

# TRUTH, DIGNITY, AND JUSTICE – THE CASE OF THE MISSING AND FORCIBLY DISAPPEARED IN LEBANON

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## Summary

Decades of activism have led the cause of the missing and forcibly disappeared to reach a turning point when parliament passed Law 105 in 2018. Yet, to actualize the contents of the law and to activate an effective National Commission of Inquiry, much has to be done at the legal, political, and social levels.

## KEY RECOMMENDATIONS

### LAW 105 AND THE NATIONAL COMMISSION

Government officials are strongly advised to facilitate the implementation of Law 105 and to allow for the independent nature of the Commission to be upheld with its work aided and unobstructed, especially after reports that the delay in forming this committee was due to sectarian representation disputes and political quotas, which endanger the authority's credibility. In fact, the impartiality and independence of the commission are necessary to conduct adequate investigations and uncover the truth. Authorities must provide resources, including a budget, while assuring the cooperation of the necessary government institutions and administrations with the commission.

### PROTECTING MASS GRAVES AND BURIAL SITES FOR FUTURE INVESTIGATIONS

Public officials and Commission members are advised to urgently protect properties suspected of containing grave sites to protect them from destruction, as is mandated by Law 105 under Article 26. Numerous families would be denied their right to truth if anything were to happen to the remains of the disappeared. Ensuring the preservation of these sites would represent an act of goodwill and unified public effort on behalf of both the government and civil society, potentially placing Lebanon's postwar history under a more positive light.

### CLARIFYING THE FATE OF THE DISAPPEARED DETAINED IN FOREIGN STATES

The issue of the Lebanese citizens detained in foreign states, such as Syria, is one that requires specialized attention. Lebanon currently holds no coercive power to guarantee that these foreign states cooperate on the matter, which is why international aid and pressure is needed to facilitate the process.

## Introduction

The right to truth of the families of the disappeared, recognized by several international treaties and conventions,<sup>1</sup> has been acknowledged and recognized by Lebanese authorities through the passing of Law 105 in 2018. Reaching this milestone required decades of struggle and activism, which were spearheaded by the "Committee of the Families of the Kidnapped and Disappeared in Lebanon (CFKDL)" formed on November 17, 1982 by Wadad Halawani after the abduction of her husband. The CFKDL has been active for 39 years, using different forms of activism, advocacy, and street pressure to push decision makers to place their cause on the political agenda in order to reveal the truth about their loved ones. Their efforts paid off again with landmark success on June 18, 2020 through the establishment of the National Commission for the Missing and Forcibly Disappeared, the main official body in charge with investigating the fate of the missing.

As is known, most of the politicians in power were implicated in the civil war, clearly linking them to the suffering of the families. Evidently, their political will to address the cause of the disappeared is absent, and sometimes, oppositional, creating complex hurdles for the CFKDL to surmount. In order to bring their cause to the forefront of national politics, the CFKDL had to successfully transition from a solely political movement to a legal and rights based one. The families endured challenges by forming solid alliances with Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs), such as SOLIDE<sup>3</sup>.

- 1) Lebanon signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007 but did not ratify it.
- 2) From then on, the group will be addressed as "The Committee of the Families", the "Committee", or simply the CFKDL.
- 3) SOLIDE stands for Support of Lebanese in Detention and Exile. Established in 1989, SOLIDE has been active in its campaign against the crimes of arbitrary detention and enforced disappearance at the hands of the Syrian army and intelligence apparatus in Lebanon. SOLIDE was founded by activist Ghazi Aad.

## **RATIFYING THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

The Lebanese Parliament should proceed with the ratification of the Convention, which has already been signed by Lebanon. The ratification would enshrine its enactment into domestic legislation and promote its implementation. Since Law 105 has been passed by Parliament, it is only natural for Lebanon to ratify the Convention and go forth with implementation procedures.

## **IN RESPONSE TO THE DISAGREEMENTS ON TRUTH AND JUSTICE**

CSOs, along with the families, scored a landmark success with the passing of Law 105 due to their multi-level cooperation. It is therefore necessary for CSOs to maintain this approach.

## **Acknowledgements of Rights and Law 105**

With politicians displaying a forceful lack of political will to deal with the cause of the disappeared, the CFKDL, along with CSOs and NGOs, consolidated their efforts and entered the legal realm. This strategy effectively legitimized their right to the truth and forced public officials into acknowledging their cause.

## **Petitions and a Landmark Ruling: Acknowledging the Right to Truth**

In 2009, the CFKDL, along with its partners, filed a petition calling for the release of the full investigation report, compiled by the first Commission, and for the government to recognize their right to truth (Legal Agenda, 2014). Following this, the Lebanese state's Shura Council<sup>4</sup> issued a landmark ruling in 2014 acknowledging the "right to truth" of the families and guaranteeing their right to receive a complete copy of the Commission dossier (Legal Agenda, 2019).

## **Law 105: How It Came to Be and What It Means**

Law 105, adopted in 2018 was drafted in 2012 by the families and CSOs. In the wake of the 2014 ruling, this draft law was proposed to the Parliament on April 2014 by MPs Ghassan Moukeiber and Ziad Qadri (ICTJ, 2014). Though before that, in 2012, another version of the draft law, written independently from concerned groups, was presented to Parliament by MP Hikmat Deeb. On the 40th anniversary of the Civil War in 2015, the CFKDL launched a 40-day nation-wide campaign to revive the memory of their disappeared and pressure the passing of Law 105 (Civil Society Knowledge Center, 2015). Finally, on November 12, 2018, Law 105 was passed, marking a historic win for the families. This breakthrough, achieved through decade-long efforts sustained by the families, embodies multiple successes. It legally recognizes the "right to know", publicly certifies the status of the disappeared, and officially defines the mandate of the National Commission of Inquiry investigating the fate of the disappeared (ICTJ, 2018).

4) The country's highest administrative judicial authority.

## **The National Commission of Inquiry**

Law 105 outlines the specifics of the Commission<sup>5</sup> tasked with investigating the cases of the missing and disappeared. It will be leading on investigative matters while coordinating with CSOs and security bodies to ultimately uphold and fulfill their commitments in clarifying the fates of all those disappeared, including those taken by local militia or foreign forces. Most importantly, the Commission will have to maintain a strict level of political and sectarian independence. As such, it will be composed of ten representatives from five concerned entities – such as the CFKDL, civil and human rights associations, and the judiciary (UMAM, 2019). Despite Lebanon's economically induced nationwide despair, the Council of Ministers has appointed the members of the Commission (Elghossian, 2020). It is now up to the powers that be to block political manipulation and to provide the Commission with adequate sources, whatever they maybe, to effectively carry out their work.

## **Political Evolution of the Cause of the Disappeared**

Many political figures of the Civil War consider the cause of the disappeared as a threat to their legitimacy and power. They've utilized violence and appeasement tactics to deter the families from their search. Their strategies have evolved with time, but the families have adapted accordingly.

## **Early Struggles and Politics of Amnesia**

The very first tactics adopted by the CFKDL consisted of street action and protests demanding to hold meetings with politicians, forcing them to deal directly with those responsible for their suffering. In 1991, an Amnesty Law was passed to pardon all civil war crimes except for ones committed against the political elite.

Moreover, it exempts all crimes deemed to be continued, including enforced disappearance, meaning that politicians would not be pardoned for withholding the truth on the disappeared (ICTJ, 2015). In 1995, Law 434 was passed allowing parents to declare their disappeared dead without any evidence, in exchange for certain benefits (Civil Society Knowledge Center, 2014). The CFKDL rejected the law as it was a clear attempt to discourage the families from searching for their loved ones.

## **Strategy Shifts and the First Inquiry Commission**

In 1999, the CFKDL shifted tactics, organized itself as an association and launched its first campaign (Civil Society Knowledge Center, 2015). They collaborated with CSOs and media channels. Their movement was maturing and taking up more space, forcing politicians to form the first Commission of Inquiry in 2000 to investigate the fate of the disappeared. It resulted in a three-page summary claiming that the disappeared were all dead.

5) Its mandate includes the conduction of all investigations on the tracing of the missing and forcibly disappeared, receiving testimonies and reports, ensuring the verification and storage of information within the Central Records, processing tracing requests, verifying DNA databases and biological information, ensuring the protection and excavation of individual and mass graves and other tasks (UMAM 2019).

## Politically Motivated Commissions

Two other commissions were formed in the 2000s. One was set up in 2001 to receive tracing requests from the families, but with a catch: they needed to provide sufficient evidence that their missing were alive. This placed the burden of proof on the families, absolving the state from its responsibility in finding the truth (ICTJ, 2015). Its creation came soon after the release of 54 Lebanese detainees by Syrian authorities, indicating political motivations within Rafiq El Hariri's government. In 2005, the year in which the Syrian army withdrew from Lebanon, a Lebanese-Syrian Commission was established to investigate those detained in Syria, after SOLIDE set up tents in downtown Beirut (Amnesty, 2011). Both commissions produced little findings.

With these precedents in mind, the newly formed Commission, under Law 105, could also face additional political obstacles, seeing as its formation was blocked in 2019 due to disagreements between ruling officials on sectarian quotas. It remains to be seen how the government will handle the matter – whether they will – attempt to slow down the work of the Commission or leave it to its own devices. Yet what distinguishes the formation of this Commission is the presence of Law 105 and its legal framework.

## Social Cooperation and Conflicts: The Families and Civil Society

### Ally Efforts and Collaborations

The families did not start working with civil society groups from the get-go. Their methods were traditional during the 80s and 90s, consisting of protests, marches, and meetings with officials. After 1999, they began reaching out to allies within civil society to strengthen their front.

They worked closely with SOLIDE, the media, academics, and artists “when organizing sit-ins and launching campaigns. Some NGOs provided legal assistance, such as the International Center for Transitional Justice (ICTJ), Legal Agenda, and the Lebanese Center for Human Rights, whose contributions aided in the drafting of Law 105. The International Committee for the Red Cross contributed similarly by processing tracing requests and collecting biological samples from relatives to facilitate future DNA analysis. Act for the Disappeared also provided psychological support to the families and has been collecting information on the fate and whereabouts of the disappeared since 2014. The CFKDL, with its allies, has managed to remain independent from funding restrictions and political affiliations, a trait that has helped them sustain their work for decades.

### Post Law 105: Truth vs. Justice

Article 37<sup>6</sup> of Law 105 created disagreements between the families, CSOs and legislators. It acknowledges the people's “right to justice”, extending beyond the “right to truth”, by punishing those responsible for civil war disappearances. The article sparked a divisive debate between parliament members during the November 12 session, but they eventually agreed to pass the law with the article included (ICTJ, 2018). This was also debated among CSOs and the families, as some CSOs argued for its inclusion for the sake of justice, whereas the families emphasized their need to focus solely on the right to truth (TDS, 2018). Looking into

the matter from a rights-based perspective, the International Convention on the Disappeared firmly affirms “the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person<sup>8</sup>”. Furthermore, the right to truth is considered to be an “absolute right, not subject to any limitation or derogation<sup>9</sup>” meaning that it should not depend on the fulfillment of other rights, such as the right to justice.

### Sustainability and Transitional Justice

Delivering the truth to the families is now an even more pressing matter than before, seeing as key witnesses and family relatives are dying and mass graves are being destroyed. This could prove difficult in light of the revolution and the economic crisis, which hold an abundance of pressing demands. Yet, it is important to understand that the families have dedicated their entire lives to seeking the truth. Under international law, subjecting the families of the missing to years of truth-seeking causes considerable “anguish and sorrows<sup>10</sup>”, suffering that can be classified as torture (OHCHR<sup>11</sup>).

In light of this, and the present situation, it is unclear whether the right to justice can be attained, or if pursuing it would only slow down the cause of the disappeared and prevent the families from reaching the truth.

8) Article 37 of Law 105: 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.

9) CED, Article 24.

10) OHCHR, “Working Group on Enforced or Involuntary Disappearances: General Comment on the Right to Truth in Relation to Enforced Disappearances,” 4, [https://www.ohchr.org/Documents/Issues/Disappearances/GC-right\\_to\\_the\\_truth.pdf](https://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf)

11) OHCHR, “Declaration on the Protection of all Persons from Enforced Disappearance,” <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx>

6) Panel Event on the Disappeared.

7) Halawani, N. Personal Interview.

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## The Civil Society Actors and Policy-Making Program

The Civil Society Actors and Policy-Making program, at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.

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