

Call for inputs in view of the special initiative marking the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance - OHCHR

Deadline	2 February 2022
Issued by	Working Group on Enforced or Involuntary Disappearances
Purpose	Study to mark the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance

“The Working Group would like to invite member States, as well as all interested individuals and organizations working on issues related to enforced disappearance, including National Human Rights Institutions, intergovernmental organizations, regional human rights mechanisms, representatives of civil society organizations, experts and academics, to provide input for the preparation of the foreseen study.”

- *Impact of the Declaration on domestic legislation and case law;*
- *Main progress of international law and practice on enforced disappearance since the adoption of the Declaration;*
- *Obstacles and challenges encountered in the implementation of the Declaration: good practices and lessons learned to overcome them;*
- *Good practices and lessons learned concerning technical assistance and cooperation to promote the knowledge of the Declaration and enhance the existing legal framework and practices and promote ratification and acceptance of more recent legal instruments, and in particular of the International Convention on the Protection of All Persons from Enforced Disappearance;*
- *Awareness on the contents of the Declaration and activities to further disseminate it: good practices and lessons learned.*

Responses to Raised Questions

1. *Can you please share examples of how the Declaration on the Protection of All Persons from Enforced Disappearances (hereinafter, “the Declaration”) has contributed to the development of domestic legislation in your country (or countries in focus)? Can you kindly share examples of domestic provisions that were adopted in your country (or countries in focus) as a result of the implementation of the Declaration?*

The “Centre Libanais des Droits Humains” (CLDH) is a Lebanese non-profit non-partisan Lebanese human rights organization based in Beirut. CLDH was created in 2006 by the Franco-Lebanese Movement SOLIDA (Support for Lebanese Detained Arbitrarily), which has been active since 1996 in the struggle against arbitrary detention, enforced disappearance and the impunity of those perpetrating gross human rights violations. CLDH monitors the human rights situation in Lebanon, fights enforced disappearance,

impunity, arbitrary detention and racism, and rehabilitates the victims of torture. CLDH's complementary components include advocacy, public mobilization, rehabilitation for victims of torture and families of enforced disappearances, and the provision of pro-bono legal services for vulnerable groups.

Between 1997 and 2005, SOLIDA/CLDH was working on several files and reports around detentions, enforced disappearances, death penalties, humanitarian, and legal concerns in Lebanon. In 1998, SOLIDA/CLDH took families of the forcibly disappeared to Europe, where the presence of forcibly disappeared persons in Syria was confirmed for the very first time. In March 1998, 121 people were released out of Syrian prisons due to international pressure and consistent advocacy.

From 2008 to 2018, CLDH actively participated in drafting for Law No. 105/2018 on the missing and disappeared which was ratified by the Lebanese government in November 2018 and lobbied afterwards for the formation of a committee of enforced disappearances in Lebanon. CLDH was especially active in working on the criminalization of Enforced disappearances (Art. 37), on the protection of the "right to prosecute" of the families and victims, and on the independence of the committee.

Perpetration of enforced disappearances was mostly witnessed in Lebanon during the 1975–1990 war. It is a taboo topic in a society where we never get to discuss the conflict and its legacy. According to a report for the Lebanese government<sup>1</sup> It is estimated that 17,415 persons were missing or disappeared in Lebanon during the war. Families of the missing and disappeared collaborated with civil society actors, mainly SOLIDE (Support of Lebanese in Detention and Exile) to fight for the right to know and find those who were forcibly disappeared. Since its establishment 1989, SOLIDE has been active in its campaign against the crimes of arbitrary detention and enforced disappearance at the hands of the Syrian army and intelligence apparatus in Lebanon. The Declaration of 1992, was a starting point to these families to have something to rely on in their demands. After decades of struggle and activism, on November 12, 2018, Lebanon passed Law No. 105<sup>2</sup> for Missing and Forcibly Disappeared Persons in Lebanon. Passing this law occurred through multiple preceding steps. It was drafted in 2012 by the families and Civil Society organization (CSOs). In the wake of the 2014 ruling, this draft law was proposed to the Parliament in April 2014 by MPs Ghassan Moukeiber and Ziad Qadri. Though before that, in 2012, another version of the draft law, written with

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<sup>1</sup> ICTJ, "Truth Seeking: Elements of Creating an Effective Truth Commission", 2013, available at <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>, consulted in January 2022.

<sup>2</sup>AUB, Issam Fares Institute Of Public Policy and International Affairs "TRUTH, DIGNITY, AND JUSTICE – THE CASE OF THE MISSING AND FORCIBLY DISAPPEARED IN LEBANON" Alexi Touma and Mira Zaghour [https://aub.edu.lb/ifi/Documents/publications/policy\\_briefs/2019-2020/20200710\\_the\\_disappeared\\_english.pdf](https://aub.edu.lb/ifi/Documents/publications/policy_briefs/2019-2020/20200710_the_disappeared_english.pdf), consulted in January 2022.

the collaboration of SOLIDE and CLDH, was presented to Parliament by MP Hikmat Deeb. Finally, on November 12, 2018, Law No. 105 was passed, marking a historic win for the families. This was an unprecedented achievement and is considered a milestone and a major consecration of the right to know, right which the victims' families have. This law paved the way for them to confront the issue of those missing and forcibly disappeared in Lebanon, in several dimensions including the social, legal, and economic ones. In addition to that, Law No. 105/2018 foresees the creation of an independent and non-discriminatory National Commission with a humanitarian mandate to clarify the fate and whereabouts of people who went missing in Lebanon. This Law is crucial as it clarifies the fate of disappeared persons and whereabouts and ensures that the victims and their relatives are informed of the investigation's progress and results. Unfortunately, and similarly to numerous Lebanese laws, this law has been stuck in the theoretical framework and has not been implemented in practice. It has not been respected as predicted and stipulated "on papers" and there still is a long road for justice to be served. CLDH and SOLIDA, in collaboration with other local and international organizations have been advocating for this for years and are still joining efforts to lobby for the cause.

Below is a figure<sup>3</sup> illustrating one of the victims' struggles.

*A mother whose three sons went missing in the Lebanese civil war holds up photographs of them during a ceremony during which the International Committee of the Red Cross (ICRC) received investigation reports from the Committee of the Families of Kidnapped and Disappeared and SOLIDE (Support of Lebanese in Detention & Exile). / CC BY-NC-ND / ICRC / M. Tahtah*



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<sup>3</sup> Mena Rights Group, "Joint Call for Action to Address Enforced Disappearances and Impunity Across MENA", August 30, 2021, available at <https://menarights.org/en/articles/joint-call-action-address-enforced-disappearances-and-impunity-across-mena>, consulted in January 2022.



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2. *Can you please illustrate if the provisions of the Declaration can be invoked before domestic courts in your country (or countries in focus) and, if so, share examples of case law where domestic courts made reference to the Declaration in their verdicts (if possible, summarizing to which provisions of the Declaration reference was made and how they were interpreted)?*

On March 4, 2014, Lebanon's State Council issued a historic ruling declaring that relatives of people who have disappeared have the right to the truth concerning the fate of their family members. This includes the right to receive a complete copy of the file on the findings of the official Commission of Inquiry, which was set up in 2000 to investigate the fates of the missing. In their capacities as the two foremost associations representing the families of the disappeared in Lebanon, Support of Lebanese in Detention and Exile (SOLIDE) and the Committee of the Families of the Kidnapped and Disappeared in Lebanon had filed the petition in December 2009. This petition called for the repeal of the government's refusal to turn the dossier over to them, and for compelling the government to act in accordance with the right to truth.

Nizar Saghieh, a renowned Lebanese lawyer who was involved in the preparation of Law No. 105/2018, stated after the ruling of 2014 the following:

*"The right to know is a new right. In the early stages of the litigation, we were asked about the legal basis of this right: is the right to know established in a legal instrument in Lebanon? The answer is no; it is not set down in a legal instrument. Rather, its legal basis stems from all the rights that Lebanon has established through the ratification of the international instruments, such as the prohibition of torture, the right to life, the right to have a family, and the rights of the child, etc. We concluded that the right to know has emerged from all these rights and this is what we used as a legal basis to recourse to the Shura Council."*

This was a very important ruling in Lebanon, as it came before the passing of Law No. 105/2018, noting that Lebanon did not ratify the International Convention of Enforced Disappearance. The Court has made reference to the Declaration and relied on all rights and obligations stated by the Declaration.



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4. *Has your State (or countries in focus) ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances? If your State (or countries in focus) has not yet ratified or acceded to the Convention, is there any pending project or initiative to do so?*

Lebanon has signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007 but did not ratify it. The Lebanese Parliament should have logically proceeded with the ratification of the Convention after passing Law No. 105/2018 above-mentioned. The ratification would enshrine its enactment into domestic legislation and promote its implementation. Since Law No. 105/2018 has been passed by Parliament, it is only natural for Lebanon to ratify the Convention and go forth with implementation procedures. The right to truth of the families of the disappeared was acknowledged and recognized by Lebanese authorities through this law; therefore, the reason for not ratifying the Convention remains unclear. Many civil society members, such as CLDH, SOLIDE and the Committee of the Families of the Kidnapped and Disappeared have asked for the Convention's ratification even before passing Law No. 105/2018. It can be thought that the Lebanese State did not ratify the Convention because it would entitle it with international obligations and duties, or for other political reasons, not to add the simple fact that the only law that passed in this regard (Law No. 105/2018) has not been implemented in practice.

The main concern to be highlighted at this stage is the fact that this issue has been put in the shadow and "forgotten" due to the multiple crises the country has been encountering, including October's uprising, the pandemic of Covid-19, the massive Beirut blast, and other political and economic instabilities.

It remains however unacceptable and unbearable to use these degrading circumstances as an excuse, especially that families are still waiting for the truth, be it the return of their relatives or any other information about them.

As part of its mandate, CLDH refuses to let such historical events to fall under an exclusive war story and continues fighting for the justice as this concerns human beings, human rights and humanity<sup>4</sup>.

5. *Can you kindly indicate the main obstacles – practical and legal – encountered by you/your country (or countries in focus)/ institution/organization in the implementation of the Declaration (if possible, making reference to specific provisions and concrete examples)?*

First of all, Article 2 of the Declaration states:

*“1. No State shall practice, permit or tolerate enforced disappearances.*

*2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance”.*

The Lebanese State did not act neither as an eradicator nor as a preventor of enforced disappearances.

Despite the recommendations and action plans suggested by CSOs over the years, the Lebanese government’s efforts remain minimal as for the searching for those forcibly disappeared.

Second of all, Article 2 stipulates:

*“Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.”*

Before 2018, legislative measures were absent.

After 2018, a law exists, but is not implemented.

Article 5 still has not prevented some discrepancies and this can be seen as an obstacle. In other words, many authorities responsible for perpetrating enforced disappearances have not been prosecuted even though the article states: *“[...] enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the*

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<sup>4</sup> CLDH, About Us, <http://www.rightsobserver.org/about-us>, consulted in January 2022.

*international responsibility of the State concerned in accordance with the principles of international law”<sup>5</sup>*

The challenges are numerous, and every article is not implemented in the correct, humane, expected and right way. For this reason, the State taking action is mandatory and activism remains a necessity that is growing with time as the State remains silent. CSOs must not stop their fight and must keep joining their efforts altogether.

The Lebanese law No. 105/2018 englobe the following subtopics:

- Protection of mass graves for future investigations
- Clarification on the destiny of those forcibly disappeared in foreign countries
- Differentiating between the right to truth and the right to justice (Article 37 of the Law No. 105/2018).

All these subtopics have been inspired by the Declaration.

*6. Can you kindly illustrate any activity undertaken in your country (or countries in focus) to raise awareness and further disseminate the content of the Declaration? To your knowledge, has the Declaration been translated in any local language other than the six UN languages? If so, could you please share a copy?*

SOLIDA was initially working on advocacy efforts, lobbying against enforced disappearances and highlighting the violation of human rights in this regard.

As SOLIDA was later replaced by CLDH, these efforts have never been interrupted as CLDH has been undertaking regular activities to raise awareness and advocate on the matter, in accordance with the Declaration’s content:

*“Any act of enforced disappearance is an offense to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field”<sup>6</sup>.*

Also, the State should not practice, permit or tolerate acts of enforced disappearances and should give every person the right to know. CLDH reminds and advocates for the victims’ rights and the States’ obligations, through individual and joint advocacy

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<sup>5</sup> OHCHR, Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, available at <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx#:~:text=Article%202-1.,and%20eradication%20of%20enforced%20disappearance,,> consulted in January 2022.

<sup>6</sup> OHCHR, Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, available at <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx#:~:text=Article%202-1.,and%20eradication%20of%20enforced%20disappearance,,> consulted in January 2022.



publications, calls for actions, producing reports and launching campaigns to raise awareness to the public, such as those organized on World Enforced Disappearances day (August 30):

*“On the #International\_Day\_for\_the\_Victims\_of\_Enforced\_Disappearances, The Lebanese Center for Human Rights reinforces the need to implement the Law of Missing and Forcibly Disappeared Persons (105) which was issued on 30/11/2018. Law (105) emphasizes the right to know for missing persons’ family members, and the need to establish an institution in order to collect information and take practical steps to locate the disappeared; it also stresses the need to reduce loss incidents and to punish anyone who hides information about the missing. Although this law criminalizes the act of enforced disappearance in any way, the fate of thousands of forcibly disappeared and missing Lebanese remains unknown today..Since the Lebanese Center for Human Rights has contributed for the past years on the ratification of law (105), it demands today the implementation of the law and the right to know fate of any missing or forcibly disappeared person.CLDH has also been working on finding disappeared persons and undergoing field visits to their family members, in order to legally assist them with the purpose of granting their human rights and limiting the suffering of victims.”<sup>7</sup>*

13 April, 1975

Anniversary of **civil war** eruption in  
Lebanon



To determine the fate of  
the missing and forcibly  
disappeared persons

<sup>7</sup> CLDH, August 30, 2019, <https://www.facebook.com/cldh.ngo/posts/1328376613987486>, consulted in January 2022.



Another example of an advocacy activity targeting key stakeholders organized by CLDH on that matter would be a roundtable discussion prepared in cooperation with the Euro-Mediterranean Federation against Enforced Disappearance, and entitled "Guidelines on the Research of Enforced Disappearances" on Saturday, February 15, 2020, in order to discuss guidelines set by the United Nations Committee against Enforced Disappearances for the purpose of organizing researchers' work on issues of enforced disappearances.<sup>8</sup>

CLDH analyzed the matter, raised the voice and suggested action plans in many reports for more than a decade now. In 2008, one of CLDH's researchers stated:

*"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 for it."<sup>9</sup>*

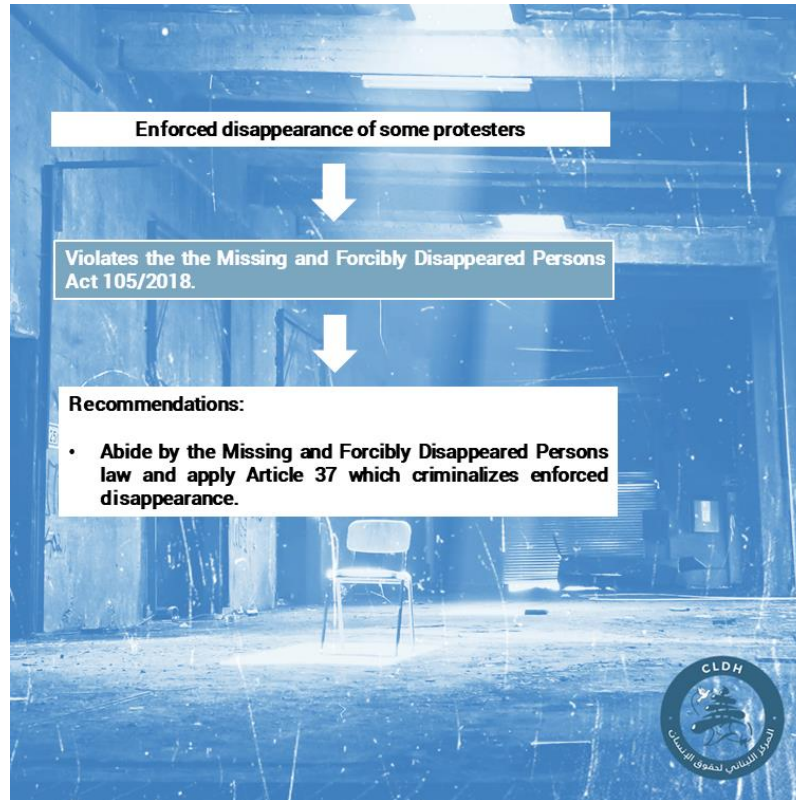
Contrary to what many politicians assert, this issue does not belong to the past. It is a suffering that is experienced daily by thousands of Lebanese families.

Below is a figure showing one of CLDH's online publications on recent enforced disappearances during Lebanon's Uprising in 2019/2020.

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<sup>8</sup> CLDH, Conference around the Guidelines on the Research of Enforced Disappearances, February 15, 2020, available at <http://www.rightsobserver.org/blog/conference-around-the-guidelines-on-the-research-of-enforced-disappearances>, consulted in January 2022.

<sup>9</sup> CLDH, Conference around the Guidelines on the Research of Enforced Disappearances, February 15, 2020, available at <http://www.rightsobserver.org/blog/conference-around-the-guidelines-on-the-research-of-enforced-disappearances>, consulted in January 2022.



7. *Can you kindly share information on existing training programs (directed both at authorities and at civil society organizations) in your country (or countries in focus) where the Declaration is analyzed and disseminated? Any information on the nature and frequency of such training is welcome.*

Training programs are regularly organized by CSOs on enforced disappearances, such as the ones organized by the ICTJ, ICRC and CLDH.<sup>10</sup> During these sessions, the Declaration is studied as one of multiple international law instruments. One of the sessions' purposes has been to spread awareness for young activists and law practitioners on the matter. The subject is centered between NGOs and activists and does not include the State. The training programs are conducted as a self-initiative in collaboration with the Committee of the Families, the Working Groups and SOLIDE.<sup>11</sup>

<sup>10</sup> CLDH, "Enforced Disappearances, Truth and Fight Against Impunity", 2013, <https://daleel-madani.org/civil-society-directory/centre-libanais-des-droits-humains/events/enforced-disappearances-truth-and-fight-against-impunity>, consulted in January 2022.

<sup>11</sup> ICTJ, Lebanon, <https://www.ictj.org/our-work/regions-and-countries/lebanon>, consulted in January 2022.

8. *Is there any other information that you deem relevant for the purposes of the study?*

In one of his articles on enforced disappearances, Wadih Al Asmar, CLDH's founder and president, stated the following:

*“Contrary to what many politicians claim, this issue is not a thing of the past. It is a suffering experienced daily by thousands of Lebanese families. The crime of enforced disappearance constitutes a set of serious violations of human rights, now strongly condemned by the international community:*

- a violation of the right not to be deprived of liberty, insofar as the deprivation of liberty falls within the very definition of this crime.*
- a violation of the right to recognition of legal personality, as guaranteed by article 16 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Lebanon on November 3, 1972. The violation of this right amounts to a denial of a person's basic right to have rights. This is precisely what happens when you make a person “disappear”: you remove them from the protection of the law, you deny their legal personality and, therefore, their right to have rights.*
- a violation of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The United Nations Human Rights Committee considers that any incommunicado detention for a prolonged period constitutes in itself inhuman treatment.*
- a violation of the right to life (when the missing person is killed).<sup>12</sup>*

This is a constantly needed reminder in Lebanon to the Lebanese State and the Lebanese population. We have to make sure this subject does not end up in the unspoken past. One of CLDH's main missions is to advocate for the better implementation of all human rights-related international instruments, including the Declaration and the Convention in this matter, as well as the domestic law (Law No. 105/2018).

Civil society members should come together with the Committee of the families of victims of enforced disappearances, to fight for their right to know. We have to work on establishing effective ways to be able to know this truth and ensure justice is served. CLDH has included in its research studies and reports different

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<sup>12</sup> Wadih Al Asmar, “Mémorialisation et disparitions forcées: comment éviter le déni de vérité? - Le Cas du Liban”, November 8, 2011, available at <http://reverleliban.blogspot.com/2011/11/memorialisation-et-disparitions-forcees.html>, consulted in January 2022.

suggestions, recommendations and action plans in order to enhance this situation.

All CLDH reports are published in the following link (for your perusal):

<http://www.rightsobserver.org/publication>.

Finally, we conclude with Mr Al Asmar's words:

*"How to conclude on what is not finished? Enforced disappearance has this terrible side of putting the lives of victims and their loved ones on hold. Working on the memorization of a crime that has never been repeated in a sort of tragic perpetual motion is a major challenge for us activists and for all academicians, historians and other specialists who work on it. I consider that my role remains in the action. I am neither an intellectual nor a historian but an activist who believes that everything must be done to restart the lives of victims of enforced disappearances. This obviously involves memorization. However, the latter must be part of a larger process that must be based on truth, justice and reconciliation. Memory, or memorization, is none other than the vehicle that will keep track of this suffering. Keeping track of the suffering is essential, but insufficient if it is not accompanied by the message of hope that constitutes the establishment of processes that make it possible to provide answers to the victims and allow them to return to a "normal" existence. To conclude would therefore be, for me, a sort of denial of the continuous nature of this crime."*<sup>13</sup>

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<sup>13</sup> Wadih Al Asmar, "Mémorialisation et disparitions forcées : comment éviter le déni de vérité? - Le Cas du Liban", November 8, 2011, available at <http://reverleliban.blogspot.com/2011/11/memorialisation-et-disparitions-forcees.html>, consulted in January 2022.