



## **LEBANESE CENTER FOR HUMAN RIGHTS**

### **REPORT**

#### **LEBANON**

#### **ENFORCED DISAPPEARANCES AND INCOMMUNICADO DETENTIONS**

Beirut,  
February 21, 2008

How can Lebanon move forward after 30 years of the absence of the rule of law? How can the country forever turn the page of the civil war? How can the right to Truth and Justice be re-instated to the victims of the war? How can the fundamental right of a human being not to be tortured, be detained arbitrarily, and be held incommunicado be respected?

All these and many other questions remain, unfortunately, without answers. The hope created by the political upheaval in 2005 in Lebanon has yet to materialize.

This report sounds, again, the alarm for the Lebanese authorities, Lebanese public opinion, and the international community to do their utmost in bringing an end to the long wait by the families of the missing and those Lebanese detained incommunicado in Syria.

## ACKNOWLEDGEMENTS

We thank the families of the missing whom we interviewed<sup>1</sup>.

They told us the painful stories of the disappearance of their loved ones and shared with us their struggle, their dashed hopes and the unbearable wait.

We thank the various committees of the families of the missing:

The Committee of the Parents of Kidnapped and Missing Persons in Lebanon, the Committee of the Families of Lebanese Detainees in Syria / SOLIDE (Support of Lebanese in Detention and Exile), and the Follow Up Committee of Lebanese Detainees in Israeli Prisons / Khiam Rehabilitation Center.

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<sup>1</sup> The families of Farid Chahwan, Georges Chamoun, Georges Malik Hanna, Imad Ibrahim Abdallah, Iskandar Zakharia, Jihad Georges Eid, Kamal Itani, Boutros Khawand, Mahmouda Khaled, Mohammed Ali Abdel Rahmal, Ali Abdallah, Richard et Marie-Christine Salem, Najib al Jaramani, Ahmad Mohammed Nassar, Georges Antoune, Ahmad Herbawi, Brahim Jaber, Fadi Habbal, Issam Fathi Kilani, Kamal et Simon Geadah, Mohieddine Hachichou, and Mohammad Saïd El Jarrar.

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## Introduction

### **I. The rationale for this report**

In Lebanon, the practice of “enforced disappearance” was systemically used during the civil war (1975-1990) by the militias and by the Syrian and Israeli armies, a practice which continued during the two occupations by these two armies.

Thousands of Lebanese went missing. In a large number of cases where collective kidnappings took place, it is likely that the majority of victims were executed inside Lebanon. However, it is equally evident that some of the kidnapped victims, in both isolated or collective acts of kidnapping, were subsequently handed over to the Israeli and Syrian authorities. Among these victims, some were killed and buried in Israel and Syria, while others were transferred into the prisons of the two countries. At present, hundreds of Lebanese citizens remain incarcerated, incommunicado and in inhumane conditions, in Syrian prisons.

Seventeen years after the end of the conflict, and now that the Israeli and Syrian armies have withdrawn from Lebanon, not one serious investigation has been conducted to elucidate the fate of these thousands of people. Yet, the families of these “missing” persons have been fighting for years to obtain answers from the Lebanese authorities. Faced with the anguish of the families, the authorities took only measures aimed at a closure, but not at a resolution – of the issue of the enforced disappearances.

The practice of enforced disappearance is an inhumane one which to this date constitutes a moral torture for both the victim as well as his/her family. This crime constitutes a cumulative violation of several human rights and is classified as a crime against humanity. The Lebanese State must do its utmost to bring an end to this suffering and to reinstate the rights of the victims and their loved ones. The State also has the responsibility of initiating a genuine act of remembrance in order to transcend the war-related traumas and to finally put the country on the way to national reconciliation.

**The issue of the enforced disappearances is not a page of Lebanese history that can be simply turned over. It is a tragedy which was never resolved and which, for several critical reasons, must be urgently settled.**

1. In Lebanon, this issue is neither a wager nor a political cause. It is a **humane cause and a humanitarian problem** that must be urgently resolved by Lebanese authorities.

To begin with, it is about the missing persons who are still alive in the prisons of Syria. According to the testimonies of individuals who have been released from there, those Lebanese nationals, who number in the several hundreds by some estimates, are subjected to torture on a daily basis and are surviving in inhumane conditions.

It is also about the families of the missing who are waiting to know the truth about the fate of their loved ones, some of them for more than 20 years. These families have to endure a moral torture that can only end when the fate of their loved ones is uncovered. One of the mothers of the missing said: *“My son’s disappearance is like I have been holding a burning coal in my hand. It’s been hurting me for 15 years, but I cannot let go of it.”*

Contrary to what many politicians assert, this issue does not belong to the past. It is a **suffering that is experienced daily by thousands of Lebanese families.**

2. The crime of enforced disappearance constitutes a set of egregious violations against the rights of a human being, and these violations are nowadays strongly condemned by the international community:

- A violation of the right not to be deprived of one’s freedom, since the deprivation of freedom is intrinsic to the definition of this crime.

- A violation of the right to be recognized as a juridical entity, as guaranteed by Article 16 of the International Covenant on Civil and Political Rights (ICCPR) which was ratified by Lebanon on November 3, 1972. The violation of this right is tantamount to denying the fundamental right of a person to have rights. This is precisely what happens when a person is made to “disappear”: That person is *removed from under the protection of the law* and is denied its status as a juridical entity, and as a result, *the right of that person to have rights* is also denied.

- A violation of the right to not be subjected to torture or other cruel, inhumane or degrading punishments or treatments. The United Nations Commission on Human Rights considers that any detention incommunicado during a prolonged period is itself such an inhumane treatment.

- A violation of the right to life (when the missing person is killed).

Beyond these various violations, the crime of enforced disappearance such as perpetrated in Lebanon constitutes a **crime against humanity**. In fact, the Rome Statute and the International Convention for the protection of people against the practice of enforced disappearance stipulate that *the generalized or systematic practice of enforced disappearance does constitute a crime against humanity*<sup>2</sup>

Yet, to this date the Lebanese State, which claims to be a State of Laws, has not taken any serious measure to restore the rights of the victims of that practice. Whereas the majority of countries that were the scene of crimes against humanity have implemented

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<sup>2</sup> The crime of disappearance was defined for the first time as a crime against humanity in Article 7 of the Rome Statute. The text of the Statute is that of the document distributed under **cote A/CONF. 183/9** dated July 17, 1998, and amended by the minutes dated November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001, and January 16, 2002. The Statute went into effect on July 1, 2002. International Convention for the protection of all persons against disappearances, article 5: “The generalized or systematic practice of enforced disappearance constitutes a crime against humanity, as defined under applicable international law, and imposes those consequences that are called for by that law.”

mechanisms aiming at establishing Truth and Justice, the Lebanese authorities remain silent over that period.

It is the responsibility of the Lebanese State to guarantee the rights of victims and their families: The right to know, the right to justice, and the right to compensation.

3. The issue of the missing in Lebanon is a problem which concerns not only the victims of disappearance and their families; it is society as a whole which is a victim of the conspiracy of silence that stains this page of Lebanese history.

The war is not over. The events of 2007 are but a blatant evidence of that fact. At this time, one can only draw the conclusion that the position that prevailed at the end of the war has failed. The argument put forth that everyone is both a victim and a perpetrator, and that all the militias are guilty of carrying out enforced disappearances, has solved nothing. If anything, the status quo thus created has only allowed an evasion from the search for the truth.

Yet, this silence is preventing closure. Indeed, no Lebanese would tell you today that he or she has “forgotten” the war.

According to Amal Makarem:

*“In Lebanon, the saving closure that one reaches after having labored to overcome a trauma has not taken place. Instead, there has been a pernicious closure by those who have merely repressed it. By sealing ourselves inside silence, we have trapped ourselves in the trauma of the past. In Lebanon, we have “forgotten” without forgetting.”*<sup>3</sup>

The new generation itself, although having not known the war, carries within itself the divisions that existed during the war. Each community has its own narrative, its own “truth” about the civil war, and is transmitting it to the new generation. These multiple truths are impervious to any exchange or dialogue between the communities, and can only preserve the divisions that existed during the civil war. The successive crises that continue to convulse the country show that the reconciliation among the Lebanese must be channeled through a national debate about the past, since the latter inevitably resurfaces with each political or security dispute.

Lebanon will have to transcend these “truths” and reach a point where a common past is accepted. It must elaborate a genuine national memory. This is the precondition for the emergence of a national identity and for national reconciliation.

To want to write the history of Lebanon, to know objectively the facts of the past, most notably to know the Truth about the fate of the missing, do not amount to “turning the knife in the wound”, nor do they “risk to stoke the flames of civil war,” as the detractors of this idea – the same people who want to close the file – claim. **To the contrary, the point is to elucidate the past in order to heal a society which is diseased with its past, a past that prevents it from facing the future.**

Establishing the Truth plays a central role in any reconciliation process. Not only is it a moral necessity, but it is a pre-requisite for any peace initiative.

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<sup>3</sup> Amal Makarem, Seminar on *Memories of the Future*, UNESCO 2001. See the text of her presentation on the site: [www.memoirepourlavenir.com/french/profil/index.htm](http://www.memoirepourlavenir.com/french/profil/index.htm)

## **II. Recommendations**

### **Accounting and identification of, the missing**

**We demand that the State officially recognizes the magnitude of the issue of the disappearances and contributes to implementing a process of accounting and identification of the missing.**

The objective of this project is to determine the exact number of the missing and their identity. This entails the creation of an identification database of the missing (collecting *ante mortem* data and DNA samples from the families of the missing) in order to carry out the identification of the bodies or remains in the eventuality of the discovery of mass graves and bones in Lebanon. The preservation and processing of these data should facilitate the identification process when the required conditions obtain in Lebanon to carry out the opening of all mass graves in the country, which is an objective that must be met.

### **International management of the enforced disappearances file**

We demand the creation of an international investigation commission whose objective is to determine the fate of the missing.

Given the ineptitude of the Lebanese State at uncovering the truth about the missing, the Lebanese Authorities must have recourse to the international community for the handling of this file.

The “generalized and systematic” practice of enforced disappearance is deemed as a crime against humanity by the United Nations. Hence, it may be subject of an international penal action.

### **Judicial Reform**

We demand that Lebanon commits to ratifying and implementing the international legal texts pertaining to the crime of disappearance<sup>4</sup>, and more specifically the Convention for the Protection of all Persons against Enforced Disappearances.

We demand that these texts be entered into Lebanese laws.

We demand that the Lebanese Authorities ensure that the courts and tribunals issue independent decisions that adhere to international laws.

We demand that certain war crimes be re-defined as crimes against humanity and, as a result, no longer be covered by the Amnesty Law of 1991.

### **Creation of a Truth and Reconciliation Commission**

We demand the creation of a Truth and Reconciliation Commission in Lebanon.

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<sup>4</sup> The legal texts pertaining to the crime of disappearance are the PIDCP, the Convention Against Torture or Other Cruel, Inhumane or Degrading Punishment or Treatment, the Rome Statute, and the Convention for the Protection of all Persons against Enforced Disappearances.



**The mission of such a commission should be to investigate the violations of the past and find extra-judicial answers to the crimes committed.**

Mechanisms conducive to reflecting on the causes of the violations, as well as on the consequences and impact they have had on individuals and the Nation, must be established. Such an initiative is an intrinsic part of a national reconciliation process and for the prevention of future violations. This process, which would involve all of society, aims at an examination of the past in order to better prepare for the future.

### **III. Initiatives and observations**

This report was completed on the basis of interviews conducted with the families of the missing, former detainees, civil society organizations, attorneys tasked with the follow up of lawsuits on disappearances, and finally, with individuals mandated by the Lebanese Authorities to follow through on the file of enforced disappearances.

Our work also relied on previous studies conducted by SOLIDA-CLDH, by the committees of the families of the missing, and by human rights defense associations and organizations. The goal was to compile this information and to establish a baseline of the available data on the issue of enforced disappearances in Lebanon.

We have queried the victims, civil society advocates, and the Authorities in order to learn about their experience, their approach, their expectations and their vision for the future. Each of these individuals or organizations we met has shed light on this file.

#### **Interviews with the families of the missing**

Between March and July 2007, we conducted 23 interviews with the families of the missing. All the families share the same hurt. For years, they have been living in uncertainty and in the expectation that one day the Truth about their loved ones will be revealed to them.

The families need that the Lebanese State officially recognizes the problem of the missing Lebanese nationals. The families want their struggle to become a national cause. They want to know the circumstances of the disappearance of their loved ones, and if they are deceased, they want their remains in order for them to bury them in dignity. Those of the families who have proof of their loved one's detention in Syria demand that they be immediately released and that their detention in inhumane conditions ceases.

#### **Interviews with civil society organizations**

In Lebanon, there are three committees of the families of the missing : The Committee of the Parents of Persons Kidnapped and Missing in Lebanon, the Committee of the Families of the Lebanese Detainees in Syria/SOLIDE (Support of Lebanese in

Detention and Exile), and the Follow-up Committee of the Lebanese Detainees in Israeli Prisons/Khiam Rehabilitation Center.

These committees have been active for years to ensure that the Lebanese Authorities and regional and international bodies take up the file of the missing. SOLIDA/CLDH is in constant communication with these committees and tries to support them in their various actions. These committees, as well as all the human rights defense organizations that are working on this issue, regret the silence of the Lebanese State over this issue. The responses of the authorities and the politicians have always been as follows: “This is not the appropriate time,” or “This issue belongs to the past; let us not open the wounds of the civil war.”

### **Interviews with attorneys handling lawsuits for disappearances**

We are unable to pinpoint an accurate number of lawsuits filed in the courts for disappearances. Many were thrown out by the courts and did not lead to a trial, which is why we have little information in this area. The interviews conducted with the families of the missing and the few lawyers<sup>5</sup> who have taken up these cases reveal that many families refuse to file a lawsuit because they no longer expect anything from the judiciary. Most often, the families fear that their actions would not succeed because the rare cases of disappearances that actually made it before the courts did not provide justice for the families.

### **Interviews with representatives of the Lebanese authorities who are tasked with the file, and with political figures.**

We conducted an interview with Fouad Saad who chaired the inquiry commission created in January 2001, and with Judge Maamari who heads the Lebanese-Syrian commission created in 2005. During those interviews, we were astounded to learn of the powerlessness of the members of these commissions to properly discharge their duties.

We also have been on regular contact with Ghassan Moukheiber, a Member of the Lebanese Parliament and member of its Human Rights Commission. Lastly, we have shared information with attorney Ziad Baroud who is assigned by the parliamentary Human Rights Commission and PNUD to draft a report on the issue of the enforced disappearances.

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<sup>5</sup> We have met with attorneys Nizar Saghiyeh and Walid Dagher who are handling the cases of Mohieddine Hachichou and Nader Sleiman Safi, respectively.

## Analysis of Various Cases

During the Lebanese War of 1975-1990, a dozen armed groups at least, including the regular troops of Lebanon, Syria and Lebanon, resorted to the practice of kidnapping. The practice continued well under the Israeli<sup>6</sup> and Syrian<sup>7</sup> occupations.

Some of the victims were released, but many disappeared and their fate was never determined.

The principal reasons for these kidnappings are as follows<sup>8</sup>:

- To hold political hostages who may be exchanged for other hostages held by the opposing side;
- To obtain ransom money;
- To maintain a strategy of terror and create “pure” religious areas;

The victims were typically kidnapped from their homes, on public streets or at checkpoints (in areas controlled by the militias or the foreign troops.) Some of the victims were handed over to the Syrians and the Israelis, while others remained in the custody of the militias.

In 1992, and on the basis of sworn statements made by the families at police stations, the Lebanese government declared that 17,415 individuals went “missing” during the 1975-1990 civil war. Since that date, the number of “17,000 missing” has become conventionally accepted. The precise number of missing individuals is likely less than that number, since the families often filed several “missing person” reports for the same individual. Displacements and migrations caused by the fighting led families to report the case to more than one police station. By the same token, the families often do not report to the authorities the release or the reappearance (dead or alive) of their loved ones.

Therefore, the number of 17,000 is probably an overestimate. At the present time, the requests for investigations filed by the families with the official commissions in charge of investigating the fate of the missing serve as a first indicator. A cross-referencing of the lists establishes the number of 2,312 missing individuals. But estimates of the number of missing could reach more than double that number, and the actual number is probably far bigger given that many families, out of a lack of trust, did not file with the commissions, while others emigrated abroad without undertaking any action, and still other families may have sometimes been completely wiped out during the war, particularly among the Palestinian population.

Although it is virtually impossible today to come up with a precise number, there is a recognition among all human rights associations and organizations that “thousands” of Lebanese families await the truth about the fate of their loved ones.

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<sup>6</sup> The Israeli Army withdrew in 2000 from South Lebanon which it occupied as of 1982.

<sup>7</sup> The Syrian withdrawal took place in 2005.

<sup>8</sup> Michael Young, « Resurrecting Lebanon’s Disappeared » (The Lebanese Center for Policy Studies 2000).

In Lebanon, the issue of the disappearances encompasses three categories of disappearances. Among the individuals who were kidnapped on Lebanese soil, the perpetrators and the fate of the missing are different.

1. A substantial majority of victims disappeared in Lebanon at the hands of the various militias, both Lebanese and Palestinian, which controlled the country during the war.
2. Other victims were kidnapped by the Syrian Army (or proxy militias for Syria) and transferred to Syrian prisons. At present, and taking into account the various testimonies and evidence collected, it is estimated that several hundred Lebanese are today detained incommunicado inside Syrian prisons.
3. Kidnappings were also committed by the Israeli Army (or by militias allied with Israel). During the Israeli occupation, many of these victims were detained or buried in South Lebanon. Others were transferred inside Israel and were buried in mass graves. These people constitute a bargaining chip in the negotiations between Israel and Hezbollah.

## I. The Missing in Lebanon

### Background

During the Lebanese civil war, the armed groups (militias) which controlled the country have all carried out kidnappings. Some of the victims would be released, but many never came back.

*Georges Antoune, 27, was kidnapped on January 31, 1990 in Dora (northern suburb of Beirut) as he walked to take a taxi. He was suspected of being a member of the army's Intelligence Services, and he was taken to the Karantina barracks. Two of his brothers went there to try and have him released, and they were told that Georges would be held for a week then released. Georges never came back<sup>9</sup>.*

*Kamal Geadah and Simon Geadah were kidnapped on August 19, 1985. Kamal, 52, was a Chief Accountant, and Simon, 24, worked for the Lebanese Red Cross. They were in a car and were kidnapped by two armed men under the Barbir Bridge<sup>10</sup>.*

*Ahmad Herbawi was kidnapped in March 1976 at the age of 17. He worked in a garage and lived in Dekwaneh with his family. His family fled the fighting in Dekwaneh to Nabaa. When Nabaa fell to the Christians, the Lebanese residents were allowed to leave and go to West Beirut. Some members of the family left, but Ahmad stayed with his mother and young sister. They were supposed to rejoin the family in West Beirut. In order to obtain a permit to cross into West Beirut, they had to go to Sassine Plaza (Ashrafiyeh), where Ahmad was kidnapped<sup>11</sup>.*

*Brahim Jaber, a university student, was kidnapped on April 12, 1984, at the age of 26. He was kidnapped in Hamra while accompanying his aunt to buy pastries<sup>12</sup>.*

*Mohieddine Hachichou, according to his wife:*

*« On September 14, 1982, at about 11:00 AM, a military vehicle carrying about 20 gunmen and a Fiat car came to our place. They asked to see my husband, saying they wanted to take him and ask him questions. They were armed. One of the men who seemed to be the boss told us not to worry, that it is a simple interrogation and that he'd back afterwards [...]. My husband never came back.<sup>13</sup> »*

The circumstances in which a majority of these thousands of people went missing make it highly unlikely that they will ever be found alive. These people are reported missing

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<sup>9</sup> CLDH interview with Simon Antoune, Georges Antoune's brother, June 7, 2007.

<sup>10</sup> CLDH interview with Kamal Geadah's daughter, Line Geadah, June 27, 2007.

<sup>11</sup> CLDH interview with Ahmad Herbawi's sister, Sawssan Herbawi, June 25, 2007.

<sup>12</sup> CLDH interview with Brahim Jaber's sister, Zaynab Jaber, June 25, 2007.

<sup>13</sup> CLDH interview with Mohieddine Hachichou's wife, Najat Hachichou, on June 29, 2007.

because their families have no evidence of their death, that the remains were never returned to them, and that they do not know the location of the remains.

At the present time, the only certain information is that numerous ossuaries and mass graves exist across Lebanese territory. No serious investigation has even been conducted to identify their locations, and their numbers cannot be ascertained.

The official Inquiry Commission set up in 2004<sup>14</sup> and tasked with settling the issue of the missing reports 40 ossuaries<sup>15</sup>. But the Commission never explained how it conducted its investigations, and neither did it provide any precise information on these 40 ossuaries. This number is, in fact, refuted by L'Hebdo Magazine which reported on December 9, 2005 the number of 400 ossuaries<sup>16</sup>. In it, the reporter states:

*The Shouf alone may have 35, and the South another 20. [...] The remains of missing people are believed to be buried in the Martyrs Cemetery in Horch Beirut; others are in the cemeteries of Saint Mitr and Saint Nohra in Ashrafiyeh; still others are in the Cemetery of the English in Tehwita (Furn el-Chebbak). Many were dumped in the sea or in quarries. [...] One must also add that human remains were left somewhere in those areas that were the scene of fierce fighting, like Shekka, the Shouf, Souk al-Gharb or Tal Zaatar. »*

Throughout Lebanon's regions, the local residents very often know the locations where unidentified remains of people who went missing during the civil war or under foreign occupation may exist. All it takes to account for the fate of many missing Lebanese is for the Lebanese authorities to take the decision of carrying out the inspection of ossuaries and mass graves.

Yet, to this day, no political decision has been made in this regard. The few ossuaries and mass graves that surfaced were uncovered fortuitously on construction sites, archeological sites, or because people reported seeing bones.

This is, among other such sites, the case with the presumed ossuary that was uncovered in Anjar, a town in the Bekaa Valley, near a former center of the Syrian Intelligence Services operating in Lebanon.

In 1999, the mayor of Majdel Anjar, Mr. Chaabane Ajami, notified the authorities after discovering human bones and remains. According to him, « *Bodies were not completely decomposed. They were buried five centimeters [two inches] beneath the surface and attracted many animals, particularly foxes and stray dogs.*<sup>17</sup> »

In 2005, the Lebanese authorities opened the site. According to information collected on site, the mass grave contained more than 30 bodies<sup>18</sup>. For the families of the missing, the discovery of these remains and the wait for the conclusions were painfully trying. In

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<sup>14</sup> Inquiry Commission created on January 21, 2000 and chaired by retired General Abou Ismail.

<sup>15</sup> The existence of these 40 ossuaries is mentioned in the report summary of the Commission's conclusions published in An Nahar on July 25, 2000.

<sup>16</sup> SEMAAN, Jad. 400 Ossuaries: Haunted by Our Dead. L'Hebdo Magazine, N° 2509, December 9, 2005.

<sup>17</sup> Comments recorded by Jean-Pierre Perrin in : *Liban : Charnier sous silence*, Feb. 16, 2006, Liberation.

<sup>18</sup> Amnesty International – public statement on December 5, 2005.

the end, several months later, the conclusions made public by the Lebanese Judiciary stated that the site was not a mass grave. The human remains apparently are from an Ottoman era cemetery and for the more recent remains (dating 50 years) from a present-day cemetery. But the circumstances in which this presumed ossuary was opened and the procedures used to investigate it do not lend any credibility to these conclusions. The searches conducted by Lebanese Internal Security Forces were botched and did not allow the identification of the bodies.

In January 2004, an ossuary was also discovered by chance during construction work at Mrah el Hebas, in the Hebas Valley, near the village of Kfarfalous. Eight bodies were retrieved. These individuals, including three women, appear to have been executed during the civil war, their hands and feet tied and shot with a bullet in the head before being dumped into an old well.

More recently, on August 14, 2007, three skeletons were discovered by a German team working on archaeological digs in Kamed el-Loz in the Western Bekaa. The remains were covered with fragments of military fatigues and had Kalashnikov machine guns with them. Security Forces were dispatched to the site under a court warrant, and according to the coroner, these remains appear to belong to individuals killed in 1982 during the Israeli invasion. According to witness accounts we obtained from the local residents and the village mayor<sup>19</sup>, these three individuals are presumed members of the Popular Front for the Liberation of Palestine (PFLP) who were killed in clashes with Israeli soldiers in 1982. Some time after the death, four village residents had come to retrieve the bodies and bury them near the village mosque, where they were ultimately found by the archaeological dig. To date, no official information has been made public on the discovery of these bodies.

Other ossuaries and mass graves have undoubtedly been uncovered in other locations in Lebanon, but very little information is available due to the authorities' silence on this issue. The only public and clear information that was noted by the Lebanese authorities concerns the mass grave in Yarzeh, near the campus of the National Defense Ministry on the outskirts of Beirut.

Unlike the discovery of the other ossuaries, which occurred fortuitously, the opening of the Yarzeh mass grave was the outcome of a determined political will. Thirty-one bodies were unearthed and DNA analysis led to the identification of 18 of them.

Nine of the identified individuals had been reported missing during the battles between the Syrian army and the Lebanese army on October 13, 1990. They are: Robert Aziz Bou Serhal, Joseph Halim Azar, Jacques Hanna Nakhoul, Elias Youssef Aoun, Georges Mtanos Bachour, Youssef Mikhaël el-Hasbani et Khaled Afif el-Nabbout, Jean Joseph Houry et Milad Youssef el-Alam.

For 15 years, the families of these missing individuals had to fight to obtain information on their fate. Some information stated that they had been transferred to Syrian prisons, while other information reported their execution following their capture.

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<sup>19</sup> Interviews conducted by the follow up committee comprising the SOLIDE, ALEF, and CLDH organizations and whose mandate was to track the ossuaries and mass graves in Lebanon by gathering information and objectively assessing the manner in which the searches were conducted.

The remains of three soldiers who had disappeared during the battles of 1984 were also identified. They are: Mtanios Hanna Gerges, Nabil Fahim el-Khoury, and Elie Hanna Barakat, and six other bodies were also identified, but we have been unable to obtain the names of the victims.

Thirteen other individuals were unearthed at the Defense Ministry, but no identification was possible on their remains.

After years of waiting, the families of the 18 identified persons finally know the truth about their loved ones' fate. They were able to bury them in dignity and begin the process of mourning and closure.

Today, the families of the missing in Lebanon are fighting to have this right recognized for them.

### The families wait

From the moment when their loved one left home, the families have been waiting. Those who cannot get themselves to accept the idea of their loved ones' death wait for their return, while others simply want their bodies returned to them.

*In the words of Simon, Georges Antoune (kidnapped on January 31, 1990)'s brother: "I especially don't want another civil war, nor do I want to cause more trouble for the country. I just want to know where my brother's body is. I just want to know the truth." The suffering of Simon and his family will not end as long as they have not obtained that truth: "It's been 17 years now that Georges disappeared, but I think about it all the time. I cannot forget."<sup>20</sup>*

*Ahmad Herbawi's family still believes that Ahmad could be alive. His sister Sawssan talks about a photo (published in a German newspaper) of young Lebanese people in a boat en route to Israel. The family think they saw Ahmad and hold tightly to this hope. Still, the family knows that Ahmad is probably dead. They want the body returned and demands that the Lebanese authorities open the mass graves.<sup>21</sup>*

*Brahim Jaber was kidnapped on April 12, 1984 at the age of 26. He was taken away in Hamra. Today, Zaynab Jaber has no information on her son's fate. She waits and hopes: "My heart tells me that Brahim is still alive."<sup>22</sup>*

### Actions and demands of the families

In November 1982, the first spontaneous demonstration by hundreds of family members of the missing took place. They demanded the immediate and unconditional release of all persons held by the militias. The Committee of the Parents of Persons Kidnapped or

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<sup>20</sup> CLDH Interview with Simon Antoune, Georges Antoune's brother. June 7, 2007.

<sup>21</sup> CLDH interview with Ahmad Herbawi's sister Sawssan Herbawi. June 25, 2007.

<sup>22</sup> CLDH interview with Brahim Jaber, mother Zaynab Jaber. June 25, 2007.



Missing in Lebanon was thus born. Throughout and after the war, these families organized sit-ins and press conferences demanding the return of their loved ones and the end of the practice. For several years, they all attempted various initiatives with the militias and with political and religious officials, but none was able to obtain answers. The only result they achieved was to obtain promises that were never kept.

Nevertheless, the Committee of the Parents of Persons Kidnapped or Missing in Lebanon managed, after years of action, to raise this issue to the level of a national cause that could not be ignored. With the end of the war, the Committee pursued its action under the slogan of “The Right to Know.”

Today, the Committee of the Parents of Persons Kidnapped or Missing in Lebanon **is demanding that the Lebanese authorities** open all the ossuaries and mass graves on Lebanese soil, and that this be done according to internationally-approved protocols for exhumations. The Committee demands that the authorities act immediately by beginning the identification of the families of the missing.

Lastly, the Committee demands the creation of a Truth and Justice Commission whose mandate is to establish the truth about the fate of all kidnapped and missing people.

Whereas most of those who went missing in Lebanon are likely to have been killed on Lebanese territory, numerous kidnapped persons were in fact handed over to (or kidnapped by) the Israeli and Syrian authorities, and were subsequently transferred to these two countries’ prisons. In fact, these two countries continued to carry out kidnappings and illegal extraditions even after the end of the war.

## II. The Missing and Incommunicado Detainees in Syria

### Description of the situation

Several testimonies made by the families and by released former detainees seem to indicate that several hundreds of Lebanese nationals are detained at the present time, without conviction, incommunicado and in inhumane conditions in Syrian prisons, some of whom for longer than 20 years.

Among these prisoners, there are individuals who were initially kidnapped by Lebanese or Palestinian militias during the civil war, then handed over to the Syrian authorities.

Others were seized by Syrian troops operating in Lebanon since 1976, then were extra-judicially transferred into Syria.

Here is the testimony of Farid Chahwan's wife:

*“Farid was at work on Tuesday July 22, 1980 when he received a telephone call from the Syrian Intelligence Services (which had an office in Selaata.) They asked him to go see them in their offices. [...]. He went and they arrested him there, in that Syrian base in the area.”<sup>23</sup>*

In her account, Georges Chamoun's mother says:

*“On October 13, 1975, Georges decided to come home to our place in the Bekaa after work. He was coming from Beirut (he used to work in Baabda) and was riding with two colleagues from the army. [...]. They drove by Chtaura and were stopped at a Syrian military checkpoint. That was where Georges was kidnapped. [...]. We only found out 15 days later that he was kidnapped by the Syrians, when his colleagues told us after they were released.”<sup>24</sup>*

Also among the Lebanese held incommunicado in Syria are the military who were kidnapped on October 13, 1990. That day, the Syrian army entered the areas then under General Michel Aoun's control, which are mainly Baabda (Presidential palace perimeter) and the two Matn districts. At 9:30 AM, the troops under General Aoun's command were turned over, at Aoun's request, to General Emile Lahoud's command who was the Lebanese Army Chief appointed by President Hrawi. General Aoun, who found asylum at the French Embassy, gave an order by radio to his general staff to take their orders from General Lahoud. Although some units appear to have continued fighting, it is an established fact that the bulk of the troops immediately ceased the battles.

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<sup>23</sup> CLDH interview with Farid Chahwan's wife, Nuheil Chahwan. March 15, 2007.

<sup>24</sup> CLDH interview with Georges Chamoun's mother, Kamal Chamoun. March 29, 2007.

However, even as the fighting stopped, several troops who remained loyal to General Aoun were executed in Lebanon and buried in mass graves<sup>25</sup> while others were kidnapped by Syrian army troops.

Since 1990, and in spite of the end of armed warfare, the Syrian army continued kidnapping Lebanese nationals inside Lebanese territory and illegally transferring them to prisons inside Syria, often with the assistance of the various Lebanese security services.

The following is a testimonial by Boutros Khawand's family:

*“On September 15, 1992 at 9:00 AM, while Boutros Khawand was on the Sin El Fil Road (Beirut), three cars – two BMWs and a red van - cut him off and stopped him. Inside the vehicles, there were 8 to 10 gunmen. They forcibly got him out of the car and into the red van, leaving his car on the road.”*<sup>26</sup>

Najib al-Jaramani was kidnapped on January 24, 1997. His son's account of the kidnapping:

*“My father was coming home after work around 2:30 PM. A red Renault 9 belonging to the Lebanese Intelligence Services parked in front of our house at the same moment. Four individuals in civilian clothes got out of the car and started talking with my father in front of the house.[...]. My mother went to see the young Army guys and asked them who they were and where they were taking my father. The men then showed their military papers and answered that they were taking my father to Mansourieh to ask him a few questions. And then they left.”*<sup>27</sup>

Some of the victims have probably been executed inside Syrian territory. According to the testimonies of people who were released from Syrian prisons, several Lebanese nationals are buried in Syria near the prison of Tadmor (Palmyra) and in a mass grave located not far from the prison of Mazze (Damascus). But many of those Lebanese, several hundreds according to the testimonials received, remain in detention today, incommunicado, often without even having had a trial, which is in violation of international covenants ratified by both Lebanon and Syria<sup>28</sup>. Only a few prisoners were permitted occasionally to receive a visit by family members.

Still, Lebanese and Syrian authorities have continued to officially deny the incommunicado detention of Lebanese nationals in Syria. Yet, in March 1998, 121 detainees suddenly “reappeared” after their release from Syrian prisons. The majority of these released prisoners (the “missing”) had been held incommunicado illegally for a

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<sup>25</sup> The remains of 7 soldiers who disappeared on October 13, 1990 were exhumed from the mass grave uncovered at the Defense Ministry in Yarzeh. Their names were listed earlier in the paragraph describing the opening of the Yarzeh mass grave.

<sup>26</sup> CLDH interview with Boutros Khawand's family. March 16, 2007.

<sup>27</sup> CLDH interview with Najib al-Jaramani's son, Samir al-Jaramani. April 17, 2007.

<sup>28</sup> The International Pact on Civil and Political Rights was signed by Lebanon on November 3, 1972 and by Syria on April 21, 1969. The Convention Against Torture or Other Cruel, Inhumane or Degrading Treatment was signed by Lebanon on November 4, 2000 and by Syria on August 19, 2004.

very long time in Syria. In December 2000, the Syrian authorities released 56 individuals including 48 Lebanese citizens some of whom had in fact been declared dead by Lebanese authorities.

Today, several families are able to prove their missing loved ones' detention in Syria. Their "missing" family members are in fact detainees that are made to disappear by holding them incommunicado.

Some families have information obtained from the Lebanese Army or from the Lebanese President himself – some even have official Lebanese and Syrian documents – allowing them to establish with certainty the detention of their family members in Syria. Others have testimonies of individuals who witnessed the kidnapping or of former detainees who were released and who assert having been detained with the family member. Lastly, several families went to Syria and some were able to see that their family member was indeed held there.

Farid Chahwan, kidnapped on July 22, 1980. His wife says:

*“Three months later [after the date of the kidnapping], in October 1980, I received a paper from the Tibat Center. This paper said that I had the right to a visit and that I had to obtain this permit by going to the Military Police in Damascus, in the area of Kaboun. [...] On October 4, 1980, I went to Syria. [...] There, I gave my husband's name and said that he was a prisoner here. They sent me to see Commander M.H. who told me that I had the right to one visit, and explained that this is the only visit until I receive a second letter granting me another visitation permit. He gave me a paper and told me to go to Mazze prison. I went there, and I gave them the permit and they let me in. I saw my husband. Between us there were two barriers and between the two barriers there were two guards on each side. That was October 4, 1980.”<sup>29</sup>*

Georges Chamoun, kidnapped October 13, 1975. His mother's account:

*“In 1979, three Lebanese individuals from Tripoli who were prisoners in Mazze were released. They came to see Georges' family to tell them that they had seen him in Mazze. Several years later, a Lebanese released from Syrian prisons confirmed to Georges' family that he had indeed been in Mazze. He gave them details such as the fact that Georges stuttered. His family then went back to Mazze where they were told that Georges was ill and that he had been transferred to the Mazze Hospital. At the hospital, the nurses recognized Georges from the photo that the family showed them. They also confirmed that he had been in fact brought to the hospital but that he was no longer there<sup>30</sup>.”*

Georges Malik Hanna, kidnapped on September 10, 1985, at the age of 42. His sister-in-law says:

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<sup>29</sup> CLDH interview with Najib al-Jaramani's son, Samir al-Jaramani. April 17, 2007.

<sup>30</sup> CLDH interview with Georges Chamoun's mother, Kamal Chamoun. March 29, 2007.

*“In 1995, a Lebanese was released from a Syrian prison and stated that he was in prison in Damascus at the Palestine Branch, and that his cell companion was George Malik Hanna. He also gave Georges’ prisoner number, No. 358. At the end of 1995, Nour Hanna (his sister-in-law) decided to go to Damascus. There, she managed to see the list of detainees in which Georges’ name is recorded. She also saw that he was accused of being a spy and that he was sentenced to a life sentence. She was not able to see him<sup>31</sup>.”*

Ahmad Mohammed Nasser, kidnapped in 1979, at the age of 30. His daughter says:

*“In 1988, two Lebanese prisoners who had been released from Adra prison confirmed to Ahmad Nasser’s family that they had been detained in the same cell as he, and that like them, he was accused on political conspiracy. In 2001, another detainee who was set free from Syria told them that he saw Ahmad and that he had been sentenced to 20 years. He also gave them a paper, dated 1999, on which Ahmad wrote: “I am Ahmad Nasser; I am at the Syrian Central Prison, room 7, in the basement of the prison. I am married and I have two children.” There was a signature on the piece of paper, which was identified as conforming to Ahmad Nasser’s signature<sup>32</sup>.”*

Mohammed Ali Abdel Rahmal, kidnapped in November 1983, at the age of 36. His family’s account:

*“The family obtained a visitation permit in 1984 and 1985, and was thus able to see Mohammed at the Palestine section in Damascus. After that date, they were not issued any authorization to see him.<sup>33</sup>”*

Ali Abdallah, kidnapped in July 1981, at the age of 23. His sister says:

*A Lebanese man from the Bekaa who was released from Syria in 2000 contacted Ali’s sister, Fatma, and told her that he was in prison with her brother. This man testified before the official inquiry commission of 2000. Fatma tells us that the man told the commission: “I saw Ali. I was in Tadmor prison in Barrack 9, and he was in Barrack 17. We used to speak to each other through small windows. We agreed that the first one to come out would inform the other’s family.” In 2000, Fatma travels to Tadmor prison. “At the entrance gate of the prison, I asked to see my brother. I was scared and I was crying. They told me that I had to obtain an authorization from Damascus in order to see him.” The next day, Fatma travels to Damascus to the Military Tribunal to obtain a visit authorization. “The official opened a notebook containing a list of names, and I saw my brother’s name*

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<sup>31</sup> CLDH interview with Georges Malik Hanna’s sister-in-law, Nour Hanna. March 5, 2007.

<sup>32</sup> CLDH interview with Hamad Mohamed Nasser, Nisrin Nasser. April 17, 2007.

<sup>33</sup> CLDH interview with the family of Mohhamed Ali Abdel Rahmal. April 27, 2007.

*written in it, along with a side note stating ‘Visits Forbidden’. The official told me that Ali’s name was not on the list.<sup>34</sup>”*

Najib al Jaramani, kidnapped on January 24, 1997. His son testifies :

*In 1997, Najib’s brother obtained a visitation permit to see him in Damascus at the Palestine Branch prison. The family subsequently obtained three other visitation permits, one per month. With the exception of the first visit, all the visits took place at the Mazze prison where Najib al Jaramani had been transferred. The last visit was on September 10, 1997. In the month of October of the same year, Najib’s sister was told that he no longer was at Mazze and that he had been transferred to another prison. The family was subsequently not issued any visitation permits. On March 7, 1998, 121 people were released from Syria. Najib al Jaramani’s name was on the list of individuals to be released, although he ultimately was never released.<sup>35</sup>*

Whereas many families thus have evidence of the existence of their loved ones in Syria, Lebanese and Syrian authorities continue to officially deny the incommunicado detention of Lebanese nationals in Syrian prisons.

The case of the military personnel, the two priests of the Antonine Order, and the cook of the Convent of Deir El Qalaa in Beit Mery, who were kidnapped on October 13, 1990, is a case that also has been kept under lid. More than 17 years after their kidnapping, the question of their detention is an absolute taboo in Lebanon because it implicates the direct responsibility of both the Lebanese and Syrian armies. Several testimonies from former detainees and various political and military officials in Lebanon and Syria have corroborated the detention of these individuals in Syrian prisons.

Ahmad An-Naasan, Syrian Investigative Judge, stated on April 3, 1991: “ *no visit is allowed because these people are General Aoun’s men, and they will be released only by decision of President Hafez al-Assad. [...] what is strange is that Lebanese officials never ask for them.*<sup>36</sup>”

A circular of the Lebanese Army, dated December 27, 1990, certifies that the military personnel who were kidnapped on October 13, 1990 did not die during the fighting<sup>37</sup>. Those Lebanese nationals who were released from Syrian prisons between 1990 and 2000 have confirmed that many Lebanese remain detained incommunicado. Because the ICRC has no standing prison visitation agreement with Syrian authorities, it is impossible to ascertain the names, number and place of detention of the Lebanese detainees in Syria.

The situation persists despite several opinions by the UN Working Group on Arbitrary Detention declaring the continued detention of some Lebanese nationals in Syria.

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<sup>34</sup> CLDH interview with Ali Abdallah ‘s sister, Fatma Abdallah. March 12, 2007.

<sup>35</sup> CLDH interview with Najib al Jaramani’s son, Samir al Jaramani. April 17, 2007.

<sup>36</sup> Testimony obtained from the mother of a missing person. SOLIDA interview. 1996.

<sup>37</sup> Lebanese Army circular naming 6 Lebanese detainees in Syria who were previously declared dead.

Similarly, when Syria submitted its report to the Human Rights Commission<sup>38</sup>, the latter demanded clarifications on the matter from the Syrian government which did not follow through; and two European Parliament resolutions enjoining Syria to put an end to these violations of human rights have also remained unanswered.

### The Families Wait

It is indeed an inhumane situation in which the families receive no information about their loved ones. They have no knowledge whatsoever of the fate of their family members and can only imagine the worse. This is what comes through upon hearing the accounts and testimonials from individuals who were released from Syrian prisons.

Whether detained in the prison of the Palestine Branch in Damascus, in Saydnaya, in Tadmor or in Mazze, all the released individuals describe abhorrent and inhumane detention conditions: The prisoners are crowded in small dungeons; they endure ill treatments on a daily basis; and are regularly subjected to torture sessions.

*“I had two pieces of cloth that served me for cover, three plastic containers in the bathroom, and a tap and a sink.”<sup>39</sup>*

*“We were beaten every day, and everyday we had new marks on our bodies. For example, they would randomly stop any prisoner to give him a beating, and they would hit him on the eyes with a cable.”<sup>40</sup>*

For the families who hear these accounts, it is such an unbearable suffering to have to imagine every day the agonizing ordeal that their loved ones endure.

*Georges Hanna was kidnapped in 1985. His sister-in-law tells us that she does not want to file a lawsuit. The only thing that matters to her today is to know the truth, to know what exactly happened. She wants to know whether he's alive or dead. She explains that Georges' family is beginning to grow old, that some have already passed away, and that soon there will be no one left to press for this case. Her greatest hope is that there would be an amnesty in Syria and that Georges would at long last be set free.*

*“After 21 years in prison, any criminal would have completed his sentence. If he's indeed a criminal, he ought to be tried in Lebanon. And if he isn't, let them release him.”<sup>41</sup>*

*The wife of Kamal Chawki Itani ( kidnapped on April 17, 1985) wants only one thing: The truth. “We just want to see him. And if he's dead, why don't*

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<sup>38</sup> International Covenant on Civil and Political Rights. CCPR/CO/84/SYR/Add.1. 15 September 2006. Consideration of reports submitted by states parties under article 40 of the covenant. Syria. Paragraph 8.

<sup>39</sup> SOLIDA interview (2006) with a Lebanese who was kidnapped in June 1986 and released in 2001. He relates the detention conditions in Tadmor prison where he spent 5 years.

<sup>40</sup> SOLIDA interview (2006) with a Lebanese former detainee in Syria.

<sup>41</sup> CLDH interview with Nour Hanna, Georges Malik Hanna's sister-in-law. March 5, 2007.

*they tell us? But we want to know whatever it is that happened to him. To know is the most important thing for us.”<sup>42</sup>*

The tragedy of these families has been ongoing for three decades, and their cause continues to hit a wall of silence. There is not one opportunity that these families miss to call on the “conscience” of the government to shed light on the fate of the “missing” who are arbitrarily detained in Syria.

### Actions and demands of the families

The families of the individuals detained incommunicado in Syria joined ranks in the “Committee of the Families of the Lebanese Detainees in Syria”, with the support among others of the organization SOLIDE (Support of Lebanese in Detention and Exile).

Since the disappearance of their loved ones, these families have been fighting to raise awareness about the Lebanese detainees in Syria. They tried to bring the detainees into the spotlight and to understand why they were kidnapped. Yet, all measures undertaken with the Syrian and Lebanese authorities have been in vain. Every single time, the search of the truth by the families hit a wall of denial, a web of lies, and pressures of all kinds. And this situation has been ongoing, for some of the families, for close to 30 years. Their wait continues to drag on and there is no light at the end of the tunnel. The parents of the Lebanese detainees in Syrian jails have tired of promises, and they demand a serious leap into action with the objective of ensuring the release of their children and loved ones.

For more than two years now (April 2005), the families of the “missing” in Syria have carried out a permanent sit-in on Riad el-Solh Square, across from the United Nations seat (ESCWA) in Beirut.

The sit-in was undertaken to draw the attention of public authorities and the international community to their ordeal, which is to have a father, a son, a daughter, a brother or a sister still imprisoned in a Syrian prison.

The purpose is to nudge the UN to recognize that Syria’s implementation of Security Council resolution 1559 remains incomplete so long as the Lebanese detainees in Syria are not set free.

At the present time, the families have no one left to turn to. The Lebanese authorities, which have refused for years to officially recognize the problem of the Lebanese detainees in Syria, have tried by various means to close the case. The United Nations does not seem to recognize the humanitarian dimension of the situation, which would require accepting responsibility for the problem at the international level.

The families continue to remind the world that “*time is not on the side of the detainees*” and urge the authorities to “*act before it is too late.*”

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<sup>42</sup> CLDH interview with Zienab Itani, Kamal Chawki Itani’s wife. March 26, 2007.



The Committee of the Families of the Lebanese Detainees in Syria and SOLIDE **demand that the Syrian authorities:**

- Publicly release the list of all Lebanese detainees who were arrested by the Syrians on Lebanese soil and taken into Syria.
- Act for the immediate release of all Lebanese nationals arbitrarily held incommunicado in Syria.
- Undertake the repatriation of the remains of those among the detainees who were executed or who died in detention, short of which it ought to make public the list of all these individuals.

The families also **demand that the Lebanese authorities:**

- Announce the disbanding of the Lebanese-Syrian Inquiry Commission and demand that the UN Security Council take up this issue.
- Demand the creation of an international inquiry commission.
- Make public the names of all individuals handed over by Lebanese state services to the Syrian authorities.

### **III. The Missing in Israel**

#### Description of the situation

Throughout the period of the occupation of South Lebanon by the Israeli Army (1982-2000), thousands of Lebanese citizens were kidnapped, detained and tortured in Israeli interrogation centers. Among those centers is the Khiam Camp which served as a place of detention for presumably close to 2,000 people between 1985 and 2000. At the time of the Israeli withdrawal in May 2000, the detainees of the Khiam prison, numbering 150 Lebanese nationals, were set free.

Other victims who were transferred into the prisons of Israel have also been released in 2000 and 2001. Yet, many families never saw their loved ones return.

During the years of the conflict, beginning with the Israeli invasion and occupation of South Lebanon, the ICRC<sup>43</sup> has handled thousands of requests for searches submitted by the families regarding persons presumed to have been captured by the Israeli Army.

Since the ICRC had access to Israeli prisons, both in Lebanese territory and in Israel – Ansar I and Ansar II (1982-1985), then Khiam which was only visited beginning in October 1995 – the fate of thousands of people who were visited in detention by ICRC delegates has been established.<sup>44</sup>

However, the ICRC emphasizes the fact that the fate of several individuals who disappeared in the aftermath of the Israeli-Lebanese conflict has unfortunately not been uncovered, in spite of numerous requests made to the Israeli authorities which never

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<sup>43</sup> CLDH interview with an ICRC representative in Beirut. August 7, 2007.

<sup>44</sup> These visits have significantly contributed to the detainees' protection, thus preventing their disappearance and maintaining family ties by the thousands of Red Cross messages exchanged across the country.

shed light of these cases. Those negative responses were transmitted to the families who had filed requests for searches with the ICRC.

With regard to these unresolved cases, the ICRC notes that some of the missing may have been buried inside Lebanese territory, in mass graves in which they were interred by villagers.<sup>45</sup>

In effect, in the state of insecurity at the time, local authorities and people would bury these bodies without conducting their identification.

The ICRC also mentions the hundreds of fighters of various persuasions and nationalities who died during military operations and whose bodies were recovered and transferred into Israel, beginning in 1985.<sup>46</sup> These bodies had been registered then individually buried in Israeli territory. As these bodies were regularly reported to the ICRC, the latter was able to formally to identify them by matching them with the requests submitted by the families and/or with the death announcements made by the political parties.

Still, the ICRC says that the recovery of some of these human remains remained contingent on the prisoners/bodies exchanges carried out between Israel and the various organizations and political parties since 1979 and to this date.

At the present time, the families of these “missing” individuals demand the restitution of the bodies. However, Israeli authorities are willing to return those remains only in the framework of an exchange of bodies and detainees with the Hezbollah organization. Thus, the fate of the Lebanese “missing” in Israel is today an issue at the core of the armed conflict between Hezbollah and Israel, while the Lebanese authorities have disengaged themselves from a resolution of this question and the remains of these “missing” Lebanese have become mere bargaining chips in the process.

In October 2000, Hezbollah kidnapped three Israeli military personnel in South Lebanon. Negotiations followed with the objective of carrying out an exchange of prisoners and remains between Israel and Hezbollah. In January 2004, after several years of negotiations made possible by a German mediation, about 60 families of the “missing” recovered the remains of their loved ones and 23 Lebanese prisoners were released by Israel. This exchange also allowed the return to their families of the bodies of three Israeli soldiers who died in Lebanon and the release of an Israeli businessman captured by Hezbollah in 2000.

More recently, on October 15, 2007, another exchange took place in which the bodies of Ali Wazwaz and Mohammad Demachkiyeh (who died during the July 2006 War fighting) were returned to their families, while Hezbollah handed over to the Israelis the remains of an Israeli of Ethiopian origin who drowned and his body drifted to the Lebanese coast.

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<sup>45</sup> The ICRC cites as an example the nearly 60 human remains exhumed in South Lebanon between February and August 2004, following the exchanges between Israel and Hezbollah at the end of January 2004, belonging for the most part to Palestinian fighters killed during the Israeli invasion.

<sup>46</sup> This is the same year that the Israeli aviator Ron Arad went missing. He is still listed as missing in Lebanon.

This situation is extremely dangerous because it perpetuates violence and the practice of enforced disappearances between Israel and Hezbollah.

### Actions and demands of the families

Today, the families of the missing, both Lebanese and Israeli, are waiting for the remains of their loved ones to be returned to them.

The Follow-up Committee of Lebanese Detainees in Israeli Prisons / The Khiam Rehabilitation Center is providing support for the families of the missing in Israel, which consists in helping them create files that are submitted to the ICRC and UN representatives who, in turn, put pressure on the Israeli authorities. The Committee-Rehabilitation Center is also working on the rehabilitation of people who were detained in Israeli prisons.

The Lebanese families cannot accept that their right to recover the remains of their loved ones be linked to the fate of missing Israelis in Lebanon.<sup>47</sup> The Israeli authorities must make public the names of all the Lebanese buried in Israel and the location of the remains. They also must act in earnest to ensure the repatriation of the bodies.

For its part, Hezbollah must cease the practice of carrying out kidnappings. This is an unacceptable solution to the problem of the missing in Israel. The right to not be kidnapped and not become a missing person is a right owed to every person, be they Lebanese or Israeli, civilian or military.

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<sup>47</sup> Among the Israeli missing in Lebanon are Ron Arad, Yohanna Katz, Zacharia Paumel and Tesfi Feldmann.

## The Lebanese State Flouts the Victims' Basic Rights

### I. The Right to Know

**Regardless of any legal claim filed in a court of law, victims have the right to know the Truth about the fate of the missing. It is the responsibility of the State to do all that it can to find the Truth.**

The right to know the fate of relatives who are reported as missing, including their present location, and if deceased, the circumstances and the cause of death, is a right enshrined by the International Humanitarian Law.<sup>48</sup>

This right is reaffirmed in the International Convention for the Protection of All Persons From Enforced Disappearances, specifically in its Article 24, Paragraph 2: *“Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person.”*<sup>49</sup>

The uncovering and establishment of the Truth is a responsibility that falls to the State. The International Convention for the Protection of All Persons From Enforced Disappearances stipulates in its Article 24, Paragraph 3, that: *“Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.”*

The vast majority of the families of the disappeared with whom we met has one requirement: The Truth. For years, it was neither an interest in compensation, nor the desire to see the perpetrators of the crimes punished, that has guided their struggle. As they continue to live in the anguish of uncertainty and of waiting for many long years, the families simply demand answers.

**Yet, to this date, the Lebanese State has provided not one answer to the families of the disappeared.**

Since the end of the war, the Lebanese authorities have adopted various measures aiming at closing – but without resolving – the issue of enforced disappearances.

### **The Taef Agreement: Giving up on the Victims**

Signed in 1989, the Taef Agreement is an inter-Lebanese treaty destined at putting an end to the Lebanese civil war. While the agreement calls for political reforms and

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<sup>48</sup> Protocol Additional (Protocol I) to the Geneva Convention, Article 32: *“In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives. »*

<sup>49</sup> Human Rights Council, Third Commission, Sixty-first session, *International Convention for the Protection of All Persons From Enforced Disappearances*, October 27, 2006. Doc. A/C.3/61/L.17. This convention was ratified by Lebanon on February 6, 2007.

defines Syrian-Lebanese relations, it makes no mention of the past and of the war victims.

Nowhere in the text of the agreement are the issues of the war crimes, the disappearances and more broadly the violations of human rights addressed. In 1991, and pursuant to this agreement, the militias were disbanded and they were never asked to provide explanations to the violations they committed during the war. No conditions were imposed on them to provide information on the fate of the persons they kidnapped or to release any prisoners they may possibly be holding.

The victims were thus entirely ignored in the Taef Agreement.

### **The Law of 1995: The Law of Silence**

The first ever official attempt at addressing the issue of the disappeared was in 1995 when the Lebanese government voted a law<sup>50</sup> allowing to declare as deceased people who had been reported as missing. The law does mention in any way an investigation that could determine the fate of the disappeared and the missing.

The vast majority of the families consider this law as an attempt to buy off their silence by facilitating the material aspects of the disappearances (inheritances, retirement pensions, re-marriage). The law does not address their fundamental need to know the truth about the fate of their relatives.

### **The Failure of the Inquiry Commissions**

Under the unwavering pressure by the families of the disappeared, the Lebanese authorities decided to set up a commission mandated with uncovering the fate of the disappeared and missing.

#### The 2000 Commission: “Resolve the matter of the disappeared”

This inquiry commission was created on January 21, 2000<sup>51</sup> and was given the mandate of “resolving” the issue of the 17,000 disappeared and missing. It was granted a timeframe of 3 months to conclude its investigation. This short deadline itself served as a signal that the Lebanese government only wanted to rid itself of this file.

Following a compilation process and a breakdown of the files submitted by the relatives of kidnapped and missing persons, the Commission estimated the number of the victims at 2,046.

The work accomplished by the Commission suffers from lack of due diligence and inaccuracies. The conclusions drawn by the Commission lead us to our own conclusion that the Commission simply recorded the information provided by the families without conducting its own investigations and research. Nothing is known of the Commission’s own investigations or the files it created. To our knowledge, no one ever received or saw the Commission’s final report. The only answer given to the families is a two-page

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<sup>50</sup> Law Number 434, May 25, 1995.

<sup>51</sup> The commission was created by a government decree signed by Prime Minister Selim al Hoss. Resolution No. 60/2000 dated January 21, 2000.

summary of the final report which asserts that there are no disappeared or missing Lebanese in Israel and Syria and concludes that “All persons who were kidnapped or reported as missing, whose disappearance dates back to four years or longer, and whose bodies were not found, have been declared as *de facto* deceased.”

The Commission goes on then to ask the families of the missing and disappeared “to carry out the required procedures with the judiciary in order to legally establish the death.” In essence, whereas the families had pinned great hope on this Commission, they were asked to turn the page and cease their pursuit of the truth. The families had to make do with a statement by Prime Minister Hoss who told them that it was “*unavoidable to come to terms with the truth and accept it, in spite of the bitterness we feel at discovering it.*”

It is this “*truth*” of the Lebanese authorities that was refuted a few months later when some of the “*missing and disappeared*” Lebanese, who had been held incommunicado for years in the prisons of Syria, were released by the Syrian authorities. The “*inquiry process*” that was carried out by the Commission was utterly debunked by the sudden release of 54 detainees from Syrian prisons.

In the aftermath of this embarrassing discrediting of the 2000 Commission, and under continued pressure by the families, the Lebanese authorities had no other choice but to create another inquiry commission.

#### The 2001 Commission: The Disappeared for whom there are reasons to believe that they are still alive.

In January 2001, a commission chaired by Fouad Saad, Minister of State for Administrative Reform, was set up<sup>52</sup> to shed light on the fate of the disappeared, “in those cases where evidence suggests that they may still be alive.” According to the decree creating the Commission, the latter is charged with collecting requests by citizens who wish to enquire about their missing relatives whom they believe to be still alive.

The Commission’s mandate was therefore neither to review the conclusions reached by the previous commission nor to re-open the dossier of the disappeared and the missing. Rather, it consisted in only examining those cases of disappearance for which there were evidence certifying these individuals as still alive.

Most of the families of the missing in Lebanon could therefore not expect much out of this Commission, as it did had neither the mandate of inquiring about the executions that took place in Lebanon, Syria and Israel, nor to demand the return of the bodies of the missing.

Moreover, with regard to the disappeared about whom there was reason to believe they were still alive, the authorities had absolutely no intention to inquire about their disappearance. It was incumbent upon the families to prove that their kidnapped relatives were alive.

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<sup>52</sup> This Commission was created by Decree No. 1/2001 signed by Prime Minister Rafik Hariri on January 5, 2001.

The Commission was only “authorized to inquire about the substance of the requests with the competent official bodies, organizations and services, with the goal of obtaining information on the matter.”<sup>53</sup> According to Fouad Saad, the Commission merely collected the testimonies of the families and submitted requests to the ICRC for the missing in Israel, and to the Syrian authorities for the missing in Syria.

The Commission received 780 inquiry requests from the families.<sup>54</sup> According to Fouad Saad, the Commission retained “the most serious cases” for further study and established a list of 97 persons about whom there may have been evidence certifying that they were still alive in Syrian prisons.

Yet, after two and a half years later, the Commission has yet to publish any official report about its findings, and after this long period of waiting and hope, the families in the end received no answers. Although the Commission’s members did recognize that serious evidence exists that certifies that 97 persons could still be alive in Syria, the Lebanese authorities did not undertake any action with the Syrian authorities to demand explanations on the likely detention of these Lebanese nationals in Syria.

In 2005, the withdrawal of Syrian troops from Lebanon gave the families hope that at least some information would come to light about the missing. They also justifiably assumed that the Lebanese authorities would be less reticent about taking up this dossier.

The argument that the Syrian occupation was an obstacle to the political resolution of this issue had become moot. Even then, the only answer that the Lebanese State could provide in the face of the continued mobilization by the families was the creation of a joint Lebanese-Syrian Commission.

#### The Joint Lebanese-Syrian Commission of 2005

In 2005, the joint Lebanese-Syrian Commission was created with the mandate of investigating the Lebanese missing in Syria and the Syrians missing in Lebanon. From a term of initially three months, the Commission’s term was extended until December 31, 2007. Yet, on January 30, 2008, the An-Nahar daily published a report in which it stated that the Commission had recently met and that another meeting was planned, although no date had been set.

Like its two predecessor commissions, the Joint Lebanese-Syrian Commission is not a genuine inquiry commission. The Lebanese half the Commission does not lead any investigation. It merely transmits to the Syrian half the list of names,<sup>55</sup> and for some of the disappeared it provides documents certifying their existence in Syria.

The Syrian half of the Commission is mandated with investigating these individuals and making a determination as to whether they are still in detention in its prisons. The fate of those individuals thus depends on the goodwill of those who had been holding them in detention, incommunicado, for years.

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<sup>53</sup> CLDH interview of Fouad Saad who chaired the commission. June 22, 2007.

<sup>54</sup> The daily An-Nahar published the list on April 17, 2005.

<sup>55</sup> These lists are those of the SOLIDE association and the Lebanese government.

At the present time, one is forced to recognize that the work of this Commission is making no headway because the Syrian authorities refuse to admit that they detain Lebanese citizens. To this date, the Syrian elements of the Commission continue to state that the persons whose cases were submitted to them are not detained in Syria.

The case of Najib Youssef Al-Jaramani is a perfect illustration of the total ineptitude of this Commission.

In 2001, the Syrian embassy in Sweden sends a letter to Amnesty international in which it states that Najib, who was transferred to Syria in 1996, was sentenced to death on a conviction of collaboration with the Mossad. This official letter confirms that the Syrian authorities had detained and sentenced Najib Al-Jaramani. This constitutes an official, written and irrefutable evidence that this “missing person” was detained in Syria.

On March 1, 2007, and following a meeting of the Lebanese-Syrian Inquiry Commission, An-Nahar publishes a list of 29 Lebanese nationals whom the Syrian government had certified that they were not present in Syria. Najib Al-Jaramani’s name is on that list.

Thus, Syria denies Najib’s detention through its membership on the Commission, while the Syrian authorities themselves, through their embassy in Sweden, had declared in writing that they detained and sentenced him to death.

Clearly, the Lebanese half of the Commission merely takes receipt of the answers of the Syrian half, while knowing full well that the Syrian authorities have no intention whatsoever of coming to terms with the truth on the fate of those individuals Syria holds incommunicado in its jails.

For more than two years, the Lebanese authorities have led people to believe that they are addressing the question of the Lebanese nationals whose detention in Syria has been established. Yet, the Lebanese authorities know full well that no answers will be provided to the families through this Commission.

All the inquiry commissions set up by Lebanese governments to uncover the fate of the missing have failed. Indeed, an assessment of their mandate and the manner in which they conducted their inquiries raise serious doubts about whether their objective was to really get at the truth. The absolute inefficiency of the commissions has in fact heightened the feeling of helplessness of the families. In the course of our interviews with the families, virtually all of them stated that they had filed their cases with each of the commission, only to be asked again and again to provide the same information they already filed, and without ever receiving a single answer. This fact has reinforced their conviction that the Lebanese authorities have never had any intention of uncovering the fate of their “disappeared” relatives.

### **The Silence of the Lebanese Authorities over the Ossuaries and Mass Graves**

The majority of the Lebanese missing and disappeared are people who were kidnapped by the militias and executed on the spot. These people are buried in ossuaries and mass



graves. The families have been waiting for decades for the remains to be returned to them so they can bury them in dignity and proceed with their mourning.

Many Lebanese, like the authorities, know the locations of some of these mass graves throughout the Lebanese regions. But to this day, no political decision has been taken to proceed with opening these burial sites.

The Lebanese authorities have kept totally silent over this dossier. According to its conclusions, the 2000 Commission had undertaken investigations and was able to inspect mass graves where unidentified people were buried. These investigations on the ground were conducted throughout the various regions of Lebanon and did take bone samples from the bodies. In its conclusions, the Commission even goes so far as name the location of these mass graves:

*“Since the armed organizations and militias did carry out physical eliminations during the war, bodies were dumped in various regions of Beirut, Mount Lebanon, North Lebanon, the Bekaa and the South. Some were even buried in mass graves located inside the Martyrs Cemetery in Horsh Tabet, in Mar Mitr Cemetery in Ashrafieh, and in the Cemetery of the English in Tehwita, while others were discarded in the sea.”<sup>56</sup>*

The Commission thus concludes without providing further details that *“An analysis of the DNA samples taken from the mass graves showed that it was impossible to determine the identity of the bodies due to the state and age of the bones.”*

To our knowledge, the Commission did not provide any indication as to the manner in which this investigation was conducted. Nothing is known about the location of these sites and mass graves, the methods of exhumation of the remains, and the numbers of the remains that were recovered. The Commission merely wiped the slate clean with these few lines and then asked the families to move on.

The few mass graves and ossuaries that have been discovered today, and about which we have some information, were in fact discovered by chance on construction sites and archeological site, or because people have reported the discovery of bones. Unfortunately, no standard procedures were used during the exhumation of a mass grave or ossuary discovered by chance. In order to ensure the proper identification of the bodies, internationally recognized protocols and procedures must be adhered to when conducting exhumation operations.

The manner in which the Lebanese authorities handled the discovery of the ossuary in Anjar is ample proof of the lack of political will to assume responsibility for the issue of the mass graves and ossuaries and its disastrous consequences.

In 2005, more than 30 remains<sup>57</sup> were discovered in Anjar in the Bekaa Valley, near a former Syrian Intelligence Services center that was in operation in the area.

Five years earlier, the Mayor of Majdel Anjar, Mr. Chaabane Ajami, had notified the Lebanese authorities of the existence of human remains. He said that *“when he*

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<sup>56</sup> Report of the 2001 Commission’s conclusions.

<sup>57</sup> Public statement by Amnesty International. December 5, 2005.

*discovered the site in 1999, the bodies were not completely decomposed. They were buried at a depth of only 5 centimeters and attracted animals such as foxes and stray dogs.” He went on to say that “when the authorities advised him to remain silent, he decided to cover the bodies with more soil and not speak about the site again.”<sup>58</sup>*

Ultimately, the authorities could not evade yet again their responsibilities, when several skeletons were again discovered in Anjar on December 3, 2005. The Internal Security Forces (FSI) carried out the digging, but no proper exhumation procedures were followed. The digging was conducted with earth moving equipment, without any precautions. The site was not protected and anyone could enter it. The Lebanese authorities thus deliberately refused to implement the applicable international protocols that pertain to exhuming remains from mass graves. This grave was opened under conditions that will forever prevent the identification of the individuals buried there.

Beyond the lack of respect and consideration for the dead and their families, this attitude by the authorities shows a lack of will to carry out proper identification of the victims and determine the circumstances of their deaths.

The discovery of the so-called “Anjar ossuary” struck a chord with Lebanese society. The families of the missing and Lebanese society at large wanted to know. Gibran Tueni, a journalist and manager of the daily An-Nahar, demanded the truth from the steps of Parliament. But after Tueni’s assassination, silence prevailed again. Several months later, the Lebanese authorities made public their conclusions. Research showed that the human remains discovered at Anjar were not a mass grave left by the Syrian Intelligence Services; it was a centuries-old Ottoman-era cemetery. The most recent remains found there may have date back to as lately as 50 years, but it was a cemetery and not a mass grave.<sup>59</sup>

Several reasons lead us to challenge these conclusions:

The families of the missing and the entire Lebanese society cannot concur with the idea that the Anjar site was a cemetery, when everyone knows that the city of Anjar was at the center of the repressive Syrian system in Lebanon, where torture and executions were common.

In effect, through April 29, 2005, the “Onion Factory” (as the area was commonly called) in Anjar housed the headquarters of the Security Services of the Syrian Expeditionary Corps in Lebanon. According to testimonies collected from former detainees, the path followed by the detainees was always the same. Following their arrest, the prisoners would be subjected to their first interrogations and ill-treatment at the Beau-Rivage Hotel (Syrian Intelligence Services section) in Beirut. If they were not released at this point, they were dispatched to Anjar’s Onion Factory where they were tortured. In Anjar, the prisoners would either die under torture or survive and be sent inside Syria and imprisoned in a Syrian jail.

Given these facts, one is justified in asking if some of these human remains found in Anjar do not belong to people executed by Syrian Intelligence. In fact, eyewitnesses

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<sup>58</sup> Jean-Pierre Perrin, *Liban: Charnier sous silence*, article in *Libération*, February 16, 2006.

<sup>59</sup> Judge Said Mirza, General Prosecutor, “*Finding on the mass graves uncovered in various regions of Lebanon.*” Published June 6, 2006.

who visited the Anjar site have stated that among the skulls uncovered, some were blindfolded and torture instruments were identified among the human remains.

Furthermore, the Lebanese authorities have at no time shown any interest or intention at identifying the bodies and establishing the truth. Indeed, even as the Lebanese authorities had at their disposal the required expertise in this area, they chose not to adhere to the internationally-recognized protocols for exhumations.

Had there been a genuine will to seek the truth, the authorities would have conducted other searches and diggings in the vicinity of the “Onion Factory” where it is virtually certain that the Syrian army buried many Lebanese detainees who were executed or who died under torture.

In our opinion, the conclusions drawn by the Lebanese authorities are nothing more than another attempt to close this dossier without uncovering the Truth. On the issue of the mass graves and ossuaries, we are convinced that the only obstacle to arriving at the truth is the lack of political will on the part of the Lebanese authorities that have at their disposal the necessary expertise for opening the mass graves and identifying the bodies.

The identification of the bodies uncovered in the mass grave of Yarzeh is ample proof of this latter fact. At the request of former Prime Minister Michel Aoun and the daily An-Nahar, the Lebanese authorities undertook to open the grave located on the grounds of the National Defense Ministry in a suburb of Beirut. The Army, which was in charge of the digging, then followed the international protocols to unearth 31 bodies and identify 18 of them by DNA testing.

After fifteen years of waiting, the families of the identified individuals were finally able to bring closure to their ordeal by learning the circumstances of their relatives’ death and to bury them with dignity.

This is indeed the right of every family of the missing and disappeared in Lebanon. The Lebanese authorities must shoulder the responsibility of the question of the mass graves and ossuaries in Lebanon, and no excuse can justify their silence. The argument that such an endeavor would open the wounds of the civil war and threaten to reignite tensions is simply unacceptable. It is precisely because the truth has not been uncovered that the wounds of the civil war have never healed for the families of the missing and for the whole of Lebanese society.

## **II. The Right to Justice**

States have the obligation to “*investigate the violations, take adequate measures towards their perpetrators, chiefly in the legal sphere, so that they are tracked, prosecuted, and sentenced to appropriate penalties, to secure effective avenues for recourse for the victims [...]*”<sup>60</sup>

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<sup>60</sup> Report by Diane Orentlicher, the independent expert charged with updating the set of principles for the struggle against impunity. Supplement: Updated set for the protection and promotion of human rights through the fight against impunity. E/CN.4/2005/102/Add.1.

The right to justice for victims of disappearance and their relatives is recognized in the International Convention for the Protection of all Persons from Enforced Disappearance in its article 4: “*Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.*”

The Convention also states in its article 5 that: “*The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.*”

Yet, in Lebanon the right to justice for the victims of enforced disappearance and their relatives has always been denied.

### **The Amnesty Law: The “Amnesia” Law**

The General Amnesty Law of 1991,<sup>61</sup> which ought to have turned a new page in the political history of Lebanon, has in fact imposed an amnesia on the violations perpetrated during the war and flouted the right to justice of the victims.

In accordance with this law, amnesty applies to exactions perpetrated by all militias and all armed groups during the years of the civil war.<sup>62</sup> The law also applies to kidnapping and hostage-taking.<sup>63</sup> This law is the reason for which the leaders of some militias that carried out kidnappings during the civil war can hold public office at the present time.

The Amnesty Law does not speak once about the victims. No position is taken regarding the missing and their families. This law means that victims of kidnappings can no longer see the perpetrators of those violation prosecuted in a court of law. Indeed, the Amnesty Law is an law of amnesia that imposes a heavy silence on all past violations.

### **Lack of Effective Judicial Recourse**

Nevertheless, and in spite of the Amnesty Law, legal recourse for the relatives of the missing is still possible. Indeed, amnesty cannot apply to perpetrators of ongoing crimes, and the crime of disappearance is an ongoing one as long as the fate of the disappeared has not been disclosed.

Yet, to this date only a few families have taken their disappearance cases to court. It is estimated that the number of lawsuits filed with the courts does not exceed 10, and there are a number of reasons behind this fact.

On one hand, in bringing lawsuits against individuals the families fear reprisals. Sometimes, the perpetrators of kidnappings live in the same village as the family of the person whom they kidnapped.

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<sup>61</sup> The General Amnesty Law, No. 84/91, was promulgated by the Lebanese government on August 26, 1991.

<sup>62</sup> Article 1 of this law declares a general amnesty for crimes committed prior to March 28, 1991.

<sup>63</sup> Kidnapping and hostage-taking are crimes that are suppressed by Article 569 of the Lebanese Penal Code which calls for a life sentence.

On the other hand, very few are those families who know the specific identity of the kidnapers, though they generally know to which militia the perpetrators belonged.

But the main reason for which the families refuse to file a complaint is that they no longer expect anything from Lebanese justice. Many of the lawsuits filed in cases of disappearance are thrown out. This is, for instance, the case of the lawsuit filed by the family of Mohammad Saïd El Jarrar who was kidnapped in the Spring of 1978. His family sued the alleged perpetrator of the kidnapping in Nabatiyeh. The local criminal police took the information from the family but did not conduct an investigation on the pretext that the family waited too long and that the lawsuit would be thrown out by the courts because of a statute of limitation.

Still, the families of the disappeared whose fate has never been elucidated can file a petition with the courts and hope that their action will be heard. Neither the principle of a statute of limitation, nor the Amnesty Law, can serve as an argument on whose basis the lawsuit can be thrown out. In fact, this was the decision rendered in the Fares case. Ratiba Dib Fares filed a legal action against the perpetrator of her son's 1982 kidnapping. In this case, the court's decision was based on the ongoing nature of the crime of disappearance since the fate of the disappeared individual remains unknown.

Since the kidnapper "did not return the kidnapped person to his parents" and nothing proves that the missing individual is deceased, the Court said that Article 2.3. of the Amnesty Law does apply: "*Amnesty becomes null and void for the perpetrators of the crimes mentioned in this Article if those crimes are replicated or ongoing, or if they are perpetrated or committed anew by their perpetrator after the Law went in effect.*"<sup>64</sup>

The Court thus convicted the accused and sentenced him to 3 years in prison with hard labor.<sup>65</sup>

This decision does constitute a step forward to the extent that it corroborates the inapplicability of the Amnesty Law for crimes of disappearance in those cases where the fate of the missing has not been disclosed. Unfortunately, the sentence issued by the Court is far from matching the severity of the crime, which means that the Lebanese judiciary does not recognize the seriousness of the violations and the right of the victims' families to demand redress. The Hachichou case<sup>66</sup> does indeed confirm this latter stance on the part of the Lebanese judiciary. On March 23, 1991, Najat Nacouzi Hachichou filed a lawsuit against 3 individuals who participated in the kidnapping of her husband on September 14, 1982. The action was filed with the Criminal Court of Saida, and it is still pending to this date. The Criminal Court of South Lebanon issued a preliminary decision on the admissibility of the action:

*"The death of the kidnapped Mehmedine Hachichou has never been substantiated with material or physical evidence. Therefore the*

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<sup>64</sup> Article 2.3f of Law No. 84 of August 26, 1991.

<sup>65</sup> Plaintiff: Ratiba Dib Fares. Accused: Hussein Muhammad Hatoum. Verdict of the Criminal Tribunal of Mount Lebanon, December 13, 2001.

<sup>66</sup> The following account is based on interviews we conducted with Najat Hachichou on June 29, 2007, and with Nizar Saghiyeh (one of Najat Hachichou's two attorneys), on August 16, 2007.

*kidnapping crime, which is an ongoing and persistent crime, cannot be subject to the statute of limitation which goes in effect on the day when the last act of violation takes place.”<sup>67</sup>*

The action by Najat Hachichou was clearly deemed admissible and the trial was thus initiated. However, it took 15 years after the action was filed for the first investigative hearings to be held. Until 2006, all hearings were postponed for the simple reason that the three accused would not appear in court, and the court would not take any action to force them to comply.

It was only in April 2006, and under intense pressure from public opinion, that the judge summoned the accused to appear before the court, explicitly stating that he will no longer accept uncertified medical waivers as reasons for failing to appear in court. The hearing did in the end take place and the first investigations were conducted.

Only 10 hearings have so far been held in the court between March 23, 1991 (date when the action was filed) and today.

It seems that the judiciary has no intention whatsoever to render justice to the victims of enforced disappearance and to their families. This stance by the justice system has discouraged the families of the missing from filing actions to demand justice.

### **Lack of Recourse at the International Level**

Confronted with the ineptitude of the inquiry commissions and the Lebanese justice system, the victims of disappearance and their families should have the possibility to call upon the international community.

However, judicial recourse at the international level is not adequate because Lebanon has not ratified any of the international legal texts that are binding in this area. As a result, the victims and their families cannot make use of the existing international legal mechanisms to take their legal actions to conclusion.

At the present time, their only recourse at the international level is the Special Working Group on Enforced or Involuntary Disappearances which was created in 1980 by the Human Rights Commission.<sup>68</sup>

The Working Group’s mandate is basically to help the families of disappeared persons uncover what happened to the disappeared person and that person’s whereabouts. In order to do so, the Working Group receives and processes communications reporting disappearances from families or human rights organizations acting on their behalf. After vetting these communications for a number of criteria, the Working Group transmits the

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<sup>67</sup> Plaintiff: Najat Nacouzi. Preliminary decision on the admissibility of the action by the Criminal Court of South Lebanon (June 12, 2003).

<sup>68</sup> Through its resolution 20 (XXXVI) of February 29, 1980, the Human Rights Commission has decided “to create for a one-year period a Working Group comprising five of its members, acting as experts and appointed in their personal capacity, to look into questions regarding the enforced on involuntary disappearances of persons.” Subsequently, the term of the Working Group has been renewed by the Commission each year, with the approval of the United Nations Economic and Social Council. Since 1986, it has been renewed for two-year terms, and since 1992, for three-year terms.

individual cases to the concerned governments and asks them to conduct inquiries and to report back with their results. However, the Working Group's findings are not binding, and the determinations it makes on disappearance cases submitted to it ultimately depend on the goodwill of the State concerned.

More than 50 disappearance cases of Lebanese nationals (basically Lebanese nationals for whom there is evidence of their detention in Syria) have been submitted to the Working Group, and still the Lebanese authorities never undertook any serious steps with Syria to have these cases elucidated.

The victims of enforced disappearance and their families will have genuine legal recourse at the national and international levels only when the Lebanese State signs and ratifies the international legal texts that are binding to it in this area. To get to that point, the Lebanese authorities must simply recognize the right of all victims to justice. In Lebanon, unfortunately, it seems that there are two classes of victims: One class is recovering its rights, while the other is being denied its rights.

### **A Double-Standard Justice**

Since the end of the war in 1990, a double-standard justice has been in place in Lebanon. The general amnesty that was issued for crimes committed during the civil war years excludes crimes committed against senior figures. In its Article 3, the Amnesty Law stipulates that the amnesty does not apply to the *“assassination or attempted assassination of religious or political figures and of Arab and foreign diplomats.”*

This law thus says that political and religious leaders have a right to justice, but that this fundamental right is denied to “ordinary” citizens.

Since 1990 nothing has changed in Lebanon. Today, the citizens are subjected to this logic that flouts the basic right of every human being to have equal and fair access to justice.

The Lebanese authorities and the international community have mobilized for the establishment of the special tribunal for Lebanon whose mandate is to try the assassins of former Prime Minister Rafik Hariri and perpetrators of related assassinations. This truth-seeking measure, embodied in the formation of the special tribunal, is a positive step that must be supported by civil society.

Yet, the mandate of the tribunal is extremely limited and does not address all the human rights violations committed since the beginning of the Lebanese war.

Is it acceptable that only political leaders have the right to truth and justice, while the “ordinary” citizen is denied his basic rights for more than 30 years?

Why have the repeated requests by the families of the disappeared of the civil war been ignored for more than 20 years?

Why is it that the United Nations have mobilized in force to ensure that those behind assassination attempts against prominent figures be prosecuted, while the fate of the missing during the civil war is merely the object of “recommendations”?

We can no longer accept this logic that is based on selective truth and on a double-standard justice.

All victims, whoever they may be, have the right to Truth and Justice.

### **III. The Right to Reparation**

The right to reparation of victims of egregious violations of human rights is recognized by international law.<sup>69</sup> This right covers the totality of the prejudices suffered by the victim.

**The right to reparation comprises the individual measures pertaining to the right to restitution, compensation and rehabilitation, and measures that are collective and of a general nature such as measures of satisfaction and guarantees of non-recurrence.**

The Lebanese State has not taken a single serious measure aiming at upholding the victims’ right to reparation.

### **Lack of Responsibility to the Victims and their Families**

In March 1998, 121 detainees were released from Syrian prisons. Most of these individuals had been illegally detained incommunicado in Syria (i.e. they are “disappeared”) for a long time.

In December 2000, the Syrian authorities released 56 individuals, among them 48 Lebanese nationals. These people, who had been abandoned for years by the Lebanese authorities were repatriated in humiliating conditions: Blindfolded and released during the night. Their names were kept secret until 12 hours after they were transferred into Lebanese soil. The families went by themselves to the Lebanese-Syrian border to see if their relatives were among the released.

Not one of the individuals who were released by Syria received financial aid or a psychological checkup by the State to try and get them to resume a “normal” life. These victims were simply abandoned to their fate by their own State. The only assistance they received was from a few civil society organizations such as SOLIDE (Support of Lebanese in Detention and Exile/The Committee of the Families of the Lebanese Detainees in Syria), the Khiam Rehabilitation Center, Restart, or Nassim Center for the Rehabilitation of Torture Victims (a CLDH project). A similar lack of action by the State vis-à-vis the families of the victims can only be deplored.

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<sup>69</sup> This right is explicitly recognized by the Statute of Rome of July 17, 1998, A/CONF.183/9, by resolution 60/147 adopted by the General Assembly on December 16, 2005, and by the International Convention for the Protection of all Persons from Enforced Disappearance.



In most cases of disappearance, the disappeared person happens to be the head of household. This loss leaves the families in disarray and extremely difficult situation at the financial and legal levels. In most cases, the women had to assume the role of provider to the family, while suffering from discrimination in employment, social protection, family rights and property rights.

The only measures taken by the Lebanese State consisted in bartering the truth about the fate of the relatives for measures facilitating the material aspects of the disappearance (inheritance, pensions, re-marriage). In effect, the 1995 law and the conclusions of the 2000 Inquiry Commission granted such facilities only on the condition that the families undertake the necessary procedures to declare for the record that their relatives were deceased. Most of the families refused to declare their relatives deceased, since for years it was not the lure of compensations that motivated their struggle, but rather the will to know the fate of their loved ones. The families rightfully believe that those decisions were taken by the Lebanese authorities for the sole purpose of buying their silence.

The Lebanese government took only those measures aiming at closing the file of enforced disappearances. The government never intended to confront its past and officially recognize the existence of victims of disappearances.

### **Lack of Official Recognition**

Since the end of the war, the issue of enforced disappearances was never officially recognized. The fact that no official census of the disappeared was ever conducted demonstrates the absolute lack of political will to deal with the scope and seriousness of the situation.

For the Lebanese authorities, these “disappeared” people are nameless and without history. Their identity is summed up in a vague mention of “17,000 missing”. The families justifiably believe that the authorities have decided to turn the page over the fate of their relatives who number in the thousands of citizens, and to discard them in the trash bins of history.

While there is no longer a need to prove the fact that thousands of Lebanese citizens disappeared during the war and under the foreign occupations, and that hundreds of them remain in secret and incommunicado detention in Syria, the Lebanese State has never issued an official declaration to uphold the rights, the dignity and the reputation of these victims.

The Lebanese State never issued a public apology to the victims and their relatives, in which it acknowledges their status of victims and fulfills its responsibilities towards them.

The silence of the Lebanese authorities over the issue has disastrous consequences on all the civilian Lebanese society. The lack of official recognition of the victims of disappearance and of the responsibility of all perpetrators is an obstacle preventing this society from overcoming the chasms caused by the war. In Lebanon today, each community has its own narrative of the history, its own “truth” which it transmits to the

new generation. These multiple “truths” which emerge in opposition to one another further deepen the divisions within society.

The State bears responsibility to officially adopt a common past and proceed with the obligation to remember. These measures are the only defenses against a resumption of this inhumane practice in the future, and require the State to include the violations that occurred in the country’s official history and organize commemorations and tributes to the victims.

## Conclusions

### **The Lebanese State flouts the victims' right to know**

The inquiry commissions set up by the Lebanese authorities to uncover the fate of the missing have all failed. One wonders, upon a scrutiny of their mandate and the course of their actions, if their objective was in fact to find the truth.

The Syrian-Lebanese commission which is still extant today is a puppet commission. The Lebanese side of the commission merely receives replies from the Syrian authorities which themselves have been holding the Lebanese prisoners in secret for years. The Lebanese State never undertook a single serious step aiming at liberating the detainees in Syria, and it even failed to secure the repatriation of the remains of Lebanese citizens from Syria or Israel.

With respect to the disappeared in Lebanon, the Lebanese authorities continue to refuse to take up this file and to begin opening the mass graves and ossuaries. While the families desperately await that the remains of their relatives be returned to them, the Lebanese State believes that the "problem" will be solved by simply facilitating the declaration of death of the disappeared persons.

The lack of political will to confront the issue of the mass graves carries with it dangerous consequences. The process of exhuming the remains whenever a mass grave is accidentally discovered does not follow established procedures. Thus, some of the discovered bodies can never be identified and their families will never obtain an answer as to the fate of their relatives.

### **The Lebanese State flouts the victims' right to justice**

To date, very few families have gone to court with their disappearance cases. The main reason for which the families refuse to file a lawsuit is that they have come to expect nothing from Lebanese justice.

Most of the lawsuits involving disappearance cases have been thrown out by the courts. In the case of two such actions that were brought before a court, the judiciary authorities did not admit the seriousness of the violations, which leads one to conclude that the justice system in Lebanon does not have any intention to render justice to the victims of enforced disappearance and to their families.

The victims have no real and effective judicial recourse, neither at the national level, nor at the international level, because the Lebanese State has not ratified any of the international texts that would be binding to it in this area.

The 1991 Amnesty Law has created a double-standard justice. The very limited mission of the Special Tribunal for Lebanon has indeed reinforced the feeling among the Lebanese people that "ordinary" victims do not have the same right to justice as religious and political leaders do.

### **The Lebanese State flouts the victims' right to reparations**

The Lebanese State has not taken any serious measures aiming at upholding the right of victims to reparations.

Those of the “disappeared” who were released from Syrian prisons have been abandoned to their fate. They have not received any assistance from the authorities.

As for the families of the disappeared, the only decisions made by the Lebanese State consisted in bartering the truth about their relatives' fate for measures facilitating the material aspects of the disappearance. The Lebanese State has in fact taken measures whose objective was to close the file of enforced disappearances, and has never wanted to confront the past of the country or to officially recognize the victims of enforced disappearance.

## Recommendations to the Lebanese Government

We believe that it is the responsibility of the Lebanese State to guarantee the right to know, the right to justice and the right to reparation for the victims.

In light of the aforementioned conclusions, we make the following recommendations and proposals:

### I. Tallying and identification of the disappeared

**We demand that the State officially recognize the magnitude of the issue of enforced disappearances and to contribute to implementing a program of tallying and identifying the missing.**

The objective of this program is to establish the magnitude of the phenomenon of enforced disappearances in Lebanon and to create a database for the identification of the missing, in order to be able to identify the remains should mass graves or ossuaries be discovered in the country.

#### ***A tally of the enforced disappearance cases in Lebanon:***

To date, no reliable tally of the disappeared in Lebanon has been done. The number of 17,000 that is commonly referred to is not substantiated by serious evidence. It merely serves to highlight the issue of enforced disappearances and to mask the reality by the authorities.

A tallying of the disappeared persons will allow to begin the process of establishing the facts and the truth about the civil period era and the Syrian and Israeli occupations. It will also serve as a comprehensive database of the missing during the 1975-1990 Lebanese civil war and under the Syrian and Israeli occupations.

#### ***Record all information that is necessary for the identification of the missing:***

Pending the proactive affirmation of a genuine political will to adhere to all international protocols during the exhumation of bodies and remains, it is necessary to gather pre-death data and to collect DNA samples from family members. This has the potential to shed light on the fate of people who went missing during the civil war and under the occupations by enabling the identification of remains of bodies exhumed from mass graves and ossuaries.

The preservation and handling of these data also will facilitate the identification process when conditions become more encouraging for opening all mass graves and ossuaries in Lebanon, which is a goal for which the country should be striving.

*The creation of an international inquiry commission:*

**We demand that an international inquiry commission be created with the goal of uncovering the fate of the missing.**

An analysis of the work carried out by the official inquiry commissions that handled the dossier of enforced disappearances clearly shows the failure of the Lebanese State in establishing the truth about the missing. Because of their inability at resolving this matter, the Lebanese authorities must call on the international community to take this matter under its control.

The matter is very urgent and time is of the essence. The objective is not only to alleviate the suffering of thousands of families who have been waiting for years for the Truth, but it is also to bring an end to the continued imprisonment of the Lebanese detainees in Syria under inhumane conditions.

The Lebanese government is fully obligated to utilize every means at its disposal without further delay, and at the present time, the only means available is to refer the matter to the competent international bodies.

The Lebanese government must therefore dissolve the Lebanese-Syrian commission and request the UN Security Council to take up the dossier. Because the United Nations defines it as a “crime against humanity”, enforced disappearance may therefore be the subject of an international criminal action.

## **II. Judicial Reform**

**We demand that Lebanon pledges to ratify and enforce all international legal texts pertaining to the crime of disappearance<sup>70</sup>, specifically the International Convention for the Protection of All Persons From Enforced Disappearance.**

This Convention has been signed by Lebanon on February 6, 2007, and it stipulates that the crime of disappearance may, under certain circumstances, be defined as a Crime against Humanity<sup>71</sup> and therefore be the subject of an international criminal action, and perhaps even of an action by the entire international community mediated by the UN entities.

This Convention is indeed an invaluable instrument to the extent that it provides for an international recourse for the families of the missing. But this Convention will not serve as a genuine recourse for the Lebanese families of the disappeared unless Lebanon ratifies it.

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<sup>70</sup> The international legal texts pertaining to the crime of disappearance are the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment, the Rome Statute, and the International Convention for the Protection of All Persons From Enforced Disappearance.

<sup>71</sup> The crime of disappearance was first defined as a crime against humanity in Article 7 of the Rome Statute of July 17, 1998, which went in effect on July 1, 2002.

**We demand that the Lebanese government incorporate these texts into Lebanese domestic law.**

Lebanon must reform the criminal code so as to include in it the crime of enforced disappearance.

**We urge the Lebanese authorities to ensure that the courts issue independent judgments that are in compliance with applicable international principles.**

As we stated earlier, the reliance on a commission does not necessarily entail a systematic abandonment of traditional justice. A victim who sought redress through a commission should always have the option to resort to traditional justice later on.

In accordance with international standards, the courts cannot throw out a complaint as inadmissible on the basis of a statute of limitation. Enforced disappearances are crimes of an ongoing nature; this entails a suspension of the statute of limitation until such time as the fate of the disappeared person is resolved.

This well-established principle of international law, which is recognized by international legal watchdog entities, is also enshrined in Article 17 of the 1992 Declaration on the Protection of all Persons From Enforced Disappearance:

*“Acts constituting enforced disappearance shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.”*

This principle is re-asserted in Article 8 of the Convention for the Protection of all Persons from Enforced Disappearance:

*“A statute of limitations ... commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.”*

The courts also must reject the applicability of the 1991 Amnesty Law on the basis of its Article 2.3.f which stipulates that:

*“Amnesty becomes null and void for the perpetrators of the crimes mentioned in this Article if those crimes are replicated or ongoing, or if they are perpetrated or committed anew by their perpetrator after the Law went in effect.”<sup>72</sup>*

**We demand that these war crimes be re-classified as Crimes against Humanity and no longer be protected by the 1991 Amnesty Law.**

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<sup>72</sup> Law No. 84 of August 26, 1991.

### **III. Establishment of a Truth, Justice and Reconciliation Commission**

**We demand the establishment of a Truth and Reconciliation Commission to investigate past violations and find extra-judicial answers to the crimes committed.**

The reliance on Truth Commission is increasingly common in countries where serious violations of human rights have been committed.

*Such commissions fulfill the various needs of the victims:*

- 1- Uncover the truth: Know the how and the why, and begin the process of mourning.
- 2- Desire for an official recognition: That the authorities recognize the crime and the violation of their rights.
- 3- Acceptance and responsibility: The need that the perpetrators, or their representatives, accept responsibility and apologize for their actions.
- 4- Justice and reparation: A commission cannot stand in lieu of a court of justice. It seeks to focus on the “Why” and the “How” of the violations, rather than on the identity of the individuals who perpetrated them. Reliance on a commission does not necessarily imply a systematic abandonment of a recourse to traditional justice. A victim who benefited from a commission’s work may still decide to rely on traditional justice later on. Without challenging the principle of an amnesty, such a commission may perhaps lead to a re-classification of certain war crimes as crimes against humanity.

*Victims are not the sole beneficiaries of a Truth Commission :*

The process of a Truth Commission involves all of society and aims to examine the past in order to better prepare for the future. It entails implementing mechanisms for reflecting on the causes of the violations, as well as on their consequences and impacts, on both individual citizens and the nation as a whole. Such a move is part of a dynamic of national reconciliation and the prevention of violations.

Morocco’s case could serve as an example for the creation of such a commission in Lebanon. Morocco has in effect put in place a Fairness and Reconciliation Body [Instance Équité et Réconciliation (IER)] on January 7, 2004.<sup>73</sup> The objective of this body was to: “Give the victims back their dignity, [...], bring comfort to their families [...], achieve a soothing reconciliation” and reach “a just, fair, humane, civilized and definitive resolution.”<sup>74</sup> The IER’s mandate was to:

- 1- Establish the nature, gravity and context of egregious violations of human rights that were committed in the past;
- 2- Conduct research and investigations, collect testimonies and search the official archives;
- 3- Collect all information and data that are useful for bringing the truth fully out in the open;
- 4- Reveal the fate of the disappeared persons, organize in collaboration with the families funerals for the deceased victims, and imagine solutions for regularizing their legal status;

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<sup>73</sup> Refer to CLDH report No. 396 (July 2004): Regional Seminar on “Truth and Reconciliation Commissions: The Moroccan experience”, Rabat, Morocco, March 25-27, 2004.

<sup>74</sup> Op. cit.



- 5- Identify the responsibilities of the various government bodies in the committed violations;
- 6- Compensate the victims for the material and moral consequences they suffered.
- 7- Implement modalities for reparations aiming at reintegrating the victims and providing for their psychological wellbeing, if needed;
- 8- Complete the unfinished work aiming at resolving the employment problems, as well as the administrative and legal problems faced by the victims, particularly in regard to the issue of expropriations;
- 9- Conduct a detailed analysis of the committed violations, as well as their causes and consequences;
- 10- Draft an official report summarizing the totality of the research, analyses and investigative work that were done. This report should also include recommendations defining the actions to be undertaken in order to preserve the memory of the victims, and it should propose measures that would guarantee the non-recurrence of the violence done in the past and a clear break with the practices of the past. The proposals made in this report should strive to re-establish and reinforce trust in the rule of law and the respect for human rights.
- 11- Contribute to implementing a process of reconciliation that supports a democratic transition for the country and the dissemination of the culture and principles of civics and human rights.

The process of the creation of a Truth and Reconciliation Commission is a long process that should be in harmony with the specificities of each country. Nevertheless, seeking inspiration from the experience of other countries in setting up such commissions should help avoid certain pitfalls.

Lebanon must reach a “formula” that is negotiated between all the protagonists of civil society in order to ultimately achieve the reconciliation of the Lebanese with their own common past and to begin the process of national reconciliation that the country badly needs.