

# GUIDE TO LAW 105 ON THE MISSING AND FORCIBLY DISAPPEARED PERSONS: QUESTIONS AND ANSWERS



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## I- PREFACE

*Dear Friends, Dear Sisters and Brothers,*

Law 105 is the fruit of your labor, you, the families of the kidnapped and forcibly disappeared. If it weren't for each one of you, you who held on to your right to know the fate of your missing loved ones, if it weren't for your perseverance and determination in demanding the State, and no one but the State, to find a solution to your cause, if it weren't for your patience and endurance in bearing hardships that even mountains would not have been able to bear, this law would not have seen the light of day.

Yes, we have won, however our battle is far from over. True victory will only be achieved when this law is properly implemented; otherwise, it will remain ink on paper.

Each and every one of you is in charge of ensuring that this law is being enforced. We all have a role to play and are capable of impacting our environment and communities, to shed light on the importance of this law and its implementation, for the benefit of the families of the missing and the Lebanese society as a whole. Said step is truly of great importance for us and our country, not to mention our undeniable right to know the truth.

Should the State properly implement Law 105, the families of the missing and forcibly disappeared will be perceived as having been key contributors in the process, by having crucially partaken in restoring the rule of law and consolidating the unity of the Lebanese people.

I wish you a calm reading of the summary of Law No. 105 and, on your behalf, I would like to thank both the ICRC and Swiss Embassy for publishing this booklet, which features the most important information contained in said law.

**Wadad Halawani**

*President*

*Committee of the Families of the Kidnapped and Disappeared, Lebanon*



## II- GENERAL INTRODUCTION

The promulgation of the Law on the Missing and Forcibly Disappeared Persons (or Law 105) in November 2018 marked a significant milestone for the families, authorities, and Lebanese society. From a legal perspective, Law 105 constitutes the first step on the path to establishing a comprehensive approach for the clarification of the fate and whereabouts of the missing and forcibly disappeared persons.

This milestone was followed, in mid-2020, by the appointment of the members of the National Commission as the individuals in charge of translating the provisions of Law 105 into reality and, despite the numerous challenges faced, indeed, the National Commission is exerting all possible effort to fully carry out its tasks and should benefit from the necessary official and popular support for this purpose.

Between the years 2000 and 2005, the Lebanese authorities established several mechanisms to respond to the demands voiced by the families of the missing and forcibly disappeared persons as well as by parliamentarians and civil society actors. Over the years, several challenges hindered the operationalization of said mechanisms, which eventually did not succeed in effectively addressing the plight of the concerned families.

Even in the face of these setbacks, the family associations and their allies were determined to pursue their endeavors through parallel venues. They resorted to several paths ranging from advocacy and lobbying to speeding up the adoption of legal actions that granted the families the right to access information gathered during the investigations pertaining to their loved ones, as specified in the decision of the State Consultative Council of 2014.

These continued cross-cutting efforts eventually led to the promulgation of Law 105, which addresses the important prerequisites that must be met in order to embark on the path of providing answers to thousands of families and clarifying the fate and whereabouts of their missing and forcibly

disappeared loved ones.

**The Law provides for the following key points:**

- The adoption of a legal definition for the missing and forcibly disappeared persons;
- The recognition of the families' right to know the fate of their loved ones and have their remains retrieved, as enshrined in the International Human Rights Law and the International Humanitarian Law;
- The acknowledgment of the families' right to be informed and to access information pertaining to the tracing of the missing and forcibly disappeared persons as well as to all the legally non-confidential investigations, including their rights to be respected and treated in a non-discriminatory manner and to receive moral and financial compensation;
- The creation of an independent "National Commission for the Missing and Forcibly Disappeared Persons in Lebanon", which shall be the entity in charge of the clarification of the fate and whereabouts of the missing and forcibly disappeared persons.

Going forward, more efforts are required to ensure the appropriate implementation of Law 105 and to set the ground for an effective Search and Identification Process capable of guaranteeing the protection and confidentiality of the data, which should be used for humanitarian purposes.

In addition, it is important to mention that the successful implementation of the upcoming steps will also require a proper coordination between all the concerned actors.

Since 2012, the International Committee of the Red Cross (ICRC) has been supporting the families of the missing and forcibly disappeared persons, as well as the authorities, with the missing file through the collection of Ante Disappearance Data and Biological Reference Samples (BRS) from



the affected families. The ICRC continues to provide its support in this regard to date, in collaboration with the National Commission. As part of its efforts, the ICRC has also been working closely with the families themselves through the implementation of different projects, such as family accompaniment and awareness raising activities, including those organized on the International Day of the Disappeared.

In light of the importance of Law 105 and in order to bring the Law closer to the families who have been waiting for decades, the ICRC and the Embassy of Switzerland in Lebanon have decided to transpose the content the Law 105 in this accessible guide, so the Law can be easily read and understood.

This guide targets the families of the missing and forcibly disappeared persons, civil society actors, organizations and the general public and aims at disseminating Law 105/2018 in a direct and accessible manner.

**The guide comprises of two main parts:**

### **1. The Presentation of the Main Components of Law 105:**

Listing the involved actors and stakeholders, determining the composition and role of the National Commission as well as those of the committees in terms of managing potential burial sites and specifying the compensation mechanisms and workflows, as indicated in the Law. This part is by no means a legal analysis nor interpretation of Law 105.

### **2. The Clarification of the Fate and Whereabouts Process:**

It is worthy to mention that since this process has not been elaborated in Law 105, the ICRC has taken the initiative to add this part and present the main elements and requirements of the Search and Identification Process. This has been done based on the experiences derived from the relevant international practices, in order to give the reader a brief understanding of how such processes are usually implemented.

Finally, the ICRC would like to take this opportunity to thank all the family members and organizations as well as the National Commission for the Missing and Forcibly Disappeared for their valuable comments and suggestions that have contributed to the compilation and production of this publication.

We hope that the readers of this guide will find it useful, especially the families of the missing persons since this guide is dedicated to them.

Sincerely,  
**Simone Casabianca- Aeschlimann**  
*Head of Delegation*  
*International Committee of the Red Cross, Lebanon*

### III- INTRODUCTION TO LAW 105

#### 1. WHY ARE LAWS IMPORTANT?

- Laws are a fundamental part of our daily lives and activities.
- Laws define acceptable and unacceptable standards of conduct and practices.
- Laws enshrine specific human rights and provide justice access mechanisms.
- Laws are mandatory to all authorities whereby all the provisions thereof should be respected and adhered to.
- Laws protect the most vulnerable in society.
- Laws are considered important to maintain peace, public safety and the rule of law.

#### 2. WHY IS LAW 105 PARTICULARLY RELEVANT?<sup>1</sup>

- Law 105 consecrates the right to know the fate of the missing and forcibly disappeared persons, as well as the right to compensation and to non-discrimination.
- Law 105 establishes an independent National Commission for the Missing and Forcibly Disappeared with clear objectives and with the aim to provide the families of missing persons with answers.
- It includes taking preventive measures to reduce the risk of potential missing cases in the future.
- It lays the foundation for the operations aiming at uncovering the fate and whereabouts of the missing and forcibly disappeared.
- It includes provisions that contribute to the protection of the the deceased, their remains, and their identification in accordance with international standards.

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<sup>1</sup>Refer back to the preface in order to further delve into the objectives and purpose of the Law.

### 3. WHO BENEFITS FROM LAW 105?



The Missing  
Persons



The Forcibly  
Disappeared Victims



The Family  
Members



The Close  
Parties



The Associations  
Representing Family  
Members



**SOCIETY IN GENERAL**

**A. The Missing Persons** whose whereabouts are unknown to their relatives and who went missing as a consequence of:



An international or non-international armed conflict



Kidnapping



Disaster or Natural Event



Any other reason



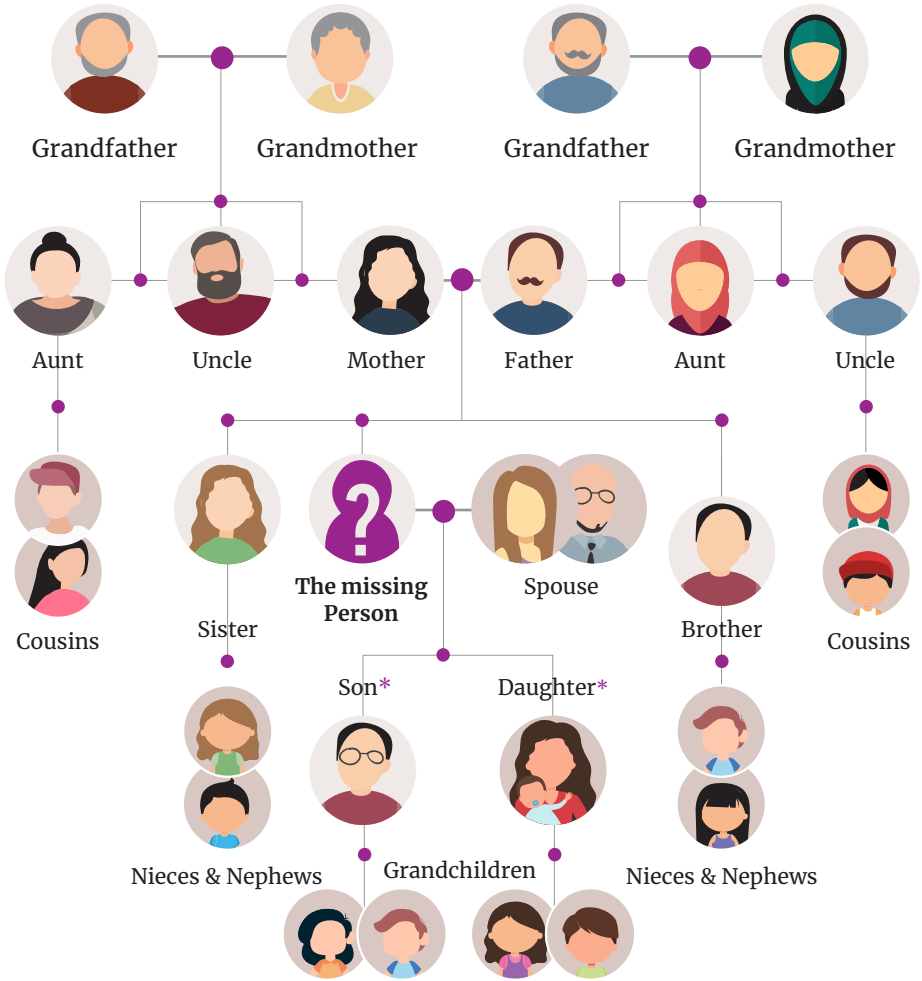
This law is not limited to a specific time frame. Therefore, it can be applied in any case involving a missing person and not only in cases linked to past armed conflicts.

**B. The Forcibly Disappeared Victims** who got arrested, detained, kidnapped, or deprived of their liberty by State agents or by groups or individuals who do not acknowledge depriving them from their liberty and hiding therefore their fate and whereabouts.

**C. Close Parties** which, according to the law, are legal entities of which the missing or forcibly disappeared person was a member, such as political parties and non-profit associations among others.

**D. The Associations Representing Family Members in Lebanon** of which, at least, a quarter of the members are family members of missing or forcibly disappeared persons, and the goals of which include working on enforced disappearances or war-related missing persons.

E. Family Members



\* A child (son/daughter) born in or outside of marriage, an adopted child or stepchild who was supported by the missing person.

**!**

Law 105 does not deprive families who have had death certificates issued for their relatives from the right to have the fate and whereabouts of their loved ones clarified.

Law 105 includes provisions that ensure the protection and respect of the deceased as well as provisions that help identify human remains, and specify the processes for the marking and protection of gravesites and burial sites and the return of human remains to their families for a dignified and proper burial, including the creation of memorial plaques for those who were not identified or claimed by their families, among others. These provisions are important as they preserve the dignity of the deceased and thus of their families and communities.

## **IV- THE RIGHTS OF THE MISSING AND FORCIBLY DISAPPEARED PERSONS AND THOSE OF THEIR FAMILIES**



**In order to guarantee the rights of the missing and forcibly disappeared persons and those of their families, it is necessary for the authorities, among other actions, to:**

- Disclose information (according to the law, sanctions shall be imposed on individuals who refrain from doing so).
- Cooperate with the National Commission and facilitate its work.
- Refrain from obstructing the course of uncovering the fate and whereabouts process and from exerting any kind of pressure or influence that might impact said process.

### **WHAT RIGHTS ARE ENSHRINED IN LAW 105?<sup>2</sup>**

Law 105 guarantees all the disappeared and missing persons, were they military or civilians, and to their family members the following rights:

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<sup>2</sup>Articles 2, 3, 4, 5 and 31

### The Right to Know

The right to know the fate of the missing and forcibly disappeared persons, their whereabouts and their detention or abduction location.

### The Right to Equality and Non-Discrimination

The right to be treated with equality by all authorities, including the National Commission, without any form of discrimination based on national and social origins, political beliefs, religion, gender, race, belonging to minorities, social or physical status, age, physical or mental disability, or any other discriminatory status.

### The Right to be Informed

The right of the families to be constantly informed by the National Commission, the exhumation committees, and other committees, about the achievements and challenges faced during the search and identification process, as well as about the collected information - upon the decision of the competent jurisdiction in some cases.

### The Right to Compensation

Missing and forcibly disappeared persons and their family members are entitled to adequate moral and financial compensation.

The compensation should be issued by the Council of Ministers based on a proposal submitted by the National Commission to the Ministers of Justice and Finance, within one year after the entry into force of Law 105.

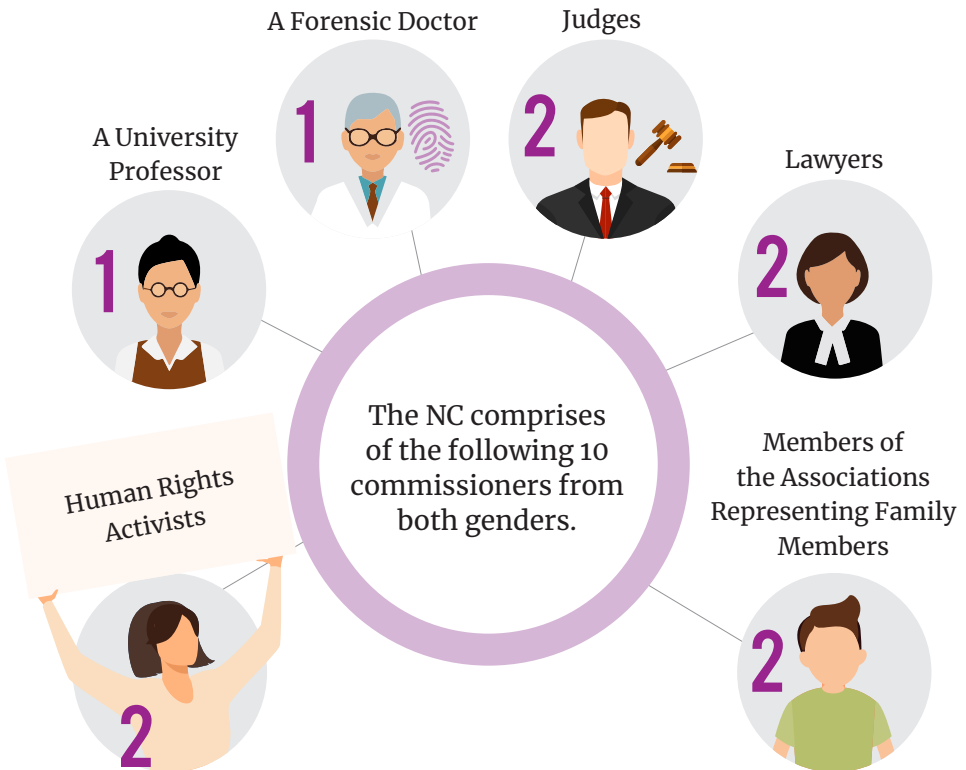


If a year has passed since the person went missing or forcibly disappeared, as per the certificate, the concerned parties have the right to receive the financial entitlements upon a decision from the competent court.



# V- THE NATIONAL COMMISSION OF THE MISSING AND FORCIBLY DISAPPEARED

## 1. WHO ARE THE MEMBERS OF THE NATIONAL COMMISSION AND WHAT ARE THE MEMBERSHIP ELIGIBILITY REQUIREMENTS?<sup>3</sup>



The President of the Commission shall work for the Commission on a full-time basis and receive a fixed monthly compensation. He shall also be prohibited from occupying any other function during this

mandate, whereas other members of the Commission shall receive compensation, for each session they attend, which shall be determined by virtue of a decree issued by the Council of Ministers.

<sup>3</sup>Articles 10, 11, 12, 16 and 18

## Membership Eligibility Requirements:

Elected members shall be:

- Lebanese citizens for more than 10 years.
- Entitled to all their civil rights with no felony or misdemeanor convictions.
- Have completed thirty-five years of age or more.
- Of high morals and ethics and known for their integrity and independence.
- Have at least ten years of experience in their respective fields.

- The members are appointed by virtue of a decree issued by the Council of Ministers for a non-renewable duration of five years, provided that new members are appointed after said period to ensure the continuity of the Commission's work.
- In the event of a membership becoming vacant more than one year prior to the end of the term for any reason, the Council of Ministers shall appoint a replacement for the remainder of the Commission's term.
- The law determines the conditions for the suspension or removal of members from their positions.
- The law prohibits members from taking over different public positions.
- The Commissioners have immunity when carrying out their functions, except in cases of flagrante delicto.

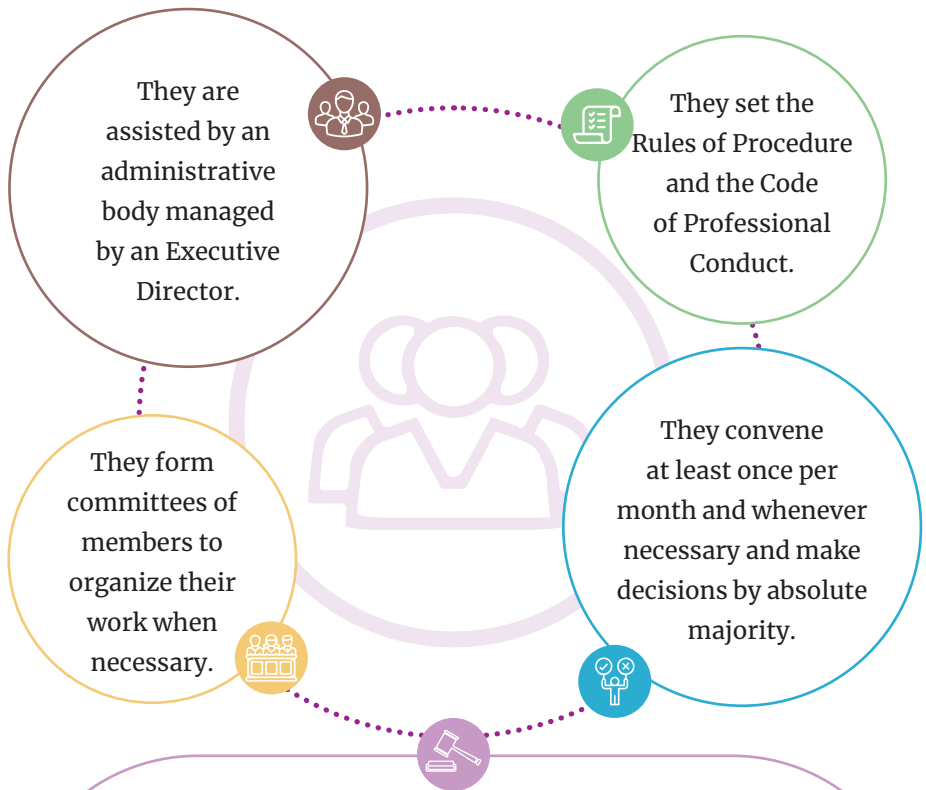
## 2. HOW SHOULD THE COMMISSION INITIATE ITS WORK AS PER LAW 105?<sup>4</sup>

The 10 members swear oath before the President of the Republic for a non-renewable term of five years.



The members elect from amongst themselves: a President, a Vice-President, a Secretary, and a Treasurer.





Within a period of two months from swearing oath, the Commission, by a two-thirds majority, shall establish a set of rules and principles regulating its functioning, also known as the Bylaws.

The relevancy of the Bylaws is rooted in the clarification that they provide as well as in their provision of specific details relative to the law for better results.

The rules set are also fundamental as they describe the procedures and steps to be followed for an efficient and competent work.

The Commission also sets a Code of Conduct, the latter being professional standards that should be adopted by all members, staff, branches, association representatives and other individuals collaborating with the Commission.

<sup>4</sup> Articles 13, 14, 15, 19, 20 and 21



## What are the National Commission's Available Resources?

An annual financial allocation set within the budget of the Council of Ministers.

Donations or any other financial support from local or international entities under two conditions:

They need to be approved by virtue of a decree issued by the Council of Ministers.

They do not compromise the Commission's independence and are in conformity with the implemented laws.

# VI- THE CLARIFICATION OF THE FATE OF THE MISSING AND FORCIBLY DISAPPEARED AND THE ROLE OF THE NATIONAL COMMISSION

## 1. WHAT IS THE CLARIFICATION OF FATE AND WHEREABOUTS PROCESS?

The clarification of the fate and whereabouts of missing or forcibly disappeared persons is a process that aims at providing answers for the families, communities and society in general by undertaking the following steps:

- **Determining** the fate of the missing or forcibly disappeared person, whether alive or dead;
- **Identifying** the location of the sought persons;
- **Determining** the circumstances of disappearance;
- **Confirming** and/or restoring the identity of the missing or forcibly disappeared persons or human remains.

For this purpose, the following types of information need to be collected and analyzed by different experts:

- Ante-disappearance information about the missing person;
- Events related to their disappearance;
- Potential burial sites;
- Potential places of detention;

- Information collected from witnesses, families and previous mechanisms;
- Information collected by forensic experts from exhumation sites;
- Other types of information.

All information need to be centralized in the Central Records of the Missing and Forcibly Disappeared Persons.

This complex process, which entails several possibilities about the fate and whereabouts, requires important financial, human, administrative and material resources, including suitable and equipped working facilities.

Law 105 has given the National Commission the mandate to manage and implement an efficient search process, based on all the information collected from different parties, including but not limited to authorities, organizations and witnesses, as well as through the previously adopted mechanisms and from the evidence resulting from the analysis and investigations conducted by said parties.

Some of these phases are further explained in the following table, which includes certain technicalities of the Search process:

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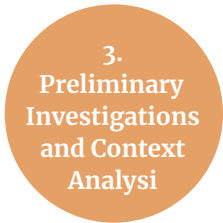
Consolidation Lists of all the individuals who were reported missing based on all possible sources of information.

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Collection of Information on missing persons, events, potential burial sites and places of detention from all possible sources, including medical records, witness statements and archives.

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Preliminary Investigations and Context Analysis by using the collected information and consolidated lists.

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From these very first stages, there are several possibilities depending on the context. Each hypothesis entails actions that need to be executed by the National Commission, or other concerned authorities, in order to clarify the fate and whereabouts of missing or forcibly disappeared individuals.

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Actions to Reestablish Contact with Individuals under Detention such as contacting the authorities or stakeholders involved in order to reestablish contact with the missing person, acquire information on their fate and whereabouts and/or recover the body.

5.  
Search and  
Recovery

The Search for and Recovery of bodies and remains by forensic and investigative experts in accordance with the relevant international standards and best practices

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6.  
Forensic  
Examinations

Forensic examinations of recovered human remains by a multidisciplinary team of forensic experts, which could include medical forensic doctors, anthropologists, odontologists and geneticists working to uncover the identity of the remains.

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7.  
Reconciliation  
of Information

Reconciliation of Information by comparing all available data on missing persons, circumstances of disappearance and recovered human remains in order to ensure their correct identification.

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8.  
Identification

Identification based on all the above-mentioned steps and in accordance with the applicable legal framework and scientific international standards.

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In some cases, given different factors such as the complexity of the process, the lack of information and the passing of time, the National Commission might not be able to fully clarify the whereabouts of the missing person but might be able to provide partial information about their fate to their families.

## 2. WHAT IS THE ROLE OF THE NATIONAL COMMISSION IN THIS PROCESS?

According to Law 105, the National Commission is the body in charge of uncovering the fate and whereabouts of the missing and forcibly disappeared persons, given the actions it shall implement, such as:

- Conduct all investigations leading to uncovering the fate and whereabouts of a missing person;
- Receive testimonies from any person suspected of having information and reports about missing and forcibly disappeared persons or about their burial sites as well as testimonies from relatives or witnesses;
- Ensure data verification and storage that shall be incorporated in the Central Records;
- Ensure the DNA database verification, or any other data or biological information;
- Establish a data bank for burial sites;
- Verify and compare information at its disposal or with any competent authority in order to validate the identity of the missing and forcibly disappeared person's remains, to determine their whereabouts if alive and to guarantee the legal identity determination by the competent authorities among others.

The Central Records consist of individual records pertaining to missing and forcibly disappeared persons about whom a tracing request has been submitted. The National Commission shall be responsible of the protection and confidentiality of these records. The Bylaws and Book of Regulations for the Management of Central Records will be important to determine the procedures for data protection.





### 3. WHO CAN SUBMIT A TRACING REQUEST TO THE NATIONAL COMMISSION?<sup>6</sup>



A family member or a close party of the missing or forcibly disappeared person.



Any other concerned person or party that has minimum data about the missing or forcibly disappeared person.

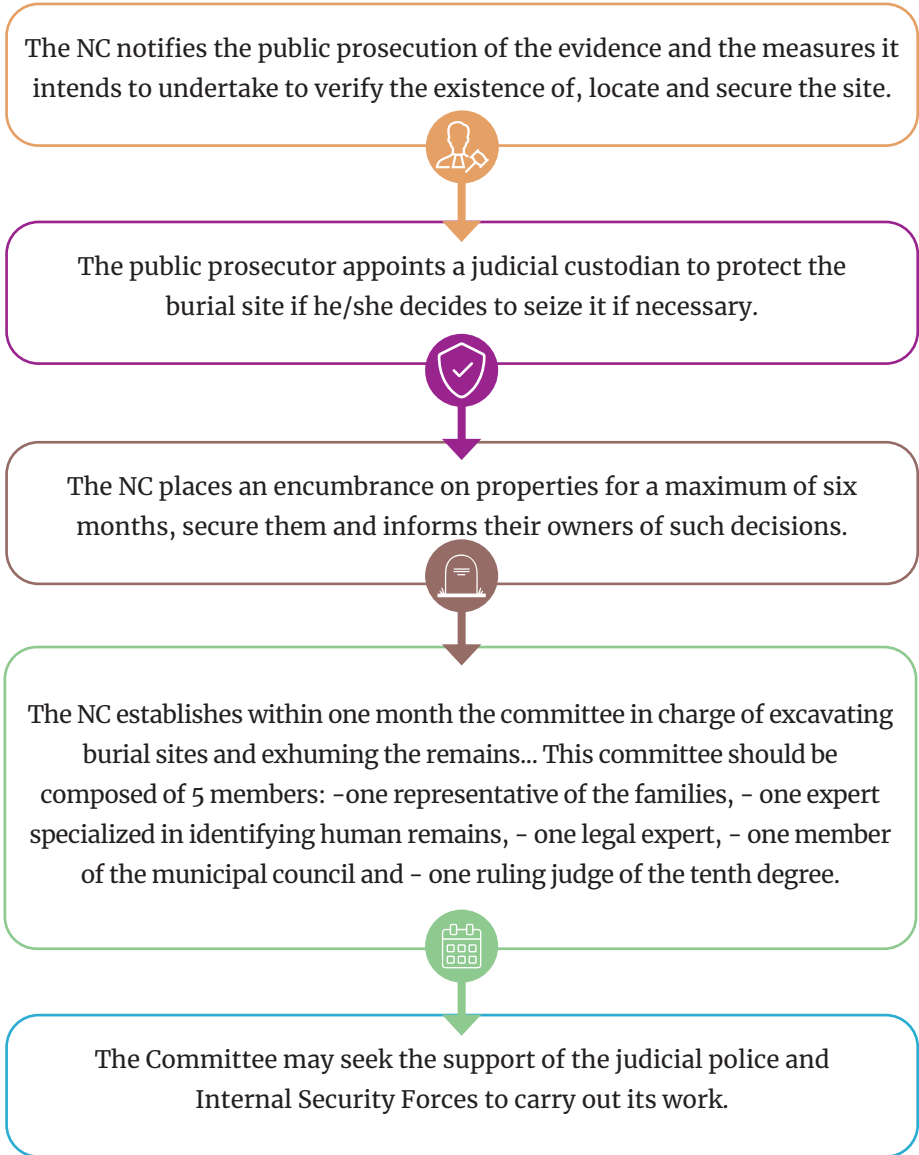


Non-Lebanese citizens in case:

- It is proven that the missing or forcibly disappeared person was a Lebanese resident.
- There is reliable data about their disappearance in Lebanon even if they do not hold a Lebanese residency permit.

<sup>6</sup> Articles 32, 33, 34, 35 and 36

#### 4. WHAT DOES THE COMMISSION DO WHEN THERE IS EVIDENCE ABOUT THE BURIAL SITES OF MISSING AND FORCIBLY DISAPPEARED PERSONS?<sup>7</sup>



<sup>7</sup> Articles 33, 34, 35 and 36



The Committee's mission consists of excavating burial sites and identifying human remains. Its activities include:

- Determining the scientific standards and investigation procedures that shall be followed upon the excavation of burial sites.
- Gathering data that would help in identifying human remains.
- Recovering and identifying buried human remains and belongings.
- Submitting reports about the Commission's work results.<sup>8</sup>



Law 105 also stipulates that the Commission shall be assisted by an Administrative Body, presided by a full-time director.<sup>9</sup> The structure of this body shall be further detailed in the Bylaws.

<sup>8</sup> Article 29 of Law 105

<sup>9</sup> Article 21

## 5. DOES THE COMMISSION HAVE ANY OTHER FUNCTIONS TO FULFILL?<sup>10</sup>

- Raise the awareness of the public about the humanitarian aspect of the missing and forcibly disappeared persons case and the suffering of their families.
- Inform the public about the investigation results and the facts that were used as proofs.
- Coordinate the efforts of local and international institutions and organizations committed to solving the cases related to missing and forcibly disappeared persons and sign agreements with them.
- Issue annual reports about the undertaken work.
- Mark the missing and forcibly disappeared persons' burial sites.

### Memorial Plaques

Families of missing and forcibly disappeared persons and the associations representing them have the right to request the marking of burial sites, whether individual or collective.

Municipalities must place a memorial plaque or mark on the burial sites and allow the set-up of memorial plaques, while taking into consideration the conditions set in the Book of Specifications on Memorial Plaques for the Missing and Forcibly Disappeared.

This book shall be agreed upon within two months from the implementation date of Law 105 submitted to the Council of Ministers for approval.



<sup>10</sup> Article 26

## VII- PUNITIVE PROVISIONS<sup>11</sup>

Offense	Sanction
<ul style="list-style-type: none"> <li>Inciting, participating or being involved in the offense of enforced disappearance.</li> </ul>	<ul style="list-style-type: none"> <li>Penal labor for five to fifteen years with a fine ranging between fifteen and twenty million Lebanese pounds.</li> </ul>
<ul style="list-style-type: none"> <li>Preventing access to information or obstructing the provision of information to family members or to the commissioners.</li> <li>Obstructing data provision.</li> <li>Intentionally delivering false information.</li> <li>Exposing any person to criminal liability, threatening them, or intimidating them, in any way, for the sole reason of their inquiry about a missing or forcibly disappeared person or their whereabouts.</li> </ul>	<ul style="list-style-type: none"> <li>Imprisonment for six months up to two years and a fine ranging between one and ten million Lebanese Pounds.</li> </ul>
<ul style="list-style-type: none"> <li>Tampering or excavating the burial site with the intention of destroying evidence that will determine the identity of the persons buried therein.</li> <li>Obstructing the work of the concerned authorities to search for and excavate burial sites or refusing to cooperate with them.</li> <li>The perpetrator knowing that the missing or forcibly disappeared person was still alive.</li> </ul>	<ul style="list-style-type: none"> <li>Imprisonment for one to three years and a penalty ranging between twelve and fifteen million Lebanese Pounds.</li> </ul>

<sup>11</sup> Articles 37, 38, 39 and 40 of Law 105.

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