 11 laws to be removed. Berri referred another seven back to parliamentary committees for further study. Lawmakers in the morning session.

and set detailed ceilings for spending, and then we go on and spend as much as we want." Contrary to custom, the session was calm on the political front, likely because Berri had asked MPs to

### Les disparus ont enfin leur loi, l'État face à ses responsabilités




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## The Missing and Forcibly Disappeared Persons' Law: **What Can be Done with this "Precedent"?**

Charting the various milestones in the long road that led to the promulgation of 105 Law regarding Missing and Forcibly Disappeared Persons, passed by the Lebanese Parliament on 13 November 2018, is no easy task.

Three factors, at least, lay behind this difficulty.

Firstly, the Law was passed twenty-seven years after the end of the "wars" that officially started in Lebanon on April 13, 1975.<sup>(1)</sup>

Secondly, those twenty-seven years were not characterized by dormancy, but by conflicting dynamics between "truth-seekers" and "denialists." On the one hand, tireless advocacy efforts were made by the families of the missing and forcibly disappeared of Lebanon's bloody war years. They were supported by civil society organizations contending that to ignore the wars' legacies cannot be excused, and that these legacies must be dealt with in order to overcome the country's past. On the other, political decision-making circles obstinately rejected this advocacy, some even going so far as to claim that meeting the families' demands would undermine the fragile "civil peace."

Thirdly, and perhaps most importantly, the Law, as introduced and justified in its Rationales, tackles an issue that Lebanon failed to address after the wars ended. In this sense, it sets a precedent in the full sense of the word, as dealing with enforced disappearance is perhaps the most widely agreed upon feature of what we call the "legacies of the war," and paves the way, theoretically at least, to also tackle other issues that were equally overlooked.

While each of these three factors deserves special attention to do justice to their contribution to Law 105's adoption, this lies beyond the scope of this brief, which instead contents itself with highlighting some milestones

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<sup>(1)</sup> The plural of "war" reproduces a usage found in the Rationales for this law. See page 35 below.

in the long and winding career of Law 105. Mere mention of these milestones does not by any means give a full account of the arduous and painstaking advocacy efforts by associations representing families of missing and forcibly disappeared persons as well as other Lebanese civil society activists, nor does it give credit to the host of international actors that encouraged their local counterparts, provided moral and financial support, and thereby contributed to preventing the missing and forcibly disappeared persons issue from falling into oblivion<sup>(2)</sup>:

- On 24 December 2009, the Committee of the Families of the Kidnapped and Disappeared in Lebanon (CFKDL) and Support of Lebanese in Detention and Exile – SOLIDE requested that the Council of State, Lebanon's highest administrative judicial authority, "annul the tacit decision of the Prime Minister's Office" to decline their request made on 29 April 2009 for "a full copy of the investigations led by the Committee appointed by Cabinet [in 2000, known as the 2000 Committee] which was tasked with investigating the fate of all kidnapped and missing persons, and to compel the State to hand over requested documents to them."
- On 12 December 2011, MP Hikmat Deeb submitted a draft law to the Lebanese Parliament to establish a "National Independent Office for Forcibly Disappeared Persons in Lebanon."
- In February 2012, the Beirut office of the International Center for Transitional Justice published a draft law titled "Law for Missing and Forcibly Disappeared Persons." This text, "drafted by lawyer Nizar Saghieh upon the request of CFKDL and SOLIDE," deserves special mention since a comparison between it and Law 105 leaves little doubt that it was a major source of inspiration and formulation for Law 105 itself.
- On 20 September 2012, Shakeeb Kortbawi, Minister of Justice at the time, published a draft decree to establish a "National Independent Office for Forcibly Disappeared Persons." The draft decree was not welcomed by the cabinet nor by civil society organizations concerned with the issue.
- On 4 March 2014, the Council of State released its decision regarding CFKDL and SOLIDE's 2009 request, annulling the decision of the Prime Minister's Office and acknowledging the plaintiffs' right to know and the right to obtain a copy of the investigations conducted by the 2000 Committee.
- On 16 April 2014, to mark the 39<sup>th</sup> anniversary of the beginning of the "wars," then MPs Ghassan Moukhayber and Ziad al-Kadiry held a joint press conference in parliament at which they announced the submission of a draft law to "establish an official entity which would have all the needed prerogatives to handle this issue [of missing

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<sup>(2)</sup> Regarding this law, a special mention should be awarded to the International Committee of the Red Cross.

and forcibly disappeared persons] so that we reach a day where we bring back those alive [among them] and even the remains of those who are dead."

- On 20 September 2014, the legal adviser to the CFKDL and SOLIDE received a copy of the investigations conducted by the 2000 Committee. Upon examining them, it became evident that the released documents were of little value.
- On 20 April 2015, (another symbolic date, coinciding with the commemoration of the 40<sup>th</sup> anniversary of the beginning of the "wars"), the Human Rights Committee of the Lebanese Parliament decided to merge draft laws submitted by MPs Hikmat Deeb and by Ghassan Moukhayber and Ziad al-Kadiry respectively into a single document.
- On 13 April 2018, on the 43<sup>rd</sup> anniversary of the start of the "wars", CFKDL registered a petition titled "National Petition in favor of adopting the Disappeared Persons Law" at the General Secretariat of the Lebanese Parliament. The petition was signed by over 5,000 citizens.
- On 9 May 2018, the Administration and Justice Committee of the Lebanese Parliament adopted the draft law, thus allowing it to be submitted to the parliament for discussion in plenary session and eventually voted upon.
- The draft law was featured as item 29 on the agenda of the parliament for the session scheduled to take place on 24 and 25 September 2018. However, the quorum was lost at item 16 and the draft law was not discussed.
- A few weeks later, the draft law was featured on the agenda of the session scheduled to take place on 12 November 2018. This time it was finally adopted. The President of the Republic promulgated it on 30 November and it was published in the Official Gazette on 6 December 2018.

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These milestones overlook many significant moments in the sequence of events that resulted in the adoption of Law 105, and especially, the years of tireless advocacy by civil society organizations.

This serves as a reminder, if one is needed, that advocacy for the implementation of this law will be as demanding as the advocacy that led to its adoption.

However, it should also be kept in mind that advocacy for the application

of this law is not just for the sake of the families of those whose loved ones went missing or were forcibly disappeared. This law takes on its full meaning and dimension only when considered in light of the Rationales cited in favor of its adoption. The Rationales plainly acknowledge that dealing with Lebanon's past, no matter how painful it may be, is vital in order to take this country forward and to put to rest the ghosts of the past that continue to haunt the present.

Advocacy for the implementation of this law will also test the political will of those in power. The discussions that took place in parliament during debate of this law, as well as the comments and reservations expressed by some MPs, are a reliable measure of political will (and lack thereof), and could point to new directions for further advocacy, whether regarding application of the Law in both letter and spirit, or on dealing with Lebanon's past more broadly.

Practically speaking, this publication consists of the verbatim Arabic text of Law 105 as published in the Official Gazette, and an English translation of that text. Though the Arabic text was largely inspired by and translated from English sources, the Arabic text, regardless of its formal defects, is the authorized text of reference. By reproducing this text, we hope to expand its circulation and prompt debate, and so we have included several footnotes pointing out questionable formulations and wordings.

**Law 105**  
**Missing and Forcibly Disappeared Persons**

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The parliament has adopted

And

The President of the Republic has promulgated the law whose text is as follows:

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## Chapter I **Definitions**

### **Article 1: Definitions**

For the purposes of this Law, the following terms and expressions, wherever mentioned and in all decrees and regulations issued in the implementation thereof, have the following meanings, with the exception of cases where the context implies a different meaning:

- (1) **Missing person:** A person whose whereabouts are unknown to his/her family, as a consequence of an international or non-international armed conflict, kidnapping, disaster, or any other reason.
- (2) **Forcibly disappeared person:** A person missing due to arrest, detention, kidnapping, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the person in question, placing the person outside the protection of the law.
- (3) **Family member:** A child born in or outside of marriage, an adopted child, or stepchild who was supported by the missing or forcibly disappeared person, the spouse, parents or stepparents, brother

or sister [of the missing or forcibly disappeared person], and their children.

- (4) **Close parties:** Legal entities ([political] parties, non-profit associations) that the missing or forcibly disappeared person was a member of.
- (5) **Associations representing family members:** Associations working in Lebanon at least a quarter of whose membership comprises family members of missing or forcibly disappeared persons, and whose goals include working on enforced disappearance or war-related missing persons.
- (6) **Minimum data:** Data that consists of the given name and surname, place and date of birth, name of one parent, marital status, profession, and address of the missing or forcibly disappeared person, and reliable information on the circumstances of the disappearance.
- (7) **Central Records:** The central database dedicated to storing information and managing tracing requests for missing and forcibly disappeared persons, and related information.
- (8) **Tracing request:** The request submitted to the Commission<sup>(1)</sup> in order to trace missing or forcibly disappeared persons.
- (9) **General tracing information:** All types of information pertaining to the tracing process that aims to determine the fate of missing or forcibly disappeared persons, with the exception of personal information (defined below).
- (10) **Personal information:** Data that helps determine the identity of missing or forcibly disappeared persons, such as name, audio-visual materials, identity card number, website data, Internet IP address, or any data related to one or more physical, genetic, psychological, economic, cultural, or social characteristics of the person. This also includes data that determines or could determine the identity of missing or forcibly disappeared persons.
- (11) **Reliable information:** Information that is likely to determine, based on factual reasonable evidence, whether or not a person could be considered as missing or forcibly disappeared.
- (12) **The Commission:** The National Commission for the Missing and Forcibly Disappeared in Lebanon established by virtue of the present Law.
- (13) **Identification of human remains:** Legal identification based on a scientific process that matches the information about missing or forcibly disappeared persons to human remains, in accordance with

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<sup>(1)</sup> The Commission is "The National Commission for the Missing and Forcibly Disappeared in Lebanon" defined in #12 below.

the best forensic practices and internationally recognized data protection criteria. If the person is found to be alive, the process of identification shall be conducted in accordance with the applicable laws.

- (14) **Burial site:** A location where human remains of one or more persons are found.

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## Chapter II

# Basic Rights and Obligations

### Article 2: The Right to Know

Family members and close parties have the right to know the fate of their missing or forcibly disappeared family members and relatives, their whereabouts, the location of their detention or abduction, and the location of their remains, which they shall also be entitled to obtain. This right also includes burial site location, collection, exhumation, and examination of remains, and determining the identity thereof.

### Article 3: The Right to be Informed

Family members and, in the event of their absence, close parties, have the right to access all information pertaining to tracing missing and forcibly disappeared persons and to all investigations not legally subject to confidentiality that determine his fate, within the mechanisms specified in accordance with this Law.<sup>(2)</sup>

- a. The Commission shall be entitled to receive all tracing-related information available from commissions, administrations, and all competent authorities.
- b. Family members shall be entitled to receive all private information pertaining to tracing missing and forcibly disappeared persons that is available from the parties mentioned in paragraph (a), upon the decision of the competent judiciary.

### Article 4: Non-Discriminatory Treatment

The competent Lebanese authorities shall ensure that the rights of family members of missing or forcibly disappeared persons are realized with

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<sup>(2)</sup> This is a literal translation of the Arabic text, which jumps from using the plural at the beginning of the sentence to using the singular without any logical reason. "His fate" presumably means "the fate of missing or forcibly disappeared persons."

equality, regardless of whether a missing person<sup>(3)</sup> was a member of an armed entity or a civilian, without any form of discrimination on grounds of sex, race, skin color, language, religion, political or other beliefs, national or social origin, affiliation to a minority group, social or financial status, age, mental or physical disability, or any other status.

### **Article 5: Right to Compensation**

- a. Missing and forcibly disappeared persons and their family members shall be entitled to adequate moral and financial compensation, to be determined by virtue of a decree issued by the Council of Ministers upon proposal of the Minister of Finance and the Minister of Justice and based on the Commission's recommendation, within one year of the entry into force of this Law.
- b. This Law shall not, under any circumstance, be interpreted as in any way influencing the right of the missing and forcibly disappeared persons or their family members to claim reparations in compliance with common law.
- c. If the Commission has proof that all conditions necessary to proclaim a person missing are available, it shall issue a certificate to this effect. A true copy of that certificate shall be given to any family member or close party of the missing or forcibly disappeared person. The Commission may mention in the certificate the approximate date of disappearance of the person or the last time the person in question was seen. If a year has passed since the person went missing or was forcibly disappeared, according to the aforementioned certificate, the concerned parties shall have the right to claim financial entitlements, including salaries, upon a decision issued by the competent court.
- d. The competent judiciary retains the right to assess various certificates and reports issued by various competent authorities while looking into claims of disappearance and death.

### **Article 6: Obligation to Disclose Information**

- a. Any party in possession of information pertaining to tracing [a missing or forcibly disappeared person], including individuals, entities, institutions, authorities, and administrations, is obligated to disclose such information before the Commission or the Exhumation Committee.<sup>(4)</sup> Employee confidentiality shall by no means be used as a pretext for failing to disclose available information.
- b. Any individual who has information regarding a burial site located on

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<sup>(3)</sup> The Arabic text points here to "a missing person." The context suggests it means "missing or forcibly disappeared person."

<sup>(4)</sup> More details about this committee in articles 26-30 below.

property he/she owns, has used, has lived in, or has worked in, in any capacity, is requested, upon their own initiative, to disclose this information to the Commission upon its establishment. Furthermore, he/she may, without liability and anonymously, communicate the information verbally to a member of the Commission, who shall duly document this information in writing and sign the document containing it.

Commissions and institutions concerned with matters of justice, the interior, social affairs, and health ministries, as well as other commissions responsible for searching for missing or forcibly disappeared persons, within their powers and prerogatives, are requested to provide the Commission with available information and to give all necessary assistance in searching for missing and forcibly disappeared persons, so as to find solutions for their cases by providing sufficient and clear answers regarding their fate.

The competent authorities, within thirty days of this Law's entry into force, shall cooperate with the Commission responsible for searching [for missing and forcibly disappeared persons] and family members of the missing and forcibly disappeared persons, and shall provide assistance to secure the rights of the families and family members in accordance with this and other applicable laws.<sup>(5)</sup>

The competent authorities, on the basis of previous and new requests for information, are responsible for collecting and verifying all information at their disposal, disclosing relevant facts and sources, and comparing them to official documents and evidence that has been verified during the process of searching for the missing or forcibly disappeared person. They are also responsible for submitting a written report of the findings to the Commission and to the person entrusted by the Commission to conduct the search.

Established judicial and administrative procedures shall apply to requests to review or obtain information, and to deadlines for lodging a complaint in the case of an unsatisfactory answer or in the case of non-response from the administration.

All new information that can facilitate the search for or the identification of a missing or forcibly disappeared person must be documented and investigated by competent authorities, and submitted immediately to the Commission.

The competent authorities must undertake the necessary measures to prohibit and sanction all actions that might obstruct investigations. In particular, they must ensure that the procedures

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<sup>(5)</sup> This article is as confused in Arabic as it is in English. The main reason behind this is that it does not specify exactly what is meant by "family members of the missing and forcibly disappeared persons" supposed to cooperate with the Commission: are they the "Family member" (Article #1.3) or the "Associations representing family members" (Article #1.5)?

mentioned in this Law are not subjected to any undue pressure or influence.

#### **Article 7: Obligation of Exchange and Cooperation**

The competent authorities shall exchange information pertaining to determining the fate and identity of missing and forcibly disappeared persons and shall submit such information to the Commission. In order to improve the search for missing and forcibly disappeared persons, the competent authorities in Lebanon shall cooperate with the International Committee of the Red Cross (ICRC), the [United Nations'] Office of the High Commissioner for Human Rights (OHCHR), the Commission, the Lebanese Red Cross, or with any other humanitarian organization, in accordance with their respective mandates.

#### **Article 8: Reserved Rights**

The act of proclaiming dead a missing or forcibly disappeared person, whether prior to or after the entry into force of this Law, shall have no effect on the obligation to realize the rights stipulated herein.

This Law shall by no means be interpreted as affecting the rights of missing and forcibly disappeared persons during international and non-international armed conflicts, nor the right of their family members to resort to judiciary means, pursuant to the provisions of common law.

In the case of a disaster or other natural event, family members shall benefit from the aforementioned provisions in Articles 3, 4, and 5.

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### Chapter III

## **The National Commission for the Missing and Forcibly Disappeared in Lebanon**

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#### Section 1

#### **Establishment and Organization of the Commission**

#### **Article 9: Establishing the Commission**

- a. In accordance with this Law, a National Commission for the Missing and Forcibly Disappeared (referred to in this text as the

Commission) shall be established with a legal personality and administrative and financial independence.

- b. Members of the Commission and affiliated employees shall carry out their tasks in complete independence from any other authority, in accordance with the provisions of this Law.

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## Section 2

### **Organization of the Commission**

#### **Article 10: Composition of the Commission**

- a. The Commission shall consist of ten members appointed by a decree issued by the Council of Ministers by a two-thirds majority, for a non-renewable duration of five years, upon the suggestion of the Minister of Justice and on the basis of a list submitted by the following entities:
  - (1) Two members [shall be appointed] from six former judges in honorary positions nominated by the Supreme Judicial Council.
  - (2) Two members [shall be appointed] from six attorneys with experience in the penal code, human rights law, or common law nominated equally by the Beirut Bar Association and the Tripoli Bar Association.
  - (3) One member [shall be appointed] from three college professors specializing in human rights or public freedoms nominated by the Lebanese University Board of Deans.
  - (4) One forensic doctor shall be appointed upon agreement between the two presidents of the Lebanese Order of Physicians in Beirut and North Lebanon. If an agreement cannot be reached within one month of the entry into force of this Law, each president shall nominate one forensic doctor, and the two names will be voted on in both councils of the Order in Beirut and Tripoli. The doctor with the highest number of votes from both councils shall then be appointed.
  - (5) Two members [shall be appointed] from twelve human rights activists nominated by the Human Rights Parliamentary Committee, based on previous nominations submitted by human rights and civil society organizations. Each candidate for nomination should be recommended by at least three Lebanese associations.
  - (6) Two members [shall be appointed] from twelve activists in associations representing families of the missing and forcibly disappeared nominated by the Human Rights Parliamentary Committee, based on nominations presented by these concerned associations. Each

candidate should be recommended by at least three Lebanese associations. The concerned associations mentioned in this clause are associations operating in Lebanon with at least one quarter of their membership consisting of family members of missing or forcibly disappeared persons, and whose objectives include working on enforced disappearance and missing persons during war.

### **Article 11: Membership Eligibility Requirements**

The nominees must meet the following requirements:

- (1) Holding Lebanese citizenship for over 10 years, enjoying all civil rights with no felony or misdemeanor convictions, being of high moral standing, and being known for good ethics, integrity, and independence.
- (2) Being over thirty-five years old.
- (3) Having at least ten years of experience in his/her field.
- (4) Selection of members must take into consideration the representation of both genders.
- (5) Candidates' files shall be submitted to the Council of Ministers' General Secretariat.

### **Article 12: Full-Time Employment and Conflict of Interest**

- a. The President of the Commission, unlike the members, will work for the Commission on a full-time basis, and shall be prohibited from occupying any other function during this mandate.
- b. Members of the Commission shall not simultaneously serve as Prime Minister, Minister, Speaker of the House, Member of Parliament, chairperson or board member of a public institution, mayor, political leader, member of councils of orders, or member of the bodies that nominated them.
- c. Members shall not run for parliamentary, municipal, or mayoral elections, nor assume any political or administrative public function, until two full years after the end of their membership in the Commission.

### **Article 13: The Oath**

Members of the Commission shall take the following oath before the President of the Republic: "I swear by Almighty God to perform my tasks in the National Commission for the Missing and the victims of enforced disappearance<sup>(6)</sup> with honesty, loyalty, independence, and impartiality, to show trustworthy behavior in

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<sup>(6)</sup> This is how the name of the "National Commission for the Missing and Forcibly Disappeared" (Article #9.a) appears in this article. Another example of the loose wording that prevails throughout this text.

all that I do, to ensure that right prevails, and to strive to protect and uphold human rights."

#### **Article 14: Election of the Commission President and Members**

After taking the oath and upon invitation of the eldest member or upon the request of three members, the members will convene and use a secret ballot to vote for the President, Vice-President, General Secretary, and Treasurer for a non-renewable term of five years. Their respective functions shall be stipulated in the Commission's rules of procedure.

#### **Article 15: Rules of Procedure and Code of Ethics**

- a. Within a period of two months of taking the oath and with a two-thirds majority, members of the first Commission<sup>(7)</sup> will establish its rules of procedure, including rules and detailed principles governing its organization and its sound functioning.
- b. The Commission shall duly set a code of ethics and high professional standards, which all Commission members, staff, branches, association representatives and other individuals collaborating with the Commission in order to fulfill its functions shall be committed to.

#### **Article 16: Vacancy**

In the event of a membership becoming vacant more than one year prior to the end of the term for any reason, the Commission will announce the vacancy and its President will notify the Council of Ministers and the entities responsible for nominations within a maximum of one week of the vacancy occurring.

The Council of Ministers will appoint a replacement member within three months of the notification, pursuant to Article 2 of this Law.<sup>(8)</sup> The replacement member will serve the remainder of the term.

#### **Article 17: Members' Immunity**

- a. Aside from flagrant crimes, Commission members or staff can only be subject to prosecution, criminal proceedings, or legal actions including arrest, for actions related to their work in the

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<sup>(7)</sup> Sic. While previous provisions insist on the fact that the Commission's duration is of five non-renewable years and the term of its members is of the same duration, the reference to the "first Commission" seems irrelevant.

<sup>(8)</sup> There is no relation between article 2 and the probability of such vacancy. It may be that it is a typo and the article refers to the catchall article 42 which specifies that "Practical details of the implementation of this Law shall be set, as appropriate, via ministerial decrees based on the recommendation of the Minister of Justice."

Commission during and after their term or their work therein, upon authorization from the Commission and upon receiving the testimony of the member or commissioner in question, who shall not partake in the Commission's voting process [on his/her case]. The Commission shall issue its decision within a period of two weeks after receiving the request for a waiver of immunity from the competent judicial body; if not, the authorization shall be granted implicitly. The Commission's decisions shall be subject to appeal before the first chamber of the Court of Appeals in Beirut.

- b. The offices, correspondence, documents, and data of the Commission shall only be subject to inspection or to judicial or administrative proceedings upon the approval of the Commission. The executive power does not, under any circumstances, including emergencies and war, have the capacity to suspend or end the work of the Commission.

#### **Article 18: Removal of Members<sup>(9)</sup>**

- a. A Commission member may only be removed from his/her post in the following cases:
  - (1) His/her performance is hindered by a health or mental condition.
  - (2) He/she is convicted through a final judgment of a felony or flagrant crime. In this case, his/her membership shall be de facto suspended immediately following an indictment or any ruling on the aforementioned crimes.
- b. The removal decision shall be made by the entity in charge of nomination, upon a suggestion submitted by the Commission and agreed upon by a two-thirds majority of members, provided that a notification of the decision is sent to the person in question within three days of being issued.
- c. Removal decrees may be challenged before the Council of State within two months of notification of the decision.

#### **Article 19: Meetings of the Commission**

The Commission shall convene at least once per month, upon the invitation of its President.

The meeting is rendered legal with the attendance of at least an absolute majority of members. Decisions are made by absolute majority, and in the event of a tie, the deciding vote is cast by the President of the Commission. Any member who fails to attend three times without providing a legitimate reason shall be de facto considered as having resigned.

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<sup>(9)</sup> The original reads literally: "Prohibition of Removal of Members."

## Article 20: Committees of the Commission

In addition to the committee<sup>(10)</sup> established by virtue of this Law, the Commission may form committees composed of its members in order to fulfill permanent or specific tasks, according to its internal bylaws.

## Article 21: Employment and Contracting

- a. The Commission shall be assisted by an administrative body, headed by a full-time executive director.
- b. Principles of employment and tasks shall be set forth in the internal bylaws.
- c. The administrative body shall be subject to the provisions of the Labor Law and social security regulations.

## Article 22: Information Requests

The Commission is entitled to contact Lebanese or foreign authorities and bodies to request any documents or information it deems beneficial for the performance of its mandate. The concerned Lebanese authorities and bodies shall respond without delay.

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### Section 3

## Finances and Budget of the Commission

### Article 23: Budget and Financial Regulations of the Commission

- a. The Commission shall be administratively and financially independent, falling under the subsequent supervision of the Court of Audit.
- b. The Commission shall have an annual financial allocation specified within the budget of the Presidency of the Council of Ministers, sufficient to cover the Commission's expenditure and activities. The Commission shall prepare the draft budget, which the president shall send to the Minister of Finance within a specific deadline set in accordance with the General Accounting Law.
- c. The budget of the Commission must allocate funds to the committee<sup>(11)</sup> that sufficiently cover all of its activities and comprise no less than a quarter of the Commission's total budget.

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<sup>(10)</sup> No further specification in the original about this committee. The context implies that it is the "Exhumation Committee" mentioned previously in Article 6 (a) and later on in Articles 26-30.

<sup>(11)</sup> See previous footnote.

- d. A bank account for the Commission shall be opened at the Central Bank within the Treasury accounts. The President shall be in charge of the Commission's expenditures and expenditure control in accordance with the General Accounting Law. At the end of the fiscal year, a table of spent appropriations ratified by the President shall be sent to the Ministry of Finance, noting that such tables are subject to the provisions stipulated by the General Accounting Law.
- e. The Commission's accounts shall be subject to the internal audit system and to independent auditing by auditing and accounting bureaus, by virtue of Article 73 of Law 326 dated 28/6/2001 (the General Budget Law for the fiscal year 2011).

#### **Article 24: Funding of the Commission**

The Commission's revenues consist of:

- a. Contributions allocated thereto in the budget.
- b. Donations, financial support and any other resources from any local or international entity, provided that they do not compromise [the Commission's] independence and are in conformity with laws in force and approved by virtue of a decree issued by the Council of Ministers.

#### **Article 25: Remuneration of Members**

The President shall receive fixed monthly compensation, whereas other members of the Commission receive compensation for each session they attend. The amount of this compensation is to be decided by virtue of a decree issued by the Council of Ministers, upon the suggestion of the Minister of Finance and the Minister of Justice.

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### Section 4

#### **Commission Mandate and Powers**

#### **Article 26: Commission Mandate**

The Commission, and where appropriate the committee responsible for exhumation and identification of remains, shall work to guarantee the rights and fulfil the obligations stipulated in this Law, particularly with regard to determining the fate and whereabouts of missing and forcibly disappeared persons, regularly informing their families of the achievements and challenges faced during the process, and tracing remains and handing them over to family members in order to solve individual cases of persons who went missing or were forcibly disappeared.

For such purposes, the Commission shall undertake all necessary actions, including but not limited to:

- (1) Conduct all investigations, upon its own initiative or upon request, to trace missing and forcibly disappeared persons and to work for their release or the recovery of their remains.
- (2) Receive the testimony of any person suspected of having information regarding this matter, as stipulated in the Commission's internal bylaws, while protecting their safety and security.
- (3) Receive reports about missing and forcibly disappeared persons, information on burial sites, and testimonies of relatives or witnesses, if need be.
- (4) Ensure verification and storage of information pertaining to missing and forcibly disappeared persons, to be included in the Central Records of missing and forcibly disappeared persons. The criteria to be met in managing and protecting such information and its confidentiality, as well as protecting sources of information and witnesses as appropriate, are specified pursuant to Article 36 below.
- (5) Take appropriate decisions, such as accepting or rejecting tracing requests. This includes replying with a formal letter explaining the reasons for rejection.
- (6) Ensure verification of the DNA database, or any other information or biological sample necessary to determine the identity of missing or forcibly disappeared persons, with competent authorities. Such samples shall be analyzed and kept in the Internal Security Forces' central forensic laboratory. The Commission shall strive to protect such information pursuant to Article 36 below.
- (7) Establish an information bank for burial sites.
- (8) Set the criteria to be met during burial site exhumations, and assign the exhumation task to competent authorities in accordance with these criteria.
- (9) Undertake necessary measures to place a temporary encumbrance on property suspected of containing burial sites for a maximum of six months, and secure them in preparation for excavation, noting that the owner shall be informed of such decisions.

- (10) Nominate members of the committees responsible for excavating burial sites.
- (11) Oversee the work of the committees responsible for excavating burial sites, exhuming remains, identifying identities, and performing autopsies and anthropological tests.
- (12) Suggest reparation mechanisms for missing and forcibly disappeared persons and their family members and provide support for the families.
- (13) Coordinate the efforts of local and international institutions committed to solving the cases of missing and forcibly disappeared persons and sign agreements with them.
- (14) Conduct professional trainings in the Commission's field of expertise.
- (15) Inform the public of the findings of investigations and proven facts.
- (16) Issue an annual report on the work undertaken, including the number of tracing requests, the number of cases under scrutiny, remains that were identified, and the names and number of burial sites that were subject to investigation by virtue of this Law, in compliance with data protection principles and consideration of the interests of the families.
- (17) Raise awareness amongst decision makers and the public about the humanitarian aspect of the missing and forcibly disappeared persons issue, the needs of their families, and their suffering.
- (18) The Commission may resort to various security apparatuses and the judicial police to fulfill any of its tasks through legal administrative means.
- (19) The Commission shall undertake all necessary measures to terminate any construction, excavation, alteration or any other type of work, in order to ensure the protection of burial sites.
- (20) Crosscheck and compare information at its disposal with any competent authority in order to verify the identity of the missing and [forcibly] disappeared persons' remains, to determine their whereabouts if alive, and to guarantee legal identity determination by competent authorities.
- (21) Issue documents and certificates to the families of missing and forcibly disappeared persons.

- (22) Provide competent authorities with information to improve tracing processes.
- (23) Submit recommendations to the Cabinet on mechanisms to be implemented in order to bring justice for missing and forcibly disappeared persons and their families.
- (24) In the event of an armed conflict or occupation as stipulated in the Geneva Conventions on 12 August 1949, the Commission shall provide the National Information Bureau with all information at its disposal.<sup>(12)</sup>

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## Chapter IV

### **Identification of Burial Sites and Exhumation of Remains**

#### **Article 27: Seizure**

Wherever evidence indicates the existence of an individual or mass burial site for missing or forcibly disappeared persons, the Commission shall notify the competent public prosecutor of such evidence as well as measures it intends to undertake to verify the existence of, locate and secure the site. The public prosecutor, in light of available evidence and before or after undertaking any investigation, may decide to seize and fence the site, and to appoint a judicial custodian to protect it as appropriate.

The owner or occupant of the property shall comply with any measure taken in accordance with the law to locate or secure the burial site in preparation for excavation works, following an official notice of such measures being duly served to said owner/occupant.

Decisions taken by the Commission under the present chapter are subject to appeal before the competent administrative court based on summary

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<sup>(12)</sup> This provision is perhaps the most striking example of the interplay between the "original draft" from which the texts of this piece of legislation were inspired and Law 105 as it was passed by the Lebanese parliament. It is useless to try deciphering this provision without referring to that "original draft." That draft, *The Law for Missing and Forcibly Disappeared Persons* published by the International Center for Transitional Justice, suggests that "the Institute," which stands for the Commission in that draft, "may also recommend that all the preliminary measures necessary be taken to set up and operate, in the event of an international armed conflict or an occupation, a National Information Bureau, as stipulated in the Geneva Convention IV on August 12, 1949, relating to the protection of civilians in times of war." Interestingly, Law 105 overlooks the very fact that there is no "National Information Bureau" in Lebanon and tasks the Commission in the most affirmatory way to communicate with an as yet non-existing entity!

procedures. The administrative court may impose a fine of twenty million Lebanese Pounds against the appealing party in cases of ill intention.

### **Article 28: Establishing the Committee**

- (1) As soon as the Commission seizes a burial site, a special multidisciplinary Committee including forensic experts shall be formed within one month of the seizure. The mandate of the Committee is to excavate the burial site, exhume its content and identify remains buried therein within a reasonable period of time from the date of its establishment, provided that appropriate conditions to begin the excavation process are in place, and with consideration for Article 20 of this Law.
- (2) The Committee shall be composed of five members as indicated below:
  - One representative of families of missing persons appointed by the Commission on suggestion from the group of family members of missing and forcibly displaced persons.<sup>(13)</sup>
  - One expert specializing in identifying human remains appointed by the Commission.
  - One legal expert working within the governorate where the burial site is located, appointed by the Commission.
  - One member of the municipal council of the municipality where the burial site is located, to be appointed by the Commission after consulting with the mayor.
  - One ruling judge of the tenth degree working within the governorate where the burial site is located, to be appointed by the Senior Chair of the Court of Appeals in the said governorate. The appointed judge shall be the de facto president of the Committee.
- (3) The Committee may request an extension of its given deadline in accordance with this Law in order to fulfill its tasks from the Commission. The deadline extension request must be justified.

### **Article 29: Mandate of the Committee**

- As soon as the Committee is formed, and following the notification of the public prosecution, the scientific standards and operational procedures of the Committee shall be set out according to international standards and best practices for investigating potential burial sites and exhumations, examinations, and identification of human remains and properties buried therein. The Committee must also ensure the

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<sup>(13)</sup> The above is a verbatim translation of the Arabic text. The "group" into question refers most probably to the "Associations representing family members".

collection of information related to missing and forcibly disappeared persons that may assist in the identification process.

- In addition, the Committee shall have the right to access official documents that may facilitate its work, wherever they may exist. The Committee shall establish scientific procedures for all necessary forensic analyses to identify human remains.
- The Committee shall undertake the aforementioned tasks in full independence and its work shall not be subject to any kind of review.
- In case it is necessary to demolish any constructions to examine a burial site or to take additional protection measures for it, the Committee shall submit a documented and justified report to that effect to the Commission, and the latter shall make the decisions it deems suitable in that regard. Necessary measures must be taken to ensure restitution after the work is completed, provided there is no legal impediment in that regard.
- Once investigations are concluded, the Committee shall draft a comprehensive report on all works documented on electronic discs, including video evidence and medical reports corroborating the identities of human remains. The Committee shall submit the report and all attached documents to the Commission.
- The Committee may seek the support of judicial police and Internal Security Forces to carry out its works as indicated above.
- The Committee may seek the support of specialized experts to carry out work, who will not have voting rights.
- A member of the Committee may record a justified dissenting opinion within the final report before submission to the Commission.

### **Article 30: Identifying Remains**

- (1) The Commission shall be responsible for examining reports of Committees identifying remains in preparation for accrediting the reports.
- (2) The Commission may request that the Committee amend some items of the report, with the exception of scientific results, within a maximum of 15 days from the date of receipt of the report. If the Committee refuses to do so, the Commission shall take the appropriate decision in that regard.
- (3) The Commission shall issue a justified decision regarding the identification of human remains with the final version of the report and attached documents proving the identity of the human remains [at the site in question]. The Commission shall notify the public prosecution and family members of the deceased of its decision. Both parties have the right to file an objection to the content of the decision with the Commission within one month of being notified.

- (4) The Commission shall examine the objection within one month of the date of receipt and issue its decision in that regard.
- (5) Such a decision may be reviewed by the Council of State in accordance with summary procedures.
- (6) The Commission shall deliver the remains to the family members of the deceased and provide necessary support for the reburial of remains.
- (7) In case of a failure to identify the remains after their examination, they shall be treated with respect and reburied in a clearly marked grave while duly preserving all necessary documents.

### **Article 31: Marking Burial Sites of Missing and Forcibly Disappeared Persons**

The families of missing and forcibly disappeared persons or their associations may request that the Commission put a mark (identifier) on individual or communal burial sites, regardless of the number of victims.

Competent local authorities for tracing missing and forcibly disappeared persons shall mark burial or exhumation sites and issue a certificate that confirms the location. The competent local authority, based on the previous paragraph, shall grant permission for a suitable memorial plaque that complies with conditions set forth in the Book of Specifications on Memorial Plaques for the Missing and Forcibly Disappeared. The Commission and associations representing family members of missing persons shall agree on this book within two months of the date of this Law's entry into force, and they shall submit it to the Council of Ministers for approval.

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## Chapter V

# **Submitting a Tracing Request, Data Collection, Centralization, and Protection**

### **Article 32: Submitting a Tracing Request**

- (1) Tracing requests are submitted to the Commission in accordance with this Law.
- (2) A tracing request may be submitted by a family member or a close party of the missing person, or by other concerned persons or parties if they are able to provide minimum data on the identity of the missing person.
- (3) Tracing requests for non-Lebanese citizens may be filed according to the provisions of this Law in the following cases:

- If there are convincing reasons to believe that the non-Lebanese "victim" resided in Lebanon during the time of their disappearance, a tracing request for a missing or forcibly disappeared person may be submitted to the Commission in accordance with this Law by any family member or by any other person, institution or entity dealing with the issue of missing and forcibly disappeared persons, on condition that they are in possession of minimum information about the identity of the missing person, as stipulated in Article 2 of this Law.
  - It is also possible to follow up on requests related to foreign citizens, according to this Law, when tracing requests are submitted from outside Lebanon, if the missing or forcibly disappeared person:
    - a. Did not hold Lebanese citizenship but had a temporary permit to reside on Lebanese territory.
    - b. Did not hold a temporary residence permit, but reliable information proves that the person disappeared on Lebanese territory.
    - c. Or, if the party submitting the request is able to provide reliable information about the circumstances surrounding the disappearance of the missing person in Lebanon.
- (4) All requests pertaining to the disappearance of any persons submitted to a competent official body prior to the enforcement of this Law shall be considered valid and submitted in accordance with the provisions of this Law, provided that they include minimum data as required. If the minimum required data has not been provided, the applicant shall be contacted within a reasonable period of time and permitted to provide additional information.
- (5) Tracing requests are subject to examination and comparison with all past and present official records in Lebanon. Once a request is accepted, the Commission shall submit a statement bearing the file number related to the missing or forcibly disappeared person at the Commission to the concerned parties.

### **Article 33: Creation of the Central Records**

The Commission shall be responsible for creating the Central Records.

The Central Records are composed of individual records pertaining to missing or forcibly disappeared persons regarding whom a tracing request has been submitted. These Records shall be subject to the principle of confidentiality and to relevant legal provisions that apply in Lebanon as included in the internal bylaws of the Commission.

"Associations representing family members," any international organization with a branch in Lebanon, any natural person, or any legal entity in possession of a database related to a missing

person covering any time period may be requested to provide the Commission with information in order to unify and complete these Records.

The Commission has, for such purposes, the right to sign agreements with local or international institutions concerned with the tracing of missing or forcibly disappeared persons in order to guarantee the protection of confidential information shared by such institutions in compliance with relevant laws.

### **Article 34: Collection of Official Information on Declarations of Disappearance or Death**

The Commission shall obtain, in coordination with relevant official authorities, copies of files of lawsuits submitted since 13/4/1975 to any competent Lebanese jurisdiction declaring the disappearance of a person or the death of a disappeared person.

Copies of all requests to declare the disappearance, enforced disappearance, or death of a person submitted as of the date of entry into force of this Law, or rulings issued thereon by any competent jurisdiction, shall also be sent to the Commission's secretariat.

Such referrals to the Commission shall not, under any circumstances, constitute a basis for the cessation of any legal prosecutions or investigations. The Commission shall also obtain all records related to the registration of the death of a missing or forcibly disappeared person since 13/4/1975 from the General Directorate of Personal Status at the Ministry of Interior.

### **Article 35: Data Collection and Usage**

Central Records are a collection of individual records of missing or forcibly disappeared persons or records containing information on the identity of the missing or forcibly disappeared and the place and circumstances of their disappearance, along with other information that may assist in tracing and identifying such persons.

All data entered into the Central Records is subject to verification by the Commission according to internationally recognized forensic best practices and data protection standards. Such verification includes assessing the validity of the request and crosschecking with official documents maintained by the competent Lebanese authorities.

Requests by the Commission to verify the data on a missing person and crosscheck with other official records of missing and forcibly disappeared persons have priority in receiving a response from the competent authority. Verification and entry of previously collected data on missing and forcibly disappeared persons into the Central Records should be completed by the competent authority within a year of the date of the establishment of the Commission.

Only a verified request or report can serve as the basis for the realization of rights based on this Law.

### **Article 36: Data Management**

Data in the Central Records is subject to established laws and regulations on record-keeping and official databases and to relevant international standards on data protection.

The process of managing, entering, exchanging, using, and verifying data is subject to the detailed special conditions set out in the Book of Regulations for the Management of the Central Records of Missing and Forcibly Disappeared Persons.

This book of regulations shall be approved by the Commission within one month of its establishment.

Cooperation and coordination among competent authorities is subject to Lebanese laws and regulations that apply to important issues such as this one. Persons engaged in managing, handling confidential data related to personal information including physical, genetic, and medical characteristics of missing and forcibly disappeared persons are subject to confidentiality regulations as established in the Book of Regulations for the Management of the Central Records of Missing and Forcibly Disappeared Persons.

Personal information, including medical or genetic data collected and/or exchanged in the context of tracing a missing person, shall not be used or shared for purposes other than tracing the missing person. Additionally, collecting, processing, and storing personal information, including medical or genetic data, shall not be in violation of human rights, basic freedoms, and human dignity.

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## **Chapter VI**

### **Punitive Provisions**

#### **Article 37:**

Any instigator, perpetrator, accomplice, or accessory in an enforced disappearance shall be punished by imprisonment with hard labor for five to fifteen years and fined between fifteen million Lebanese Pounds and twenty million Lebanese pounds.

#### **Article 38:**

Imprisonment of six months to two years and a fine between one

million Lebanese Pounds and ten million Lebanese Pounds shall apply against:

- (1) Anyone who prevents access to information to a family member or to the Commission.
- (2) Anyone who, without justified cause, hinders provision of the requested information to a family member or to the Commission.
- (3) Anyone who intentionally delivers false information that misleads or hinders the tracing process of a missing or forcibly disappeared person.
- (4) Anyone who exposes a person to criminal liability, threatens them, or intimidates them in any way for the sole reason that they inquired about a missing or forcibly disappeared person or their location.

The minimum penalty shall be imprisonment for one year and a fine of five million Lebanese Pounds if a person gives false information or it is proven that the person misused or manipulated information. Such a penalty shall be reduced by three quarters if the concerned person discloses the information in their possession within one month of the date when a criminal lawsuit is filed against them.

### **Article 39: Aggravating Circumstances**

If it is found that the perpetrator knew that the missing or forcibly disappeared person was still alive, he/she shall be punished by imprisonment from one to three years and issued a fine between twelve million Lebanese Pounds and fifteen million Lebanese Pounds.

### **Article 40: Tampering with Burial Sites**

Imprisonment for one to three years and a penalty of between twelve million Lebanese Pounds and fifteen million Lebanese Pounds shall be imposed against:

- (1) Anyone who tampers with or excavates a burial site with the intention of destroying evidence likely to determine the identity of those buried at the site.
- (2) Anyone who obstructs the work of authorities concerned with tracing missing persons in the course of fulfilling their duties in the identification and excavation of burial sites, or who fails to cooperate in order to enable the authorities to carry out their duties.

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## Chapter VII

# Final Provisions

### Article 41: Observance of Inheritance Laws

The implementation of this Law shall be in compliance with the provisions of inheritance laws for all sects as well as provisions of the relevant criminal laws.

### Article 42: Implementation Details

Practical details of the implementation of this Law shall be set, as appropriate, via ministerial decrees based on the recommendation of the Minister of Justice.

### Article 43: Implementation of the Law

This Law shall enter into force upon its publication in the Official Gazette.

Baabda, 30 November 2018  
Signature: Michel Aoun

Promulgated by the President of the Republic  
The Prime Minister  
Signature: Saad Hariri

The Prime Minister  
Signature: Saad Hariri

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## **Rationales for the Draft Law on the Missing and Forcibly Disappeared**

During its modern history, namely during the war hostilities from 1975 to 1991, Lebanon witnessed cases of kidnapping and enforced disappearance involving a large number of persons whose fates remain unknown.

After the end of that period of war, Lebanon failed to find a solution that would satisfy the victims of such acts and their families. During the post-war era, the major concern was to avoid reopening old wounds at the expense of ensuring justice or securing reparations. This made the missing and forcibly disappeared, along with their family members, perpetual victims of a past that most war officials and perpetrators were able to free themselves from thanks to the war laws.<sup>1</sup> In the meantime, victims of such acts remained prisoners of that past and saw their suffering perpetuated, especially considering the indifference of the perpetrators.

Successive post-war governments made some attempts at uncovering the fate of the missing and forcibly disappeared; however, these attempts remained limited. They have included the establishment of a committee to investigate the fate of the missing and kidnapped (2000), a commission to receive grievances from the families of the kidnapped (2001), and the Syrian-Lebanese Commission (2005), none of which led to uncovering the fate of the missing and forcibly disappeared, either through finding them while they were still alive or finding their remains.

Based on the aforementioned,

Pursuant to international conventions ratified by Lebanon, namely the United Nations Convention against Torture (UNCAT), the UN Declaration on the Protection of All Persons from Enforced Disappearance that Lebanon pledged to ratify, and all relevant international instruments,

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<sup>(1)</sup> Interesting lapsus calami. Most probably, it should read "thanks to the amnesty laws."

And pursuant to the will of the Lebanese people to overcome the past and strengthen civil peace on the basis of values of human rights, equality, and mutual recognition, and being that this will cannot materialize through a truncated look at the past or any attempt to obliterate it, but rather must be established through the exact opposite approach by showing solidarity with the victims, seeking justice, and putting an end to their ongoing pain,

It only seems appropriate, if not necessary, to draft a law to address the issues of the missing and forcibly disappeared, and to put an end to the suffering of their families, by covering different perspectives.

The main objectives that the draft law aims to achieve are to:

1. Recognize and enshrine the right of families of the missing and forcibly disappeared to know their fates.
2. Establish an entity in charge of collecting and documenting information, creating Central Records, and taking practical steps to identify locations of mass graves in preparation for the identification of victims.
3. Take preventive measures to limit [further] cases of missing persons.
4. Adopt a definition of a missing or forcibly disappeared person and a clear method to manage Central Records related thereto.
5. Organize the process of tracing missing or forcibly disappeared persons.
6. Organize the process of locating, protecting, and exhuming mass graves.
7. Set a mechanism to seek justice for the missing and forcibly disappeared and their families.

### **On Rights and Acknowledging the Cause of Missing Persons and their Families:**

Naturally, the key to solving the issue of those who went missing during the wars [of Lebanon] is [the acknowledgment of] the right of families to know the fates of their loved ones as a central right. Other rights stem from this right, such as the right to access related official documentation and investigations. Apart from the fact that acknowledging such rights is a required act of justice in all cases, and that it is a duty to put an end to the suffering and anguish of the families of missing persons, such an acknowledgment also has the symbolic value of the State recognizing an issue that affects a large portion of its citizens. It is needless to add that acknowledging such rights is grounded in the principles of restorative justice.

On the other hand, and in order to guarantee the right to know, it is beneficial for the law to include provisions for sanctioning those who hide information that may contribute to uncovering the truth, not due to their past actions such as perpetrating kidnapping and murder, since these acts were covered by amnesty laws, but for hiding information that may put an end to the suffering of the missing if they are still alive, and of their families in all cases. It is also imperative, in order to avoid repeating past mistakes, to adopt strict measures against the crimes of kidnapping and enforced disappearance by amending provisions of the penal code in that regard.

### **On Institutions Guaranteeing such Rights:**

The draft law stipulates the establishment of an entity in charge of collecting and documenting information, creating Central Records, and taking practical steps to locate sites of mass graves in preparation for the identification of victims. Given the sensitivity of the matter, and in order to guarantee the credibility of such an entity to the families of the missing, it shall have a high level of independence and must be organized as an "independent commission" composed of representatives of families of the missing and civil society, in addition to a judge and other persons to be appointed by the Council of Ministers from a list of names submitted by concerned parties. Strict measures must be taken to ensure the independence of such members, and it would be relevant for the said Commission to undertake its functions in parallel with social action on collective memory and victims of war.

### **On Mass Graves:**

The draft law entails measures to protect and exhume mass graves in preparation for identifying remains buried therein. Such measures require the establishment of special committees to represent families of missing persons along with local authorities, operating under the supervision of the Commission, while ensuring that their work does not conflict with the work of the competent judicial authority.

Based on the aforementioned, we submit the present draft to your distinguished Assembly with the hope that it will be adopted.