

LEBANON

Failing to Deal with the Past

What Cost to Lebanon?

January 2014



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ICTJ

Justice
Truth
Dignity

Cover Image: On left: Ain El Remmaneh, Beirut, February 17, 1990. (Roger Moukarzel) On right: Special Tribunal for Lebanon. (STL) Top of map: Court room scene after four judges were assassinated in Saida, on June 8, 1999. (Annahar) Bottom of map: Children in Sin el Fil, 1989. (Roger Moukarzel) Design by Edward Beebe

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About the Authors and Contributors

Dima Smaira is a researcher based in Lebanon specializing in Lebanese politics and the study of conflict and security. She is a PhD candidate in international relations at Durham University (UK). She holds an MA in International Affairs from the Lebanese American University. Her areas of specialization include issues relating to human security, stability, conflict, and the transformation of security in Lebanon.

Roxane Cassehgari is a research assistant at ICTJ. She received her LL.M. from Columbia Law School, with a specialization in human rights, transitional justice, and international criminal law. She holds a dual law degree from Cambridge University (UK) and Panthéon-Assas (France).

International Center for Transitional Justice

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, ICTJ provides expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

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ACRONYMS

CDR	Council for Development and Reconstruction
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRP	Community Reconciliation Processes
DDR	disarmament, demobilization, and reintegration
FCLD	Committee for the Support of Lebanese Detainees in Israeli Prisons
HJC	High Judicial Council
HRC	High relief Commission
ICCPED	UN Convention on the Protection of all Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee for the Red Cross
ICTJ	International Center for Transitional Justice
IDP	internally displaced person
ISF	Internal Security Forces
LAF	Lebanese Armed Forces
LF	Lebanese Forces
LMAC	Lebanon Mine Action Centre
LNM	Lebanese National Movement
MoD	Ministry of the Displaced
NGO	nongovernmental organization
PLO	Palestinian Liberation Organization
SC	UN Security Council
SLA	South Lebanon Army
SOLIDE	Support of Lebanese in Detention and Exile
SOLIDERE	Société Libanaise pour le Développement et la Reconstruction de Beyrouth
STL	Special Tribunal for Lebanon
UN	United Nations
UNIIC	UN International Independent Investigation Commission
UNIFIL	UN Interim Force in Lebanon
UNRWA	UN Relief and Works Agency for Palestinian Refugees

Executive Summary

This paper examines the situation of impunity in Lebanon that has persisted since the 1975–1990 war. It highlights the price of the Lebanese authorities' failure to address the legacy of past conflict.

Lebanon's post-war transition has been flawed, partial, and largely ineffective. Despite statements from the Lebanese government regarding its commitment to international law, Lebanon has made no serious attempts to comply with its international legal obligations to pursue perpetrators of serious human rights violations or to address the rights and needs of victims, nor has it addressed the culture of impunity that has pervaded Lebanese society.

Successive Lebanese governments have adopted a politicized and selective approach to accountability that has marginalized victims and failed to respect their inalienable rights to truth, justice, life, liberty, and physical integrity. Through a policy of "state-sponsored amnesia," the government has endeavored to silence investigations and formal inquiries into the war, leaving political and social factions to compete over the dominant war narrative and victims without satisfactory answers as to what happened during the 15-year war.

Lebanese institutions have failed to provide impartial and effective service to victims of conflict and political violence. Its reparation program has been fraught with challenges as well as abuses and corruption. Having played a repressive political role in the immediate aftermath of the war, particularly in terms of quelling opposition to Syrian tutelage, Lebanon's security and justice sectors remain largely dysfunctional, being unable to fulfill the government's responsibility to provide equal access to justice, rule of law, and security.

Lebanon's flawed post-war transition has left communities segregated, allowing grievances to swell. A fragile peace based on consensual security and consisting of politically brokered containment of security incidents has so far withstood the numerous crises that Lebanon has faced since the end of the war. However, in the midst of intense regional instability, peace is increasingly under threat. Caught in the middle of regional confrontations, Lebanon has witnessed waves of instability and political violence that recall the prewar era and risk spiraling out of control.

Although in recent years the international community, through the United Nations and the donor community, has taken a proactive role in supporting Lebanon's stability, it has largely been unable to advance a culture of accountability. It has failed to fully respond to violations of international humanitarian law and human rights committed in Lebanon by domestic and international actors (including Israel and Syria) and proved incapable of actively and effectively supporting Lebanese institutions in charge of justice, rule of law, and security. Paradoxically, international and regional powers, by recently establishing mechanisms that reinforce the authority and capabilities of state institutions and pursue accountability for a limited number of serious crimes, have also played a role in fuelling tension between Lebanese factions that take opposing stances vis-à-vis these mechanisms.

This study recommends a holistic approach to crafting a comprehensive and victim-centered transitional justice process in Lebanon. An incremental approach to reform would be of value, given the likely challenges to pursuing accountability in the country. Programming must involve state and nonstate actors—political and community leaders, civil society, and the broader public. In addition, human rights champions need to be further supported, and the progress that local groups have made needs to be maintained and promoted. This is an arena open to both Lebanese and foreign stakeholders.

1. Introduction

Lebanon is a deeply divided country, carrying a long legacy of human rights violations. It suffered an internationalized war from 1975 to 1990 and persistent instability due to an array of domestic and external factors, including sectarianism and regional confrontations. For decades, Lebanon has maintained difficult relationships with its neighboring countries, as regional powers have attempted to use it as a pawn in their own power struggles.¹

The impact of the war on the Lebanese people has been significant. It is estimated that some 2.7 percent of the population was killed as a result of violence, 4 percent wounded (the overwhelming majority being civilians), 30 percent displaced, and about 33 percent have emigrated.² Further, 0.36 percent of the population was permanently disabled, and 0.75 percent forcibly disappeared.³ Serious human rights violations have included systematic and mass displacement, wide-scale killing, rape, torture, arbitrary detention, and enforced disappearance.⁴

The agreement that finally ended the 1975–1990 war, known as the Document of National Accord (or the Ta'if Agreement), established a power-sharing arrangement among the different warring parties. Negotiators attempted to achieve national unity by reshuffling the distribution of power.⁵

Given the massive scale of the war's destruction and the number of victims, the country needed to adopt a sweeping approach to justice and reform in order to transition successfully from war to peace. This should have included addressing the legacy of conflict and curbing impunity through a comprehensive transitional justice strategy, which typically encompasses prosecution, truth and memorialization, reparation, and institutional reform. These judicial and nonjudicial measures recognize the rights of victims and promote accountability while limiting a culture of impunity.⁶

Yet, at the conclusion of the war, there was no attempt to deal with its legacy. Rather, a flawed transitional process emanated from a consensus reached at Ta'if among the conflict's protagonists. This included a general amnesty, no truth seeking, mismanaged reparations, and incomplete institutional reform, all of which undermined prospects for justice and national reconciliation. Limits were placed

1 Internal allegiances and identities have served as proxies or extensions of transnational regional ones, and Lebanese minorities have sought to protect their position in the distribution of power by reaching out to foreign powers, thus facilitating outside intervention.

2 Boutros Labaki and Khalil Abou Rjeili, *Bilan des Guerres au Liban* (Paris: L'Harmattan, 1993) 37, 211–212. Government estimates differ. ICTJ, "Lebanon's Legacy of Political Violence: A Mapping of Serious Violations of International Human Rights and Humanitarian Law in Lebanon, 1975–2008" (New York: ICTJ, 2013).

3 Ibid.

4 Ibid.

5 Ta'if is available at www.un.int/wcm/content/lang/en/pid/1723

6 In 2004 the UN Secretary-General reported to the UN Security Council on rule of law and transitional justice, noting the important role that accountability and justice have in restoring the dignity of victims of serious abuses as well as in helping to create an environment that limits the prospects of recurrence of such violations: "Bringing to justice those responsible for serious violations of human rights and humanitarian law, putting an end to such violations and preventing their recurrence, securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation, re-establishing the rule of law and contributing to the restoration of peace."

on what matters could be brought to the public's attention, based on what former warlords viewed as unwarranted truths. This resulted in the denial of truth and justice for thousands of victims of the war. As noted by the late Sheikh Hussein Fadlallah, the price of Lebanon's approach to solving conflict—of leaving things in the past—has been to “la[y] the ground for all the violence that we see in Lebanon.”⁷

This report, one of three complementary publications produced by ICTJ as part of a two-year European Union-funded project, “Addressing the Legacy of Conflict in a Divided Society,” analyzes the persistent situation of impunity in Lebanon and its consequences through the lens and framework of the four pillars of transitional justice: prosecution, truth seeking, reparation, and institutional reform. The other publications include a mapping of serious violations of international human rights and humanitarian law in Lebanon and a study of the needs and expectations of people in Lebanon regarding dealing with the past. Together, these publications will serve as resources to support and inform debates about the past in Lebanon by civil society and policymakers alike.

In close coordination with a consortium of academics, civil society representatives, and victims' groups, ICTJ will develop these findings into a policy brief that outlines recommendations for dealing with Lebanon's past in a way that can support accountability, rule of law, and sustainable peace.

⁷ Author's extrapolation from criticism by the late Sheikh Hussein Fadlallah, a prominent spiritual guide to the Shiite community in Lebanon, regarding the General Amnesty Law, quoted in Marieke Wierda et al, “Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon.” *Journal of International Criminal Justice* 5 (2007): 1065–81.

2. Historical Context

The years leading up to Lebanon's 1975–1990 war were rife with socioeconomic and political upheaval. Domestic factors and the external dimension of the conflict (notably the Arab-Israeli conflict and the Palestinian armed presence in Lebanon) further polarized the Lebanese population, largely along sectarian lines.

Two main camps developed in the years before the war: 1) the right-wing Christian alliance, formed by the Lebanese Front and led by the Phalange party; and 2) the leftist Muslim alliance (the Lebanese National Movement (LNM)), led by Kamal Joumblat, head of the Progressive Socialist Party.⁸ The two camps took opposing stances on the Palestinian presence. The LNM saw it as an opportunity to align Lebanon with the pan-Arab Nasserite axis and bring about domestic reform.⁹ The Lebanese Front, however, saw it as a threat to both the status quo and a Westward-looking Lebanese identity, and as a trigger for Arab-Israeli conflict.

While confrontations between the Lebanese Armed Forces (LAF), the Palestinian Liberation Organization (PLO), and the main Lebanese protagonists intensified in the early 1970s,¹⁰ it was not until 1975 that polarization led to widespread fighting. The spark was ignited on April 13, 1975,¹¹ when members of the Democratic Front for the Liberation of Palestine (DFLP) fired on Phalange members as they left a church in the Beirut suburb of Ain al-Rummaneh; next, in what seemed to be a reprisal, gunmen fired on a bus heading to the Tall al-Zaatar Palestinian camp, killing 29 passengers. Soon after the “Ain al-Rummaneh bus incident,” fighting broke out between the two main factions and spread across Beirut. The next 15 years saw grave violence and human rights abuses that affected communities in every part of the country.¹²

The war unfolded in a number of stages, as actors multiplied and shifted alliances. Direct foreign intervention came from the Palestinian factions, Israel, and Syria. The UN Interim Force in Lebanon (UNIFIL) was deployed as a peace-keeping force south of the Litani River. Foreign sponsors and/or supporters included France, Iran, Iraq, Libya, Saudi Arabia, and the United States.

A political deal was brokered to end the war on October 22, 1989, when Lebanese members of Parliament gathered in the Saudi town of Tà'if to sign the Document of National Accord (or Tà'if Agreement).¹³ The agreement spelled out the terms of the postwar period and heralded the Second Republic. Numerous Lebanese involved in creating the agreement—many of them warlords—sought to turn the page on the war, but in a way that neither incriminated them nor revived old animosities.

8 Fawwaz Traboulsi, *A History of Modern Lebanon* (London and Ann Arbor, MI: Pluto Press, 2007), 176.

9 Egyptian President General Gamal Abdel Nasser was the most prominent proponent of leftist Arab nationalism and the nonaligned movement during the Cold War.

10 A series of clashes between the Palestinian *Fida'iyyin* and the Lebanese army started in 1968. *A History of Modern Lebanon*, 153.

11 For further information on the war, see ICTJ, “Lebanon’s Legacy of Political Violence,” 2013. See also Traboulsi, *A History of Modern Lebanon* or Samir Kassir, *La Guerre du Liban : De la dissension nationale au conflit régional* (Paris: Karthala, 1994).

12 ICTJ, “Lebanon’s Legacy of Political Violence.”

13 The agreement was ratified on November 5, 1989, but General Michel Aoun, then interim prime minister, refused the terms. The war continued until his defeat by Syrian troops on October 13, 1990. He then was exiled to France for 15 years.

The Ta'if Agreement catalyzed many significant political shifts. A number of provisions stipulated better representation in government for Lebanon's sectarian groups and reinforced power-sharing, state authority, and national unity. Constitutional amendments were subsequently adopted to adjust the balance of power, with most militias demobilized. However, this study demonstrates that the process was flawed, selective, and incomplete.

As far as victims' rights were concerned, the agreement only touched on the return of the displaced and conditions for amnesties. For instance, with the exception of the forcibly displaced,¹⁴ Lebanese authorities paid little—if any—attention to the missing, disappeared, and injured or their families, or to the psychosocial effects of the war on the wider population.¹⁵ To appease factional leaders, Ta'if disregarded the general rights of victims and their families, forcing civilians to accept postwar parity with aggressors. It rewarded warlords with cabinet positions and provided some 8,000 militia fighters with positions in the security forces or the civil administration.¹⁶

The signing of Ta'if did not reclaim Lebanon's territorial integrity. Syrian forces, which first entered Lebanon in 1976, remained until April 2005. Under Syrian tutelage,¹⁷ Lebanese security forces clamped down on any opposition to the Syrian presence. Israel, after its 1978 and 1982 invasions of Lebanon, occupied parts of the south until May 2000, with the assistance of its proxy, the South Lebanon Army (SLA).¹⁸ Even in the postwar period, Lebanon continued to be vulnerable to instability, as it served as a proxy for regional and international showdowns.

Further, Ta'if did not curb one of the root causes of the conflict: sectarianism. This has been a key factor in institutional weaknesses that prevent the provision of impartial, efficient, and effective public services. The continuation of sectarian politics in the postwar era has held back national unity, as political and religious leaders have used sectarian divisions to maintain their privileges and their hold on power. The consequences of this partisan approach to peace making have pervaded every aspect of Lebanese life.

Similarly, Ta'if did not incorporate a gender perspective in its process or its content, despite the occurrence of gender-specific violence throughout the war, thus missing an opportunity to bring about institutional, political, and social change. This entrenched Lebanon's broader patriarchal and sectarian traditions. Sectarianism also has hindered progress in women's rights, partly because religious courts have a monopoly over family matters—with each recognized sect having its own laws and regulations.¹⁹ As a result, draft laws on issues such as violence against women and granting spouses citizenship have been blocked in Parliament.²⁰

14 Most were from Mount Lebanon (particularly Chouf). See also section 6, Reparations.

15 For this reason, Lebanese human rights jurist Nizar Saghieh notes that Ta'if "dealt with the victims from a purely political angle, reflecting a settlement between the different communities." In Saghieh, *Families of the Disappeared in the face of policies of silence and denial: what doors to transport their demands to the Judiciary?* (Beirut, ICTJ Publication: al-Matba'a al-'Arabiya, 2012), 12.

16 Dima De Clerck, "Ex-Militia Fighters in Post-War Lebanon," in Elizabeth Picard and Alexander Ramsbotham, eds. *Reconciliation, Reform and Resilience. Positive Peace for Lebanon* (London: Conciliation Resources, 2012), 24.

17 Syrian tutelage, or *Pax Syriana*, began in 1987 with Syrian forces reentering West Beirut; it was later institutionalized by Ta'if and the Treaty of Brotherhood, Cooperation and Coordination of 1991. See, for example, Ta'if III-second (D): "The Syrian forces shall thankfully assist the forces of the legitimate Lebanese government to spread the authority of the State."

18 Since the end of Lebanon's war, Israel and Hezbollah have engaged in a protracted conflict. On July 25, 1993, Israel led operation "Accountability," a seven-day war in retribution for Hezbollah attacks against Israeli and SLA targets in south Lebanon. Between April 11 and 26, 1996, Israel led operation "Grapes of Wrath," causing civilian casualties as a result of air raids against the UNIFIL Fijian battalion and other targets; mass displacement; and a naval blockade of Lebanon's Beirut, Sidon, and Tyre ports. Further, from December 1998 to May 5, 2000, prior to the Israeli withdrawal, numerous raids and low-intensity cross fires incurred civilian casualties and the destruction of civilian infrastructure, such as power stations, mobile telephone stations, and bridges. Finally between July 12 and August 13, 2006, Israel and Hezbollah fought another devastating war—the 33 days war. However, some parts of south Lebanon remain under Israeli occupation. See ICTJ mapping report for violations committed during these conflicts.

19 For example, marriage, divorce, adoption, and domestic violence disputes fall under the jurisdiction of religious courts, which resist civil encroachment. Moreover, women's issues are secondary to concerns of maintaining a sectarian balance. For example, granting nationality to a Lebanese woman's spouse or child who is Palestinian is perceived as facilitating plans for the naturalization of Palestinian refugees and, therefore, threatening the sectarian balance of power.

20 Although Lebanese women gained the right to vote in 1953 and many have been fierce advocates of social change, progress in terms of women's rights has been limited. Since independence, only 17 women have served in Parliament. Further, although the Association of Banks in Lebanon began allowing Lebanese women to independently open bank accounts for their minor children in 2009, only a few private banks have since adopted this policy.

3. The Legal Framework

Impunity through the lens of international law and transitional justice

This paper considers impunity not simply in the narrow sense of punishment of individual perpetrators, but also in regard to the broader notion of accountability, following the approach developed since the Joint Principles.²¹ This approach found its fullest expression in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the Guidelines), which the UN General Assembly adopted by consensus in 2005.²² The Guidelines, as the preamble to the resolution make clear, did not create new law but rather reflected the state of international law at the time. The focus of the resolution is on providing guidance to countries on procedures they can follow to best fulfill their obligations to victims and society when there has been a serious breach of human rights.

The Guidelines set out what has become a familiar array of methods by which the right to remedy and reparation might be guaranteed. These measures are synonymous with the ideas and procedures that are now commonly accepted as the four pillars of transitional justice: criminal justice, truth seeking, reparations, and institutional reform. However, while this paper relies on the same legal basis as the Guidelines, it maintains a more traditional division of themes in transitional justice and treats the issues of criminal justice and the right to truth separately, instead of as parts of reparation. At the same time it is worth noting the valuable service the Guidelines do in regrounding the practice of transitional justice, not merely as a policy framework (which it is), but in the context of rights and duties under international law. These are not simply aspirational rights but rights recognized by states as clearly established under law. Therefore, as follows, the key elements of transitional justice are couched in corresponding legal rights and obligations, which help frame the discourse within the language of international law and state responsibility.

The principle of accountability

A victims' right to an effective remedy and reparation, as set out in the Guidelines, is strongly tied to the principle of accountability. International law increasingly recognizes that perpetrators of gross human rights violations and international crimes (war crimes and crimes against humanity) must be held accountable for their actions. The Guidelines and the UN Commission on Human Rights' Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity have both confirmed that such violations must be the object of independent, impartial investigations.²³ Only then can the right of remedy truly be fulfilled.

21 Joint Principles, E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997.

22 See www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx

23 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 4: "In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him." Updated Set of Principles, Principle 19, 2005: "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished."

In line with the duty to prosecute, the UN has consistently affirmed the inadmissibility of blanket amnesties.²⁴ This position draws its legitimacy from several sources in international law that require states to prosecute perpetrators of the most egregious violations, namely:²⁵ genocide, war crimes, and crimes against humanity. Although there is not a treaty that clearly articulates the illegality of amnesties, it should follow that amnesties for these types of violations are impermissible under international law. As such, the international community should not be bound to respect them.²⁶

Victims' rights to an effective remedy and reparations cannot be sacrificed, therefore, for the immediate purpose of sealing national reconciliation; nor can this justification abridge victims' or society's right to know the truth about violations. Past lessons from history have shown that amnesties in the context of atrocious crimes are unlikely to be sustainable.²⁷ The resulting impunity is an invitation for more abuse and most often a proclamation of victor's justice. Unsatisfied and unremedied parties prolong the climate of hostility, which in turn can revive the root causes of a conflict.

The duty to prosecute

The duty to prosecute stems from several instruments of international law.²⁸ These sources all converge to create an international obligation for states to investigate and prosecute alleged perpetrators of international crimes. The duty to prosecute is an essential element of enforcing a victim's right to an effective remedy. In this respect, criminal law is the most significant expression of a state's commitment to human rights values in that it condemns and denounces conduct in violation of universally recognized rights.²⁹ Beyond deterrence and retribution, the duty to prosecute is, therefore, grounded in the importance of rebuilding a society respectful of the rule of law and restoring public trust in state institutions.

24 See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Rule-of-Law Tools for Post-Conflict States: Amnesties* (New York and Geneva: OHCHR, 2009), 27.

"United Nations officials, including peace negotiators and field office staff, must never encourage or condone amnesties that prevent prosecution of those responsible for serious crimes under international law, such as war crimes, genocide and crimes against humanity, or gross violations of human rights, such as extrajudicial, summary or arbitrary executions; torture and similar cruel, inhuman or degrading treatment; slavery; and enforced disappearance, including gender-specific instances of these offences, or that impair victims' right to a remedy, including reparation, or victims' or societies' right to the truth."

25 *Ibid.*, 11. "A number of widely ratified international human rights and humanitarian law treaties explicitly or (have been interpreted) to require States parties to ensure punishment of specific offences either by instituting criminal proceedings against suspected perpetrators in their own courts or by sending the suspects to another appropriate jurisdiction for prosecution." See the complete list in note 28. This suggests that an amnesty for this type of violation would contravene the corresponding treaty. International jurisprudence suggests that amnesties for gross violations of human rights and serious violations of humanitarian law also violate customary international law. For instance, International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Anto Furundžija*, has stated an amnesty for acts of torture would be internationally unlawful. (Case No. IT-95-17/1-T, Judgment of December 10, 1998, para. 155).

26 See OHCHR, *Rule of Law Tools*, 2009.

27 For instance, amnesty laws passed in Argentina and Chile in the 1980s did not lead to more democratic, peaceful societies. On the contrary, since Argentina annulled the amnesty law in 2003 and Chilean courts decided to interpret the law more narrowly, both countries have become models for uninterrupted democracies in the continent. *Ibid.*, 2, referencing Kathryn Sikkink and Carrie Booth Walling, "The impact of human rights trials in Latin America," *Journal of Peace Research*, 44, No. 4 (2007): 427.

28 The Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Geneva Conventions (but only for crimes that constitute "grave breaches"); the International Covenant on Civil and Political Rights; the European Convention for the Protection Human Rights; the American Convention on Human Rights; and the African Charter on Human and People's Rights. Humanitarian law also contains a duty to prosecute (First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146, Common article 3 for non international armed conflict). International bodies like the Human Rights Committee and the European and the Inter-American Courts of Human Rights have all interpreted and reaffirmed the duty of investigation and prosecution. See for instance, Human Rights Committee, general comment No. 31, 2004, on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18; Inter-American Court of Human Rights, *Almonacid-Arellano et al. v. Chile*, Judgment of 26 Sept. 2006, para. 114. Customary international law also started developing with cases of crimes against humanity and war crimes tried at Nuremberg and other trials after World War II. Although the Rome Statute does not itself impose a duty to prosecute, preamble 6 of the statute does recall states' duty to punish perpetrators of international crimes. The complementarity jurisdiction of the ICC also presupposes that states must prosecute, otherwise the ICC would step in.

29 In terms of a jurisdictional competence, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that trials of perpetrators of human rights violations should be the competence of ordinary civilian courts rather than military tribunals. See Updated Set of Principles, Principle 29.

The right to truth

Although the right to truth has not received a specific legal recognition through any treaty,³⁰ national courts, international judicial bodies, and international institutions like the UN have all recognized that states have an obligation to investigate and inform victims or their families of violations of the right to life and physical integrity.³¹ Most early developments of the right to truth relate to enforced disappearances,³² even though it is increasingly admitted for other gross violations of human rights and international crimes.

A victim's right to an effective remedy and reparation of gross violations of human rights and serious violations of international humanitarian law includes the right to know the truth about the abuses suffered, the identity of perpetrators, and the causes of such violations.³³ The right to know also extends to the families of victims.³⁴

While the core elements of the right to the truth are well established, it continues to evolve and now encompasses a large array of subsumed rights.³⁵ The right to truth goes beyond the procedural guarantees required to uphold the right to remedy. The value of truth is exemplified by its healing function in restoring personal dignity to victims, often after years of stigmatization. Establishing the truth about what happened and who is responsible for serious crimes can also initiate a process of reconciliation through a better understanding of the causes of past abuses, with the goal of preventing their recurrence. A political order based on transparency and accountability is more likely to enjoy the trust and confidence of residents and citizens. Conversely, denial and silence are conducive to mistrust and social polarization.

The right to the truth can be achieved through both judicial and nonjudicial measures. When a supporting criminal law system is lacking, nonjudicial measures may be required. Truth commissions and other nonjudicial commissions of inquiry have been the most common examples of nonjudicial measures.³⁶

The right to reparation

The Joint Principles and the Guidelines outline the right to reparation as comprising a subset of measures: restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.³⁷ Each form of reparation is complementary and should be implemented according to the individual situation of victims, the scale and gravity of the violence, and the progressive capacity of the state to redress past abuses.

30 The source of the right to truth is open to debate. As stated, it can be categorized under the right to an effective remedy and the right to due process. It can also be seen as an autonomous right, independent of or in addition to these other rights. Indeed, the Additional Protocol I to the Geneva Conventions and the International Convention for the Protection of all Persons from Enforced Disappearances (ICCPED) explicitly endorse the right to know certain facts. Gonzales and Varney, *Truth Seeking*, 2013, 4.

31 The Inter-American Human Rights system has been adamant in recognizing the right that victims, their relatives, and society as a whole have to truth. See Velásquez Rodríguez v Honduras case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Barrios Altos Case, Inter-Am.Ct.H.R. (Ser. C) No. 75 (2001). Courts in Colombia, Peru, and Argentina have followed the evolution and endorsed the right to truth along the same lines. Gonzales and Varney, *Truth Seeking*, 2013, 5. The UN General Assembly also recognized that the international community should "endeavor to recognize the right of victims of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable." UN Human Rights Commission, Human Rights Resolution 9/11 (2008).

32 The International Convention for the Protection of all Persons from Enforced Disappearances (ICCPED) is the only treaty that explicitly recognizes a right to know the truth regarding the circumstances of enforced disappearances, the progress and results of investigations, and the fate of disappeared persons. It also imposes on state parties the duty to provide restitution and guarantees of nonrepetition.

33 They include the right to an effective investigation, verification of facts, and public disclosure of the truth. Eduardo Gonzalez and Howard Varney, ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission* (New York: ICTJ, 2013), 3.

34 *Ibid.*, 3.

35 These include the right of relatives and communities to commemorate and mourn human loss in forms that are culturally appropriate and dignified, the state's duty to preserve documentary evidence for commemoration and remembrance, and guaranteeing adequate access to archives with information on violations. The right can also be seen as an extension of freedom of information and freedom of expression. Finally, the prohibition against granting amnesty for serious violations and international crimes relates to the right to truth insofar as it urges verification and disclosure of these facts. Gonzalez and Varney, *Truth Seeking*, 2013, 3.

36 For instance Guatemala and Brazil have justified the establishment of a truth commission by the explicit recognition of their citizens' right to the truth. *Ibid.*, 5.

37 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/14716, December 2005, IX, 18.

While restitution aims to restore victims to a condition akin to their situation prior to the violation (*restituto ad integrum*), compensation and rehabilitation become relevant whenever such restoration is impossible or insufficient.³⁸ In concrete terms, restitution typically will take such forms as the return of displaced victims to their original homes or the recovery of lost property, as well as the recovery of individual rights and liberty for all victims. In contrast, compensation, usually provided in the form of money, is given to victims for economically assessable damages. Specifically, monetary compensation repairs physical and moral harm and economic or material damages that are intrinsically more permanent and hardly replaceable. Similarly, rehabilitation addresses the overall well-being of victims through psychosocial and medical care.³⁹

Satisfaction comes at the end of the reparation spectrum, envisaged as a much broader category that encompasses all other measures that recognize the plight of victims and grants them a place and status in society.⁴⁰ For this very reason, satisfaction embraces the notion of reconciliation, which lies at the heart of transitional justice. Additionally, it is often associated with the right to know the truth. Typical measures will include public apologies, recognition of responsibility, commemorations, and historical accounts that build a collective memory to be passed on to successive generations.

The duty to ensure nonrecurrence

Guarantees of nonrepetition complete the cycle of transitional justice measures. Nonrepetition, or nonrecurrence, is the ultimate objective to guaranteeing that victims' rights are fully implemented in the long term. Transitional justice not only intervenes as an immediate relief but also purports to create a new, sustainable foundation for a society committed to the rule of law and democratic values. Institutional reforms, vetting of former perpetrators from state institutions, an independent judiciary, and reinforcement of the security sector are among the measures designed to rebuild a society riven with widespread human rights abuses.⁴¹

Similar to other transitional justice tools, it is incumbent on the state to actively reconstruct society. However, the corresponding duty to ensure nonrecurrence is all the more significant because it requires the state to assess and remedy its own responsibility for past abuses. The duty to ensure nonrecurrence recognizes victims' rights and integrates them as an essential component of the state's new institutional framework.

Domestic legal framework

Lebanon has clear obligations to address impunity, arising from its duties to ensure an effective remedy and associated duties to prosecute, reform institutions, prevent recurring violations, provide reparations, and ensure that victims and society know the truth about violations that have taken place.

According to its constitution, Lebanon is "an active and founding member of the United Nations and abides by its covenants and by the Universal Declaration of Human Rights."⁴² Lebanon is party to a number of international treaties that require accountability for serious human rights violations and international crimes.⁴³ More recently, Lebanon signed the UN Convention on the Protection of All Persons from Enforced Disappearance (ICCPED) and thus should refrain from taking any action inconsistent with the purpose of that treaty.⁴⁴ While successive Lebanese governments have reiterated their commitment to these standards, they have failed to guarantee the rights therein.

38 *Ibid.*, IX, 18, 19, 20.

39 *Ibid.*, IX, 21.

40 *Ibid.*, IX, 22.

41 *Ibid.* See also Paul Seils, ICTJ, "Towards a Transitional Justice Strategy in Syria," September 2013, outlining transitional justice and giving the main lines of what institutional reform involves: vetting state institutions, security and justice sector reform, restoring rule of law, etc.

42 Lebanese Constitution (1926), Preamble (b) and Ta'if Agreement (1989), General principles (B).

43 Lebanon became a party to the Convention against Torture or Other Cruel, Inhumane or Degrading Punishment or Treatment in 2000; the International Covenant on Civil and Political Rights (ICCPR) in 1972; Protocol I of the Geneva Conventions in 1997; the Convention on the Rights of the Child (CRC) in 1991; International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1972; and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997 (with reservations).

44 Lebanon acceded to ICCPED in 2007 but has yet to ratify.

4. Prosecutions

By opting to favor a political agreement between opposing parties and promulgating amnesty laws, Lebanon barred the possibility of pursuing criminal accountability for war-related violations. In so doing, Lebanon not only missed an opportunity to provide justice to victims, but also to document the events of the war and understand the conflict's differing accounts.

In the absence of state prosecutions, victims and their families have made several attempts to use domestic courts to pursue justice for serious human rights violations committed during the war, but to no avail. In part, the Lebanese judiciary has been reluctant to pursue prosecutions due to a lack of independence and enforcement capabilities.

Amnesty laws have had dramatic negative consequences for guaranteeing victims' rights. The judiciary has been unable to provide equal access to nonpartisan justice and thus has deprived victims of meaningful routes to accountability. The Justice Council,⁴⁵ for example, is not known for efficiency.⁴⁶ Two massacres that took place in Mount Lebanon—in the villages of Bmaryam and Kfarmatta—were referred to the Justice Council in 1989; however, no verdict was reached in either case.⁴⁷ Impunity has also thrived under the influence of international actors and their failure to support the rights of victims. Former military prosecutor Assad Germanos's investigation of the Sabra and Shatila massacres⁴⁸ found that there was insufficient evidence to suggest that the command of the Lebanese Forces (LF)⁴⁹ or the Phalange party had previous knowledge of the attacks or had ordered them.⁵⁰

4.1 Amnesty Laws

The Ta'if Agreement of 1989 was followed by the General Amnesty Law passed by Parliament on August 26, 1991,⁵¹ which pardoned all political crimes committed prior to March 28, 1991. Presi-

45 The Justice Council tries criminal cases pertaining to national security threats; it only receives cases referred to it by the Cabinet of Ministers, and its decisions cannot be appealed.

46 The Justice Council has been referred to as the "cemetery of cases." *An-Nahar*, "The Cemetery of Sentences: Information International counts 160 cases submitted to the Justice Council," July 15, 2012, 5.

47 In September 1983 at the start of the "War of the Mountain," Bmaryam and Kfarmatta (among others) were scenes of massacre of, respectively, Christian and Druze families. Aside from the Justice Council's failure to pursue these cases, the postwar Ministry of Displaced's (MoD's) reparation program required all families to relinquish lawsuits. Kanafani-Zahar, *Liban*, 2011, 29.

48 Between September 16 and 18, 1982, following the assassination of president-elect Bachir Gemayel (head of the Phalange party and commander of the Lebanese Forces or LF), the Israeli Defense Force—the occupying force at the time—allowed LF and Phalangist combatants to enter the Palestinian refugee camps of Sabra and Shatila and massacre hundreds (possibly thousands) of men, women, and children.

49 In June 1976, Lebanese right-wing Christian militias launched an attack on the Palestinian camps of Tall al-Zaatar and Jisr el-Basha. Following the attack, a number of these militias came together under the command of Bachir Gemayel (son of Phalange party founder Pierre Gemayel) to form the LF. In its efforts to fight Palestinian factions and their Lebanese allies in the Lebanese National Movement (LNM), the LF allied with Israel. The LF would become a central actor in Lebanon's 1975–1990 war.

50 An Israeli commission was set up to investigate the events: the Kahan Report of 1983 assigned direct responsibility to the Phalange party and indirect responsibility to Israel (including Minister of Defense Ariel Sharon). Linda A. Malone, "The Kahan Report, Ariel Sharon and the Sabra-Shatilla Massacres in Lebanon: Responsibility under International Law for Massacres of Civilian Populations," *Utah Law Review*, No. 373 (1985), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2168387

51 Law No. 84 of August 26, 1991, Granting General Amnesty to Crimes Committed before March 28, 1991 (Beirut: Dar al-Manshourat al-Houquouqiya-Matbaat Sader, Vol. 3), 3532.

dent Elias Hrawi stated that giving factional leaders and their fighters a clean slate was necessary for peace.⁵²

However, the law undermined accountability for past grave violations.⁵³ The amnesty protected perpetrators of egregious violations of inalienable and nonderogable human rights and established discriminatory and unequal legal protections based on status—as violations against “ordinary” citizens could not be prosecuted. Article 3.3 exempted acts against political and spiritual leaders, foreign diplomats, or those referred to the Justice Council. Article 2.3 of the amnesty law, however, stipulated that continuing crimes and crimes repeated by perpetrators after the date of the promulgation of the law rendered the amnesty null.

Following Syria’s withdrawal from Lebanon in 2005, a reconciliatory atmosphere spread across Lebanon and an opportunity arose to address the legacy of the war. General Michel Aoun returned from exile in France, and LF leader Samir Geagea—previously convicted of four assassinations, including that of former Prime Minister Rachid Karamé—was granted special pardon under Law No. 677 of July 19, 2005.⁵⁴ To maintain a sectarian balance, as Geagea was a Maronite Christian, members of Parliament accepted and signed another amnesty for the Sunni Dinnieh and Majdal Anjar Group. This Islamic militant group had clashed with Lebanese Armed Forces from December 1999 to January 2000, leaving 14 soldiers and 24 militants dead. These two amnesties represent the persistence of the culture of impunity in Lebanon.

4.2 Excluding SLA Members from Amnesties

Following its 1978 invasion of Lebanon, Israel had established a “security zone” south of the Litani River, and put the SLA in charge of it;⁵⁵ it also ran the Khiyam Detention Centre. Following Israel’s withdrawal from Lebanon on May 24, 2000, SLA members either fled to Israel, surrendered, or were arrested by Lebanese security forces. Soon after, some 2,000 SLA militia members were tried for collaborating with Israel. These trials, averaging seven minutes per person, delivered sentences ranging from several weeks in prison to the death penalty, depending on the individual’s level of responsibility within the SLA. These summary trials gave reason to question the fairness of the proceedings and the sentences delivered.⁵⁶

Another problematic aspect has been Lebanese refugees living in Israel. Fearing retribution, hundreds of Lebanese families who had lived under or collaborated with the Israeli occupation fled to Israel.⁵⁷ Through an initiative led by the Free Patriotic Movement, the Lebanese Parliament passed a law in November 2011 that recognized the right of these families to return home, though SLA members and those who had collaborated with Israel would still have to face trial. This law spurred resentment from some families who felt they were not granted the same concessions (amnesty) as other warring factions and that their continued stigmatization as “collaborators” was unjust.⁵⁸ Phalange MP Sami Gemayel led

52 Kanafani-Zahar, *Liban*, 2011, 90.

53 See above, the principle of accountability in the legal framework.

54 Lebanese Forces had considered the Geagea trials unfair. Amnesty International corroborates accusations of unfairness related to unfair proceedings, detention, and conditions of imprisonment. Amnesty International, “Lebanon. Samir Geagea and Jirjis al-Khoury: Torture and unfair trial,” November 2004, 2, www.amnesty.org/en/library/info/MDE18/003/2004

55 The South Lebanon Army (SLA)—known as the Free Lebanon Army before 1980—was a splinter group of the Army of Free Lebanon that broke away from the regular armed forces in 1976.

56 Time is an essential component of the right to a fair trial. See Article 9 of the ICCPR: “Anyone arrested or detained on a criminal charge . . . shall be entitled to trial within a reasonable time.” Amnesty International dismissed the SLA trials as “travesties of justice.” Amnesty International, “Lebanon: Guilt and Innocence Blurred in Summary Trials,” June 22, 2000, www.amnesty.org/en/library/asset/MDE18/010/2000/en/f2a4d3e6-dedd-11dd-b263-3d2ffbc55e1f/mde180102000en.html

57 The plight of these families has been discussed by spiritual and political leaders. The 2008 Ministerial Declaration pledged to address the issue of Lebanese refugees in Israel. Following the political violence of May 2008, the March 8 and March 14 movements (main political factions in Lebanon) met in Qatar and signed the Doha Accord as the basis of their reconciliation. The declaration that followed pledged to address the situation of Lebanese refugees in Israel and all of the Lebanese who were disappeared after 1975—including those in Syria.

58 Some Lebanese families in Israel threatened to resort to “international courts to demand amnesty and to guarantee [their] financial and moral rights if [their] repatriation did not take place in an honorable way” (emphasis added). “Lebanese in Israel give Mikati Cabinet ultimatum: report,” (Beirut) *Daily Star*, November 8, 2011, www.dailystar.com.lb/News/Politics/2011/Nov-08/153344-lebanese-in-israel-give-mikati-cabinet-ultimatum-report.ashx#ixzz2LpQyJ3SL

a subsequent campaign focusing on the selective nature of the amnesty laws. Speaking for some 6,500 Lebanese SLA members and their families, he proposed a draft amnesty law for all Lebanese who had found refuge in Israel.⁵⁹ This initiative received little attention, however; thousands of Lebanese had already returned to Lebanon, and former SLA members as well as other collaborators had already been sentenced by the military court.

4.3 Trying Cases of Enforced Disappearance in Lebanese Courts

Civil society groups have tried to invoke Article 2.3 of the General Amnesty Law to urge Lebanese authorities to investigate and disclose the fate of victims of enforced disappearance.⁶⁰ Indeed, enforced disappearance is considered an “ongoing crime” until the victim or the victim’s remains are found.⁶¹ According to the Centre Libanais des Droits Humains (Lebanese Center for Human Rights or CLDH), only 10 lawsuits relating to the disappeared have been filed in Lebanon.⁶² The judiciary has considered and issued verdicts in only two cases; one culminated in a reduced sentence of three years (December 2001),⁶³ and the other acquitted three men accused of kidnapping (September 2013).⁶⁴

Several factors contribute to the judiciary’s incapacity and unwillingness to provide justice to victims of enforced disappearance and their families. Given the lack of definition in the Lebanese Penal Code for “ongoing and repeated crimes,” judges have been reluctant to include enforced disappearances as exceptions to the General Amnesty Law under this category.⁶⁵ Further, judges often face interference by politicians or are themselves part of poles of influence.⁶⁶ As a result, although a number of individual judges have ruled in favor of the plaintiffs, the Lebanese judiciary has been largely unable or unwilling to consider cases of enforced disappearance under the provision of ongoing crimes.⁶⁷ The general prosecutor has instead recalled the importance of maintaining civil peace as weighing against considerations of justice.⁶⁸

4.4 Minimal Action in Holding International Actors Accountable

Like domestic actors, neither Israel nor Syria has been asked to account for violations committed by their agents during their presence and operations in Lebanon. Aside from establishing UNIFIL as a peacekeeping force,⁶⁹ the UN Security Council (SC) has not taken strong action in response to the many grave violations committed by various parties during and after the country’s internationalized war.⁷⁰

59 This law would grant a one-year window for Lebanese refugees living in Israel to benefit from the amnesty, stipulating that all sentences be repealed and prosecutions halted, but maintaining the right for legal action to be taken before civilian courts. “Gemayel Drafts Amnesty Law for Israel Refugees.” (Beirut) *Daily Star*, November 25, 2011, www.dailystar.com.lb/News/Politics/2011/Aug-25/Gemayel-drafts-amnesty-law-for-Israel-refugees.ashx#axzz2KsPwmyO

60 Article 2.3 of the Amnesty Law stipulated that continuing crimes and crimes repeated by perpetrators after the date of this law rendered the amnesty null.

61 See Working Group on Enforced or Involuntary Disappearances, General Comment N. 9 on Enforced Disappearance as a Continuous Crime.

62 The Centre Libanais des Droits Humains (CLDH) notes that families are often reluctant to file lawsuits against individuals because of fear of reprisal, lack of information as to the exact identity of the kidnappers, or low expectations in the judiciary. CLDH, “Lebanon: Enforced Disappearance and Incommunicado Detentions” (Beirut: CLDH, 2008), 36.

63 This was the case of Ratiba Dib Fares accusing Hussein Muhammad Hatoum of kidnapping her son in 1982.

64 This refers to the kidnapping of Mehyeddine Hachichou. In this case, the lawsuit was filed in March 1991, and the verdict was issued 22 years later in September 2013. E-mail correspondence with Wedad Halawani, president of the Committee of Families of the Kidnapped and Disappeared in Lebanon.

65 Saghieh, *Families*, 2012, 15.

66 Words of Parliament Member Butros Harb (2002). Suleiman Takieddine, “An Independent Judiciary for a Better Justice.” In Nawaf Salam, ed., *Options for Lebanon* (London and New York: I.B. Tauris, 2004), 24.

67 Aida Kanafani-Zahar mentions one judge admitting not being able to effectively pursue the case and enforce the sentence; CLDH refers to cases that were thrown out and to Hachicho’s case, which was excessively delayed (22 years). Kanafani-Zahar, *Liban*, 2011, 99; CLDH, *Lebanon*, 2008, 36–38.

68 This is the general-prosecutor’s justification for considering crimes of enforced disappearance as falling under the General Amnesty. The concern “to maintain civil peace” as quoted by Saghieh, *Families*, 2012, 16.

69 The UN Interim Force in Lebanon (UNIFIL) was first established in 1978 after Israel’s invasion of Lebanon. It is mandated with monitoring the Blue Line between Lebanon and Israel (still contested by Lebanon). It was not until 2006 that UNIFIL’s mandate was expanded in Resolution 1701 following the Israel-Hezbollah war. Over the years criticism has revolved around its weak and narrow mandate. See Susan Sachs, “Weak UN mandate stalls UN peacekeepers,” *Christian Science Monitor*, August 23, 2006, www.csmonitor.com/2006/0823/p01s03-wome.html.

70 For a discussion of the legal classification of and the responsibility for serious violations of international humanitarian and human rights law committed in Lebanon, see ICTJ, “Lebanon’s Legacy of Political Violence,” 2013, 123–29.

Following the 1982 Israeli invasion of Lebanon, a UN commission did find that Israel's actions during the invasion were "largely incompatible with the Geneva Conventions of 1949."⁷¹ It also found that Israel, as the occupying power, shared responsibility with the Lebanese militia over the Sabra and Shatila massacre.⁷² However, these matters cannot be brought before domestic courts, due to the amnesty law, or the International Criminal Court, because the events in question took place before the Rome Statute took effect. Attempts to prosecute under extraterritorial jurisdiction provisions have also failed.⁷³

Reports of wide violations of international humanitarian law committed in the aftermath of the war, such as during the 1996 Qana massacre and the 2006 Israeli war with Hezbollah, have been largely ignored.⁷⁴ In 2006 the Human Rights Council strongly condemned grave violations that Israel had committed in Lebanon;⁷⁵ however, such statements have not translated into action.

4.5 The Special Tribunal for Lebanon

The assassination of Lebanese PM Rafiq Hariri on February 14, 2005, prompted uneasy but relatively swift developments by the international community. The SC passed Resolution 1595, establishing the International Independent Investigation Commission (UNIIC) to help the government conduct investigations into the assassination.⁷⁶ SC Resolution 1636 (also issued in 2005) determined that the act was a threat to international peace and security—thus invoking Chapter VII of the UN Charter; SC Resolution 1664 (2006) formalized an agreement between the UN Secretary-General and the Lebanese government to establish the Special Tribunal for Lebanon (STL) to prosecute perpetrators of related crimes.⁷⁷

The STL is a hybrid or "internationalized" tribunal.⁷⁸ It is the first tribunal established to try a particular crime—terrorism—rather than what are sometimes referred to as core international crimes (such as genocide, crimes against humanity, war crimes, and aggression). The STL adopts Lebanese criminal law, using the domestic definition of the crime of terrorism, and incorporates a relatively limited body of jurisprudence. The STL has the narrowest mandate of all the international or internationalized criminal tribunals.⁷⁹ For instance, it does not have a reparation mandate.

The STL has been a deeply contentious issue in Lebanon, where it has been seen as exacerbating political divisions, both in its establishment and in its limited mandate.⁸⁰ Still, a number of Lebanese politi-

71 Sean MacBride, Kader Asmal, Brian Bercusson, Richard Falk, Géraud de la Pradelle, and Stefan Wild. *Israel in Lebanon: The Report of International Commission to enquire into reported violations of International Law by Israel during its invasion of the Lebanon*. (London: Ithaca Press, 1983), 117, 146.

72 *Ibid.*, 169, 173.

73 In June 2001, 28 victims filed a law suit in Belgium against Ariel Sharon and Amos Yaron. Intense political pressure and the assassination of the primary witness—Elias Hobeika, intelligence chief and military commander of the LF—impacted the proceeding; subsequent legislative amendments to Belgian law precluded its courts from having jurisdiction. Chibli Mallat, "Special Dossier on the 'Sabra and Shatila' Case in Belgium." *The Palestine Yearbook of International Law*, Vol. XII 2002-2003 (Leiden: Martinus Nijhoff, 2005), 183–190.

74 The UN Secretary-General reported to the UN Security Council that it was unlikely "that the shelling of the United Nations compound [at Qana] was the result of gross technical and/or procedural errors." UN Security Council, "Letter dated 7 May 1996 from the Secretary-General addressed to the President of the Security Council," <http://unispal.un.org/UNISPAL.NSF/o/62D5AA740C14293B85256324005179BE>

75 See Human Rights Council Resolution S-2/1, The grave situation of human rights in Lebanon caused by Israeli military operations, August 11, 2006, www2.ohchr.org/english/bodies/hrcouncil/specialsession/2/

76 Are Knudsen and Sari Hanafi identify four factors that came together to internationalize the investigation and the prosecution of this case: Hariri's stature as an international statesman with close connections to leaders in France, Saudi Arabia, the United States, and other countries; a targeted suspect (Syria); "an interventionist political climate"; and the "novel" introduction of "internationalized tribunals" to international criminal justice. Fourteen other crimes found to be connected to the assassination of Hariri and/or found to be of a similar nature and gravity were added to UNIIC's and the STL's jurisdiction. Are Knudsen and Sari Hanafi, "Special Tribunal for Lebanon (STL): Impartial or Imposed International Justice?" *Nordic Journal of Human Rights*, Vol. 31 No. 2 (2013): 183.

77 The agreement was not ratified by the Lebanese Parliament because of a political stalemate over the establishment of the tribunal; upon the request of then-Prime Minister Fouad Siniora (supported by 70 of 128 parliamentarians), Resolution 1757 (2007) "authorize[d] the establishment" of the STL.

78 It is the first treaty-based tribunal established pursuant to a Chapter VII resolution of the UN Charter, permitting the Security Council to take necessary measures in the interests of peace and security.

79 For more information, see Nidal N. Jurdi, "The Subject-Matter Jurisdiction of the Special Tribunal for Lebanon," *Journal of International Criminal Justice* 5, No. 5 (October 2007): 1125, 1128. <http://jicj.oxfordjournals.org/content/5/5/1125.abstract>; and Marieke Wierda et al, *Handbook on the Special Tribunal for Lebanon* (New York: ICTJ, 2008).

80 Knudsen and Hanafi, *Special*, 2013, 189.

cal parties, civil society groups, and a segment of the general public assign significance to the tribunal's establishment as a potential force in curbing impunity. The hope of its creators was that, in addition to punishing perpetrators, the tribunal would help strengthen the local justice system.

However, concerns about political interference in the local judicial system and public perceptions of the STL as a "Western" mechanism have led to skepticism about the court and its purposes. The cost of the tribunal—with its budget exceeding the annual budget of the Lebanese Ministry of Justice—also makes the STL a relatively easy target for those who disagree with such resource allocations and the priority determination implicit in the STL's mandate.

Notably, before the STL was established, UNIIC had recommended that four generals suspected of involvement in the Hariri assassination be detained.⁸¹ Their detention lasted four years, from 2005 to 2009, when UNIIC's mandate ended;⁸² the STL ordered their release as one of its first acts.⁸³ Nevertheless, by then, concerns regarding due process and fairness had already tainted the work of the STL.⁸⁴ Although the STL should not be held accountable for UNIIC's actions, the tribunal's work has been negatively affected by UNIIC's legacy.⁸⁵

While the STL has been fraught with setbacks, it nevertheless represents an important international effort to establish accountability for a limited number of serious crimes.

81 All four were heads of security agencies: Major-General Jamil Sayyed, Major-General Ali Hajj, Brigadier-General Raymond Azar, and Brigadier-General Mustapha Hamdan.

82 Eleven reports of the UNIIC are on the STL web site, www.stl-tsl.org/en/documents/un-documents/reports-of-the-uniic

83 UN Human Rights Council, "Report of the Working Group on Arbitrary Detention." January 10, 2008, A/HRC/7/4, 8, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/100/91/PDF/Go810091.pdf?OpenElement>

84 Until recently, all four men were denied access to information about their detention. On April 18, 2012, the Appeals Chamber ruled in favor of Jamil el-Sayed's request to disclose documents pertaining to his detention. www.stl-tsl.org/en/media/press-releases/18-04-2012-appeals-chamber-decision-in-the-matter-of-el-sayed

85 The STL's image had also been tainted by repeated leaks of confidential documents and witnesses interviews and weak public outreach over false testimonies before the UNIIC." The latest of these is the January 2013 leak of the witness list. Nidal Jurdi, "Falling between the Cracks: The Special Tribunal for Lebanon's Jurisdictional Gaps as Obstacles to Achieving Justice and Public Legitimacy," *Journal of International Law and Policy* 17, No. 2 (October 2011): 253, <http://jilp.law.ucdavis.edu/issues/Volume%2017.2/Jurdi%20-%20Final%20PDF.pdf>; For the witness list leak, see "STL Leaks: The Prosecution's Surprise Witnesses," *Al-Akhbar*, January 15, 2013, <http://english.al-akhbar.com/print/14665>

5. Truth and Memory

To date, the Lebanese government has made few efforts to examine the truth about what happened during the country's complex past; there has been no serious state-led investigation into the war. As a result, there are no official reliable numbers as to the dead, missing/forcibly disappeared, displaced, injured, or physically handicapped—only estimates.⁸⁶

There is also no consensus on the facts of the war. Events are still disputed, selectively narrated, and interpreted in a noninclusive manner. Although Ta'if had stipulated that the “curricula shall be reviewed . . . in a manner that strengthens national belonging” and that a unified history textbook be developed,⁸⁷ consecutive governments have not adopted a nationally accepted and representative history book and so the 1975–1990 war remains omitted.

In Lebanon the primary focus of the right to truth relates to violations of the right to life and physical integrity, including the phenomenon of enforced disappearance, which has blighted communities. Beyond the right of victims to know the truth about such events, society has a right to know not only the details of specific violations, but also the underlying causes that led to prolonged violations of fundamental human rights.

5.1 The Missing: Their Unknown Fate and Numbers

In the immediate aftermath of the war, the Lebanese government estimated that 17,415 people were missing. The media and civil society subsequently adopted the figure of 17,000. However, in 2000, based on requests submitted by families of the disappeared, the first government commission to address the issue identified only 2,046 individuals who were disappeared between 1975 and 1999. The larger figure is likely an overestimate, but civil society holds that the smaller one undoubtedly underestimates the reality, as many families were either unwilling or unable to file requests for an investigation with the commission.⁸⁸

In 1991, the Lebanese government shut down processes looking into the issue of enforced disappearances, announcing that “there were no detainees held by political parties anymore.”⁸⁹ This was based on assurances by political parties (i.e., former militias) rather than on a state-led or independent investigation. Further, on May 25, 1995, Law 434 on the “principles for declaring the missing dead” sought to close the file on the disappeared by regarding any person missing for at least four years as legally deceased and advising family members to undertake legal procedures to record their deaths.⁹⁰ The law

⁸⁶ See Labaki and Abou Rjeili, *Bilan*, 1993, and ICTJ, “Lebanon’s Legacy of Political Violence,” 2013.

⁸⁷ Ta’if III-F (5).

⁸⁸ CLDH, *Lebanon*, 2008, 11.

⁸⁹ Quote from Michel Murr, then Minister of Defense. Kanafani-Zahar, *Liban*, 2011, 93.

⁹⁰ In addition, a 2000 amendment to the Employee Law stipulates that a missing employee’s rights are to be settled within 10 years of the law. Saghieh, *Families*, 17–18.

was, therefore, regarded as an attempt to “buy off [families’] silence” by facilitating the declaration of death of victims of enforced disappearance.⁹¹

The question of Lebanese nationals who were forcibly disappeared in Syria is particularly contentious in light of Syria’s influence in Lebanon and resulting domestic divisions. Syrian officials repeatedly deny that they are detaining any Lebanese (aside from those sentenced by its judiciary).⁹²

The fate of many fighters who went missing during hostilities with Israel remains unknown. Although a number of exchanges took place between 1996 and 2008,⁹³ some parties maintain that the fate of more fighters is unknown;⁹⁴ some, including Palestinian fighters, are believed to be buried in Israel, while others are believed to be in collective graves in south Lebanon.⁹⁵

Nevertheless, the relentless effort of families of the missing and disappeared, and an increasing number of NGO supporters, have broken the official silence. Following pressure from civil society, the Lebanese government has had to respond to requests to uncover the fate of the missing and forcibly disappeared.

5.2 Commissions of Inquiry on the Missing and Forcibly Disappeared

In 2000, ten years after the Ta’if Agreement was signed, the government agreed to establish the first commission on the missing and forcibly disappeared. Two more commissions followed: a 2001 commission to investigate the disappeared who may still be alive,⁹⁶ and a 2005 joint Lebanese-Syrian commission.

The work of these commissions has been severely criticized, marking another failure by the government to meet its commitment to take reasonable steps to fulfill its obligations regarding victims’ right to know the truth. Although the 2000 commission report—albeit only two pages long—recognized for the first time the existence of mass graves, it stated the impossibility of identifying the remains found therein some two decades after death and denied claims that Lebanese are detained in Syria or Israel. It also referred back to Law 434, under which families can declare their loved ones deceased without evidence of their death or knowing the whereabouts of their remains. In response, families rejected the law once again and maintained their right to know what had happened to their relatives.⁹⁷

Subsequent commissions did not challenge the findings of the 2000 report, undertake investigations, or even produce a report. At the same time, the existence of the commissions provided further excuses for government to prevent investigations. The Committee of the Families of the Kidnapped and Disappeared in Lebanon (Committee of the Families) and Support of Lebanese in Detention and Exile (SOLIDE), which have played an important role in bringing attention to the issue of the missing in Lebanon, filed two lawsuits in 2009. They requested the state to protect two mass graves mentioned in the 2000 commission report and sought to obtain a copy of the full report of the commission’s investigations before the Shura Council.⁹⁸ Nevertheless, the Shura Council did not render a decision on the request to disclose the 2000 commission report. The Prime Minister’s Office provided a few additional

91 The CLDH referred to the law as the “silence law.” CLDH, *Lebanon*, 2008, 29.

92 Their claim was contradicted when 54 Lebanese were released by Syrian authorities. CLDH, *Lebanon*, 2008, 19, 26, 30. See also Act for the Disappeared, www.actforthedisappeared.com/what-you-need-to-know.php

93 Some took place between Israel and Hezbollah. While the Lebanese government was largely disengaged, through the International Committee of the Red Cross (ICRC) and German mediators, Hezbollah negotiated the return of remains and the release of detainees. Mediation with the latter culminated in the return of 60 remains and 23 prisoners in 2004; in 2008, 5 prisoners and 199 remains of Palestinian and Lebanese fighters were exchanged. CLDH, *Lebanon*, 2008, 26; and Isabel Kershner, “Yielding Prisoners, Israel Receives 2 Dead Soldiers,” *New York Times*, July 17, 2008, www.nytimes.com/2008/07/17/world/middleeast/17mideast.html?_r=0; also see ICRC, “Lebanon: 40 years of ICRC presence,” 2008, www.icrc.org/eng/resources/documents/misc/lebanon-40-years-311207.htm.

94 Saghieh, *Families*, 2012, 25.

95 CLDH, *Lebanon*, 2008, 26.

96 Decree No. 1/2001 of January 5, 2001.

97 Kanafani-Zahar, *Liban*, 2011, 100. See also *supra* Prosecution section.

98 The Shura Council is the State Council, Lebanon’s administrative court.

documents, including two conflicting reports on the issue of identifying remains.⁹⁹ Although, the government had recognized the right to know by providing certain information, it then dismissed further requests on the grounds that it had already disclosed a report.¹⁰⁰

Following Syria's withdrawal from Lebanon in 2005, enforced disappearance received renewed attention, and a 2005 Ministerial Declaration pledged to pursue the plight of the families of Lebanese disappeared in Syria through a joint commission. Lebanese President Michel Suleiman's unprecedented oath in 2008 recognized the need to devote "strenuous effort" to addressing this.¹⁰¹ Although no major and lasting breakthroughs have been made, the opening of a mass grave in Yarzeh, outside of the Ministry of Defense, allowed for the remains of 18 individuals to be identified, giving hope that the fate of hundreds of others could still be discovered.¹⁰²

However, political considerations underpin the lack of serious attempts on the part of the government to comply with its obligations to fulfill the right to truth regarding the disappeared. These include at least two key factors: the complicity of some domestic actors in incidents under question and the Lebanese government's subjugation to Syrian authorities. Successive governments' handling of this matter (even in the post-Syrian era following withdrawal in 2005) has been characterized by reluctance and concealment.

Beyond commissions of inquiry, civil society has advocated for a broader truth commission to address the complex legacy of Lebanon's past.¹⁰³ A number of high-profile politicians, notably MP Ghassan Mokheiber,¹⁰⁴ have joined the call. However, many have expressed skepticism about the prospects.¹⁰⁵ It is unlikely that current political leaders, some of whom are allegedly responsible for some atrocities, would establish a commission to look into their own acts.

5.3 Draft Law for Missing and Forcibly Disappeared Persons

In 2012 SOLIDE and the Committee of the Families, with the support of ICTJ, prepared a draft law for missing and forcibly disappeared persons. It addresses many of the underlying problems in earlier approaches by the Lebanese government by defining the "missing" and "forcibly disappeared" based on international standards as well as by recognizing the continuing, ongoing victimization of victims' relatives.

Broadly speaking, the draft law stipulates the creation of a bureau to investigate the fate of the missing and disappeared, establishes a monitoring commission (a Public National Commission), regulates the identification and exhumation of graves, and provides for sanctions to individuals who participated in the crime and individuals who impede investigations or who "tampe[r] with or desecrat[e] a mass grave."¹⁰⁶

99 One coroner noted that the identification of remains was impossible, while another noted that it was possible. However, with ISF's forensic laboratory now operational, confirmation by international studies that identification of remains is possible even two decades post-mortem, and the acceptance of the landholders to inspect the Mar Mitr cemetery (one of two mass graves identified), some progress has been achieved. Saghieh, *Families*, 2012, 10.

100 *Ibid.*, 11.

101 The president-elect noted "the need for strenuous efforts in order to release [Lebanese] prisoners and detainees, uncover the fate of those missing and recover our sons who have taken refuge in Israel. Indeed, there is room for all in the nation's fold" (emphasis added). "Full Text: President Michel Sleiman's Oath Speech," *Now Lebanon*, May 29, 2008, www.lebanonwire.com/o8o5MLN/o8o52922NL.asp

102 The mass grave was opened on July 11, 2005. Act for the Disappeared, www.actforthedisappeared.com/what-you-need-to-know.php

103 For example the CLDH 2 report "demand[ed] the creation of a truth and reconciliation commission." CLDH, *Lebanon*, 2008, 8, 48.

104 Mokheiber called for a commission on truth, justice, and reconciliation to deal with the missing and the forcibly disappeared. See "MP Mokheiber Supports the Ministerial Declaration's Statement on the Missing and Forcibly Disappeared for Purifying Collective Memory but Notes his Reservations to its non-Authoritative Formula and Calls for a Commission of Inquiry and a Truth, Justice and Reconciliation Commission," January 19, 2010, www.ghassanmokheiber.com/ByCategory.aspx?sid=70

105 Notably former Justice Minister Ibrahim Najjar, who said this proposal is "utopian and illusionary . . . improbable." Baptiste De Cazenove, "Pour faire la paix au Liban," *L'Orient Le Jour*, October 10, 2012, www.lorientlejour.com/category/Liban/article/785108/%3C%3C+Pour_faire_la_paix_au_Liban+%3E%3E....html

106 SOLIDE and Committee of the Families of the Kidnapped and Disappeared in Lebanon, *Law for Missing and Forcibly Disappeared Persons* (Beirut: Arab Printing Press, February 2012). See also ICTJ press release, "Lebanon: Families Propose Draft Law for the Missing and Forcibly Disappeared Persons," October 16, 2012, <http://ictj.org/news/lebanon-families-propose-draft-law-missing-and-forcibly-disappeared-persons>

In the context of the drafting of this document and its accompanying awareness-raising campaign, Justice Minister Chakib Cortbaoui drafted a decree creating an “independent, national committee to take practical steps” to investigate the case of the disappeared. The decree establishes an independent commission under the custody of the Ministry of Justice, central records that are “subject to scrutiny by the commission,” and a central bureau for genetic fingerprint preservation.¹⁰⁷

The resignation of Prime Minister Najib Mikati on March 22, 2013, and the ensuing political stalemate in the country, as well as pressure from some civil society organizations that rejected the decree,¹⁰⁸ have frozen the prospects for advancing the draft law or adopting the decree. Civil society is advocating for a law as opposed to a decree because it would have more legitimacy.¹⁰⁹ Additionally, civil society also views the law as the most comprehensive, authoritative option.¹¹⁰ A law on the missing and the forcibly disappeared would reinforce families’ claims and elevate the right to truth with formal legal legitimacy.

5.4 Memorialization

Many have argued that civil society has contributed to the “collective amnesia” in Lebanon that has prevailed in the aftermath of the war because many groups did not call for the repeal of the amnesty law or openly condemn it. Like the authorities, the wider public generally has preferred to remain silent for fear that discussing the war would lead to renewed divisions and conflict.¹¹¹ Nevertheless, this was not the case across the board: memorialization initiatives were undertaken during the war and have increased in such forms as theatrical productions, movies, novels, memoirs, songs, documentation, campaigns, and annual commemorations.¹¹²

Several local projects have encouraged debate on the war. UMAM Documentation and Research is an electronic platform dedicated to remembering Lebanon’s war.¹¹³ ICTJ launched a pilot oral history project called *Badna Naaref* (“We Want to Know”).¹¹⁴ Other organizations, such as *Wahdatouna Khalasouna*¹¹⁵ (Salvation in Unity) and *ACT for the Disappeared*,¹¹⁶ have also undertaken memory and memorialization projects. However, although the main political parties also organize commemorations, they remain politicized, selective, and noninclusive.¹¹⁷

107 An unofficial translation of the decree can be found on ICTJ’s Web site: <http://ictj.org/sites/default/files/Decree-National%20Commission-Forcibly%20Disappeared-10oct2012-EN.pdf>

108 The Legal Agenda, Comments of the Committee of the Families and the Legal Agenda on the Ministry of Justice’s decree: http://legal-agenda.com/article.php?id=202&folder=articles&lang=ar#.UpNg_sT11qU

109 A law passed by Parliament enjoys higher legitimacy and authority than a ministerial decree. However, at the same time, securing parliamentary approval is more difficult than securing cabinet approval; it is also more difficult to reverse. Legal recognition of the right to know would entail legal responsibility on the state for the missing and forcibly disappeared of the 1975–1990 war and the subsequent period. See Meris Lutz’s article for some of the grievances of civil society groups: Meris Lutz, “Qortbawi unveils new proposal for commission on disappeared,” (Beirut) *Daily Star*, February 16, 2013, www.dailystar.com.lb/News/Local-News/2013/Feb-16/206661-qortbawi-unveils-new-proposal-for-commission-on-disappeared.ashx#axzz2RfxoEYsj

110 The decree itself is considered lacking; issues pertaining to inclusivity, victim involvement, independence, authority to compel, and duration have been raised. For example, the time frame for the decree is set to six years without provisions for extending the decree or the commission it establishes. See ICTJ, “Lebanon: Principles for Dealing with the Missing, Including the Forcibly Disappeared,” October 16, 2012, <http://ictj.org/news/lebanon-principles-dealing-missing-including-forcibly-disappeared>

111 Michael Young, *Resurrecting Lebanon’s Disappeared* (Beirut: Lebanese Center for Policy Studies, 1999), 4.

112 One initiative worth noting is *Beit Beirut* (the house of Beirut), a landmark building that has been turned into a museum/cultural center. The building overlooks the Green Line separating East and West Beirut and became infamous for its use as a sniper base during the war. See www.beitbeirut.org/english/partnersen.html

113 “Memory at Work. A Guide for Lebanese on Peace and War”: www.memoryatwork.org

114 The project is carried out as a partnership between UIR Mémoire at the Center for the Study of the Modern Arab World (CEMAM)-Université Saint-Joseph and UMAM Documentation and Research. A documentary directed by Carol Mansour was produced for dissemination in schools nationwide with the support of the Ministry of Education. See www.badnanaaref.org/index.php/about/2

115 See wahdatounakhalasouna.blogspot.com/2008/08/welcome-to-wahdatouna-khalasouna.html

116 See www.actforthevanished.com

117 Commemorations by the LF, the Phalange, and Hezbollah are some examples. “Hezbollah Martyr’s Day: Celebrations, Rose Garlands,” *Al Manar*, November 12, 2013, www.almanar.com.lb/english/adetails.php?eid=120371&cid=23&fromval=1, and Nada Raad, “Ceremony commemorates death of Bashir Gemayel,” (Beirut) *Daily Star*, September 11, 2004, www.dailystar.com.lb/News/Lebanon-News/2004/Sep-11/2990-ceremony-commemorates-death-of-bashir-gemayel.ashx#axzz2kckP7F5E

6. Reparations

So far, Lebanese officials have undertaken few efforts to implement different measures of reparations aimed at repairing the harms suffered by victims, their families, or their communities—such as compensation, rehabilitation, and satisfaction through the expression of apologies. Additionally, no interstate reparation process has been conceived, although the tacit and prolonged involvement of Lebanon's neighbors in hostilities incurs legal responsibilities for reparation.¹¹⁸

6.1 The Return of the Displaced

In Lebanon the question of reparation cannot be separated from the phenomenon of massive displacement. In this context, the corollary to the right to reparation is the right of internally displaced persons (IDPs) to return to their places of origin.

The phenomenon of displacement has had enormous demographic, political, and socioeconomic repercussions for Lebanese society. It is estimated that since 1975,¹¹⁹ hundreds of thousands of Lebanese have been displaced from their homes and villages as a result of systematic mass violence, largely along sectarian lines. Mount Lebanon is by far the most affected, with 62 percent of displaced families originating from there; a further 23.8 percent come from the south and 7.7 percent from Beirut.¹²⁰ Approximately 30 percent of the population was displaced during the war.

Ta'if conceived of a reparation program for IDPs—mostly involving restitution and compensation. It recognized the “right of every Lebanese evicted since 1975 to return to the place from which he was evicted,”¹²¹ stipulating the enactment of legislation to guarantee and implement this right.¹²² To that end, a 1990 constitutional amendment enshrined the right of all Lebanese to “live in and enjoy any part of the country under the supremacy of the law.”¹²³ Given the demographic changes in certain areas, this amendment holds both symbolic and legal value in delegitimizing sectarian-based displacement and cantonization. In short, it closed the door on partition plans that previously had threatened Lebanon's disintegration.¹²⁴

118 However, the UN asked Israel to pay reparations to Lebanon and other countries affected by the environmental damage caused by the oil spill resulting from targeting Lebanon's electricity plants in 2006. Hezbollah is said to have prepared to “pay legal fees to facilitate lawsuits filed by Lebanese citizens with multiple citizenships in third-party states” to claim reparations from Israel for damage incurred during the war. On Hezbollah's plans, see <http://jurist.org/paperchase/2007/08/hezbollah-organizing-lawsuits-against.php>. And see General Assembly Resolution 65/147, Oil slick on Lebanese shores, February 10, 2011, [www.un.int/wcm/webdav/site/Lebanon/shared/documents/General%20Assembly%20Resolutions/A-RES-65-147%20\(2011\)%20Oil%20oslick%20on%20Lebanese%20shores..pdf](http://www.un.int/wcm/webdav/site/Lebanon/shared/documents/General%20Assembly%20Resolutions/A-RES-65-147%20(2011)%20Oil%20oslick%20on%20Lebanese%20shores..pdf)

119 This period includes the 15 years of war and subsequent conflicts, such as the Lebanon-Israel conflict of 2006 or the Nahr el-Bared conflict of 2007.

120 Some 52.7 percent of IDPs settled in Beirut. Statistics provided by the Ministry of the Displaced. In UN Development Programme (UNDP), “A Profile of Sustainable Human Development in Lebanon,” 1997, 1–2, <http://www.undp.org.lb/programme/governance/advocacy/nhdr/nhdr97/chpt3k.pdf>

121 Ta'if, II-D.

122 Ta'if, III (2) D.

123 Ta'if, I-H.

124 Ta'if I-H stipulated that “here shall be no fragmentation, no partition.”

A number of state institutions have been involved in designing and implementing various forms of reparations, including return (restitution) and compensation. In 1993 the Ministry of the Displaced (MoD) and the Central Fund for the Displaced were created to fund and manage the process of return. The MoD sought to prepare the return of IDPs in four steps: 1) rehabilitation of infrastructure, 2) evacuation of occupied houses, 3) repair and reconstruction of houses, and 4) reconciliation. Other government bodies—such as the Ministry for Social Affairs and Public Work, the Council for Development and Reconstruction (CDR), and the Council of the South—were involved “to provide the physical infrastructure and services needed to resettle the displaced.”¹²⁵ In the Prime Minister’s Office, the Higher Relief Commission was also created to provide humanitarian assistance to refugees and displaced persons.¹²⁶

Nevertheless, the government has largely failed to manage an efficient, comprehensive reparations program to ensure the long-term return of victims of forced displacement or other satisfactory reparations for those affected by the conflict. Further, although the state recognized the right of return as essential for national reconciliation, there was no acknowledgement by the state of the harms suffered or state responsibility for violations. Only individual initiatives, like that of former Minister of Displaced Walid Joumblat (also former protagonist and responsible for much of the displacement in Mount Lebanon), recognized responsibilities.¹²⁷

Political impediments to an effective return

MoD’s program to facilitate return was excessively slow and suffered from a lack of planning and coordination among the various actors—including relevant ministries, municipalities, and NGOs. Although officials had estimated that \$400 million would cover the entire return process, \$800 million was spent between 1991 and 1999 for the return of some 20 percent of the displaced. In 1996, 50 percent of funds were disbursed to finance the evacuation of illegally occupied houses while the remaining sum covered all other activities.¹²⁸

Figures released by the ministry exposed inconsistencies among the number of houses that were occupied, evacuated, and rebuilt. The program was allegedly funding the evacuation of almost double the number of registered occupied houses and double the number of registered rebuilt/repared houses.¹²⁹ These inconsistencies and imbalances were linked to embezzlement and, as noted by Shadi Masaad, former head of the Central Fund for the Displaced, to “political interference.”¹³⁰

The MoD’s efforts have been supported by reconstruction projects, humanitarian aid, and peace-building efforts from the EU, UN, and domestic and international NGOs. Yet the return project has lacked the socioeconomic basis for sustainable return. The second phase of the return project, started in 1998, has focused more on infrastructure and socioeconomic incentives to return, though incentives like the availability of employment remain scarce.

125 Norwegian Refugee Council, *Profile of Internal Displacement: Lebanon* (Geneva: Norwegian Refugee Council, 2004) 32, [www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/5A433921FB61E367802570BA0056B608/\\$file/Lebanon%20August%202004.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/5A433921FB61E367802570BA0056B608/$file/Lebanon%20August%202004.pdf)

126 Ministerial decision No. 93/30 of August 2, 1993, mandates the commission with the management of aid and other resources transferred by the Council of Ministers; the Higher Relief Council generally compensates victims of natural disasters or violence. The council “is presided [over] by the Prime Minister and made up of members in the persons of the Ministers of Defense, Health, Social Affairs, Interior, Finance, Public Works, Energy and Housing. The High Relief Commission’s members also include the Director Generals of Social Affairs, Council of the South, and the Fund for the Displaced, and representatives from the ISF and the Lebanese Army.” It is operated by staff drawn from across the administration—from the various ministries, bodies, and agencies involved in recovery; it distributes and delegates the use of these resources for projects in recovery, reconstruction, and development. Lebanese Republic, Decision 93/60 Amendment to the High Relief Commission, *Al-Jarida al-Rassmiya* (official gazette), No. 32, August 18, 1993, 744, and Presidency of the Council of Ministers, “Rebuild Lebanon. Human, economic and infrastructure recovery,” <http://rebuildlebanon.gov.lb/english/f/Page.asp?PageID=46>.

127 See *infra* Satisfaction: Apologies and Recognition of Responsibility.

128 UNDP, “A Profile,” 1997, 4–6.

129 While in 1992 some 26,987 houses were recorded as occupied, 1996 figures show that 41,446 houses were evacuated, and “the number of evacuations was twice the number of rebuilt or repaired houses.” For some time, this suspicious overspending on evacuation came at the expense of necessary socioeconomic and infrastructural conditions for return, such as water and electricity. UNDP, “A Profile,” 1997, 4.

130 George Assaf and Rana el-Fil, “Resolving the Issue of War Displacement in Lebanon,” *Forced Migration Review* 7 (April 2000): 32, www.fmreview.org/FMRpdfs/FMR07/fmr7.10.pdf

Beyond possible mismanagement, corruption has plagued the process of return. The postwar government allocated the Council of the South, the Higher Relief Council, and the CDR to former warlords.¹³¹ The CDR awarded the reconstruction of the Beirut Central District to the controversial Société Libanaise pour le Développement et la Reconstruction de Beyrouth (SOLIDERE), a private real estate company.¹³² As former protagonists were given public positions, they channeled state funds to their respective constituencies.¹³³ These institutions, therefore, have been used to amass political patronage and personal gain, thus perpetuating sectarian-based clientelism.¹³⁴

Moreover, the reparation program has not treated IDP groups equally, contributing to tensions between those communities that benefited swiftly from the program and those that did not.¹³⁵ These discrepancies took shape in the starkly unequal reconstruction of villages across Mount Lebanon.¹³⁶ While the MoD focused on Mount Lebanon, Beirut, and east of Sidon, the Council of the South limited its assistance to southern Lebanon. East of Sidon witnessed the most success, with about 80 percent of IDPs returned. Beirut proved to be more problematic because it was a primary destination for IDPs fleeing the Israeli occupation and hostilities in the south. The continued occupation and the widespread problem of landmines and unexploded ordnance left by Israel (post-withdrawal in 2000 and after the 2006 war) has delayed the evacuation of houses and hindered the return of IDPs in the south. The displaced from the Bekaa and northern Lebanon were left out of the formal process of reparation and return.¹³⁷

Community reconciliation in zones of return has also been run with a political agenda. The MoD identified 20 mixed Druze-Christian villages of Mount Lebanon where massacres had occurred. In 2013, following state-led reconciliation in the mixed village of Brih, the government considered the process complete. However, reconciliation in Mount Lebanon was in many respects limited. It was presented in packages to be agreed on in committees representing the different communities. The process, therefore, maintained a “communitarian logic.”¹³⁸ No distinction was made between victims and aggressors, and victims’ voices were often silenced so as not to perpetuate conflict. Individual responsibility was not addressed, litigation was not allowed, and in some cases victims were not involved.¹³⁹ Short of a more inclusive and popular reconciliation program, forgiveness and reconciliation have remained fragile.

Additional impediments to return: landmines and munitions

The accumulation of landmines and cluster munitions from several periods of conflict, including 1990, 2000, and 2006, hinders the return of the displaced. In the 2006 war, such weapons were used in an unprecedented scale: during the last three days of the conflict, Israel fired approximately 1,000,000

131 The postwar government, led by Rafiq Hariri, appointed Druze leader Walid Joumblat as Minister of Displaced, giving him control of the Central Fund for the Displaced; Elie Hobeika (the LF commander mentioned above in the Sabra and Shatilla case) was appointed as Minister for Social Affairs and Handicapped; Nabih Berri (Head of the Shia party/militia Amal) became speaker of parliament and was given control of the Council of the South.

132 SOLIDERE is a private, public purpose real estate company. Law 17 of 1991 had allowed the CDR to allocate the reconstruction of the Beirut Central District project to a private company. The Late Prime Minister Hariri was its founder and biggest shareholder. Increasingly, the company has been accused of unlawful expansion of its mandate, corruption, and disenfranchisement of property holders’ rights. Ohrstrom, Lysandra, “Solidere: Vigilantism under color of law,” (Beirut) *Daily Star*, August 6, 2007, www.dailystar.com.lb/Lebanon-Examiner/Aug/06/Solidere-Vigilantism-under-color-of-law.ashx#axzz2RfxoEYsj See also Section 6.2, Compensation.

133 Are Knudsen and Nasser Yassin, *Political Violence in Post-Taif Lebanon, 1989-2007*. (Bergen: Chr. Michelsen Institute, 2007) 9–12.

134 For example, *Majlis al-Jounoub*, or the Council of the South, has been commonly referred to as *Majlis al-Jouyoub*, or the Council of Pockets. *Ibid*.

135 A petition by displaced families from a number of villages in Mount Lebanon wondered how they have been displaced for more than two decades and are still waiting for compensation; in contrast, following the 2006 war with Israel, the displaced of the south have already been paid compensation and returned home. “Siniora vows to rush payment to displaced Chouf residents,” (Beirut) *Daily Star*, February 24, 2007.

136 For instance, it is estimated that in the early stages of MoD’s program, \$500 million was spent in the Chouf alone as preferential treatment to Druze communities in the Mountain; Chouf is under Walid Joumblat’s constituency. Elizabeth Picard, *Lebanon: A Shattered Country — Myths and Realities of the Wars in Lebanon* (New York and London: Holmes and Meier, 2002), 167.

137 UNDP notes that “in both regions . . . the process has been spontaneous and a result of individual and local initiatives”; hence, “no exact information on the number of returnees there” exist. UNDP, “A Profile,” 1997, 4.

138 The program linked or conditioned the disbursement of indemnities to accepting the reconciliation package. Aïda Kanafani-Zahar, “Displacement, Return and Reconciliation in Mount Lebanon,” in Elizabeth Picard and Alexander Ramsbotham, eds. *Reconciliation*, 2012, 46–48.

139 *Ibid*.

cluster bombs in Lebanon.¹⁴⁰ The resulting contamination contributed to internal displacement and a lack of socioeconomic development due to restricted access to land. Decontamination is essential for the return and restitution of the displaced.

The LAF's Engineering Regiment has been involved in demining since the early 1990s. In 1998 the Lebanese Mine Action Authority was established under the Ministry of Defence. It formulated a National Mine Action Program, implemented by the Lebanon Mine Action Centre (LMAC).¹⁴¹ Lebanon's 2011–2020 National Mine Action Strategy is in accordance with its obligations under international law,¹⁴² however, while it seems to be on the right track, insufficient funding and the wider national political stalemate affect restitution.¹⁴³

6.2 Compensation

In the case of IDPs, questions of compensation have been interconnected with restitution. The allocation of compensation has been influenced by nepotism, and many have lamented partial or delayed compensation. During the process of return the private company SOLIDERE handled the reconstruction of the Central Beirut District, which involved providing compensation packages to returnees. However, the process proved to be problematic. SOLIDERE's reconstruction plan involved acquiring full ownership of the land. To this end, it offered property owners shares in the company in exchange for leaving their properties. Approximately 20,000 displaced families who occupied homes in the area were offered indemnities to evacuate. However, disputes arose as to whether the rights of these two groups—property owners and the displaced—were violated. Both challenged the compensatory amounts offered and reported that the company used intimidation techniques to effect results.¹⁴⁴

Since the end of the war, the High Relief Commission (HRC) has led a large number of compensation schemes, including the coordination of aid for those who were affected by hostilities in the Palestinian Nahr el-Bared refugee camp, which it had sought to reconstruct.¹⁴⁵ However, some victims of political violence, like those hurt in Tripoli's Jabal Mohsen and Bab al-Tabbaneh neighborhoods since the start of the Syrian war in 2011,¹⁴⁶ have deplored the government's neglect and called on the HRC to address their plight. Resentment of the state's under-performance is reaching its peak, with civilians repeatedly expressing their grievances through protest, including by blocking roads.¹⁴⁷

Compensation for Lebanese detained in Israeli and Syrian prisons has been problematic, as well. Following Israel's withdrawal in 2000, Parliament passed Law 364 on Compensations or Pensions for

140 Approximately 1 million cluster bombs turn into "more than four million submunitions," the demining teams had to deal with "possibly up to one million unexploded Submunitions." Human Rights Watch. "Flooding South Lebanon" (New York: Human Rights Watch, February 2008), 1, 41, www.hrw.org/reports/2008/02/16/flooding-south-lebanon

141 See "The National Mine Action Policy," 2007, LMAC, www.lebmac.org/files/publications/National_Policy__March_2007.pdf

142 The Convention on Cluster Munitions entered into force in 2010 and was ratified by Lebanon in 2011.

143 Donors fund some 75 percent of mine action in Lebanon, but several groups have had to withdraw their teams because of reduced funding. On the political front, although in 2007 a governmental decree established the Inter-ministerial Advisory Committee and the International Support Group, they were activated only between 2011 and 2012. The Electronic Mine Information Network, "Lebanon Summary Report," www.mineaction.org/country.asp?c=16. On funding, see George Massaad, Salim Raad, Kassem Jammoul, and Chip Bowness, "The National Demining Office in Lebanon, 1998–2004." *Mine Action in central and South America* 8, No.2 (November 2004), <http://maic.jmu.edu/journal/8.2/notes/massad.htm>.

144 Some displaced families that had squatted in abandoned houses for a decade or two challenged the amount offered and resisted leaving. The compensation scheme was seen as disenfranchising the rights of property holders because they could not challenge the appraisal committees appointed by the government, the value of SOLIDERE shares plummeted, and many families noted that the compensation was undervalued and indefinitely delayed. As a result, some 500 former property owners (the Downtown Rights Holders Committee) are suing the company. Ohlstrom, "Solidere," 2007 and "Avedis' Story With Solidere in Beirut-Lebanon," *Indymedia Beirut*, April 10, 2005, <http://beirut.indymedia.org/ar/2005/04/2470.shtml>

145 The Lebanese Armed Forces (LAF) led a three-month military campaign in 2007 against the militant group Fateh al-Islam in Tripoli's Palestinian Nahr el-Bared camp. Some 27,000 Palestinian refugees fled into neighboring areas, and the camp suffered from large-scale destruction. The reconstruction process started only in 2010, and thus far only 600 families have returned. Funding shortfalls have stalled the process, as full reconstruction is contingent on aid and some \$157 million is still needed to complete the program. See www.unrwa.org/etemplate.php?id=661 and "UN humanitarian chief visits Nahr el-Bared camp," UNRWA, April 16, 2013, www.unrwa.org/etemplate.php?id=1717

146 Jabal Mohsen and Bab al-Tabbaneh are two neighbourhoods in Tripoli (northern Lebanon), which are inhabited mainly by Alawites (Syrian president Bashar al-Assad's sect) and Sunnis, respectively. They share a violent history from the Lebanese war and have been involved in intermittent fighting since the start of the Syrian war (one supporting the Syrian regime and the other supporting the rebels).

147 Misbah Al-Ali, "Tripoli residents protest over HRC compensations," (Beirut) *Daily Star*, November 20, 2012, www.dailystar.com.lb/News/Local-News/2012/Nov-20/195645-tripoli-residents-protest-over-hrc-compensations.ashx#axzz2NcrWUZqI

Detainees Released from Israeli Prisons.¹⁴⁸ The law contains provisions on satisfaction and recognition, noting that “defending the nation is a legitimate right” and recognizing the sacrifices of detainees in the course of fighting and resisting the Israeli occupation (or in detention in SLA centers).¹⁴⁹

The Ministry of Finance has been in charge of distributing compensation to Lebanese detainees released from Israeli prisons under the law. Three issues emerged in the course of implementation. First, as noted by the Committee for the Support of Lebanese Detainees (FCLD) in Israeli Prisons, the amount of indemnities has been considered very low compared with the difficulty of reintegrating back into society. Second, eligibility for compensation is conditional on presenting detention certificates from the International Committee for the Red Cross (ICRC). However, the FCLD has contended that the ICRC did not have access at certain times to a number of detention centers held by the SLA,¹⁵⁰ which prevented some detainees from holding certificates. Third, FCLD has compiled evidence showing that convicted SLA members had applied for and received compensation.¹⁵¹

More strikingly, the law marks the failure of Lebanese authorities to set up a similar compensatory and rehabilitative mechanism for Lebanese released from Syrian prisons.¹⁵² Former detainees have called for recognition of their legitimate rights.¹⁵³ To date, this double standard for Israeli and Syrian detainees is still applicable, despite: the 2005 withdrawal of Syria; the LF’s proposal of a draft law on July 14, 2008, to provide compensation to Lebanese released from Syrian prisons;¹⁵⁴ and the 2009 Free Patriotic Movement’s proposal of an “accelerated” law allowing detainees liberated from Syrian prisons to benefit from the mechanism set forth in Law 364.¹⁵⁵

6.3 Rehabilitation

Authorities do not have reliable figures of the number of people who were physically disabled as a result of the war and subsequent political violence. One study of the 1975–1990 war estimated that 9,627 people had been permanently disabled.¹⁵⁶ This figure, however, is modest because it is based on a narrow definition of people with physical disabilities.

Law 212 of 1993 created the Ministry of Social Affairs, which caters to the disabled and “deals with the social repercussions of the war, including providing social support for injured and physically disabled

148 Lebanese Republic, *Al-Jarida al-Rassmiya* (Official Gazette), No. 41 (August 18, 2001) 3564.

149 In its implementation, the law distinguishes between those who spent less than one year in detention, those who spent between one and three years, and those who spent more than three years in detention. According to Article 1, if the duration was less than a year, the detainee receives 2.5 million Lebanese liras (L.L.) (approximately USD \$1,666); if detention was between one and three years, the detainee is entitled to a lump sum of L.L. 5 million (approximately USD \$3,333) for every year spent in detention. The first choice in Article 2 for detainees who were in more than three years is a lump sum equivalent to the amount stipulated in Article 1 (L.L. 5 million for every year spent in detention). The second choice is a monthly pension of L.L. 400,000 (approximately USD \$266) plus, for every year spent on top of the initial three, a lump sum that is half of what is given to a soldier.

150 FCLD argues that the ICRC was granted access to the Khiam detention centre only in 1995. Nayla Assaf, “Members of SLA collect ex-detainees’ money.” (Beirut) *Daily Star*, February 4, 2003, www.dailystar.com.lb/News/Lebanon-News/2003/Feb-04/38109-members-of-sla-collect-ex-detainees-money.ashx#ixzz2kgUOAvvh

151 The FCLD asks the authorities to differentiate between convicted collaborators (those who might have spent time in detention centers and who might, therefore, hold ICRC certificates) and detainees who were defending the country. It also asks the authorities to conduct better investigations into applicants. Information on the concerns of the FCLD is pulled from two articles: Celina Nasser, “Former detainees unmoved by compensation law.” (Beirut) *Daily Star*, May 5, 2002, www.dailystar.com.lb/News/Lebanon-News/2002/May-04/11600-former-detainees-unmoved-by-compensation-law.ashx#axzz2kosiux2Z; and Assaf, “Members of SLA,” 2003.

152 This failure is consistent with the state’s apparent attempt to suppress their existence and rights (as seen in the discussion on truth seeking).

153 See *An Nahar*, “Compensations to Detainees Liberated from Syrian Prisons in the ‘Refrigerator’: No Good to Plead from Politicians and Hopes on the Patriarch,” March 31, 2011.

154 The law was proposed by MPs Antoine Zahra and Elie Keyrouz. Article 1 defines a released detainee as “any Lebanese that was detained in Lebanon or Syria for political reasons . . . and that spent time in a Syrian prison or detention centre.” Also, Article 4 widens the scope of authorities entitled to issue detention certificate to the ICRC, the Lebanese Red Cross, the Ministry of Defense, the Ministry of Interior and Municipalities, the Lebanese security agencies, and Syrian authorities. See the draft law on the LF Web site, <https://mobile.lebanese-forces.com/2008/07/31/15529/>

155 The law was proposed by MP Ibrahim Kanaan. See www.ibrahimkanaan.org/ParliamentsDetails/09-03-18/law_8.aspx

156 Labaki and Abou Rjeili, *Bilan*, 1993, 37.

persons of the war.”¹⁵⁷ The ministry has distributed some 88,000 disability cards, and it provides service to some 7,162 disabled people in association with civil society groups.¹⁵⁸ Nevertheless, the ministry does not provide a separate service to the war’s disabled, and its program barely addresses the psychosocial repercussions of the war.

In addition to its demining role, the LMAC is tasked with providing victims of landmines and cluster munitions (estimated at 2,941) with medical, psychological, and economic support.¹⁵⁹ However, LMAC Chairman General Mohammad Fahmy noted that financial constraints have limited the center’s ability to follow up on the injured.¹⁶⁰ Furthermore, victims of unexploded ordinances suffer from the same exclusions as the physically disabled.

Reparation for the war’s physically disabled is also enmeshed with the government’s general approach to people with disabilities, as Lebanon has yet to implement a comprehensive, integrated national strategy to provide for societal and political inclusion as well as empowerment of people with disabilities. In 2000, after much pressure from civil society, Parliament passed Law 220 on the rights of people with disabilities, filling the official vacuum to a certain degree and instituting a more structured approach to providing a rightful service;¹⁶¹ however, no serious attempts have been made to fully implement the provisions of the law. In 2007 Lebanon also acceded to the UN Convention on the Rights of Persons with Disabilities.

6.4 Satisfaction: Apologies and Recognition of Responsibility

Satisfaction through the expression of apologies and recognition aims to acknowledge the plight of victims and transform their experience into a collective issue, rather than an individual issue. The significance of satisfaction reaches its highest level when the state acknowledges its own responsibility for crimes (in terms of both the direct commission of crimes and the failure to prevent crimes) and makes a formal apology to victims.

The Lebanese government has not undertaken a formal process of apology. Instead, politico-sectarian leaders have led a handful of individual initiatives. In 1993 Walid Joumblat, head of the Progressive Socialist Party, said, “Yes, I am responsible, directly or indirectly, for religious cleansing and mass destruction because, at the time, I was a warlord.”¹⁶² Fifteen years later, LF leader Samir Geagea publicly apologized for the “mistakes” that his militia had committed during the war and called for a “fact-finding committee, and for reconciliation.”¹⁶³ However, although Geagea had benefited from a special amnesty in 2005, no substantial reconciliatory steps followed.¹⁶⁴

Additionally, in 2000 former LF Intelligence Chief Assaad Chaftari led an initiative by writing an open letter of apology for his war crimes.¹⁶⁵ He and Mohieddine Mustapha Chehab, a former com-

157 Beirut: *Dar al-Manshourat al-Houquouquiya-Matbaat Sader*, Vol. 16: 16465.

158 www.socialaffairs.gov.lb/tazhil.aspx

159 Rajana Hamyeh, “Clearing Cluster Bombs and Landmines: Lebanon’s Long and Winding Road,” *Al-Akhbar*, September 13, 2011, <http://english.al-akhbar.com/content/clearing-cluster-bombs-and-landmines-lebanon%E2%80%99s-long-and-winding-road>

160 *Ibid.*

161 Several state institutions are involved in integrating disabled people into Lebanese society: the Ministries of Social Affairs, Interior and Municipalities, Public Work and Transport, Health, and Education. Municipalities also implement Law 220. Election law 90-91 (section 9) of 2008 reflected relative progress in facilitating the participation of the disabled. The Ministry of Education approved the remodeling of a few schools to facilitate access, and the Ministry of Transport approved the procurement of new buses that met international standards. Interview with Jihad Ismail, Lebanese Physically Handicapped Union, Beirut, April 3, 2013.

162 Robert Fisk, “Lebanon’s dispossessed come home: Robert Fisk in Damour on the scars of an orgy of ethnic cleansing.” *The Independent*, May 16, 1993, www.independent.co.uk/news/world/lebanons-dispossessed-come-home-robert-fisk-in-damour-on-the-scars-of-an-orgy-of-ethnic-cleansing-2323136.html

163 “Geagea calls for establishing a fact-finding committee into civil war wrongdoings.” *Now Lebanon*, November 4, 2008, https://now.mmedia.me/lb/en/nownews/geagea_calls_for_establishing_a_fact-finding_committee_into_civil_war_wrongdoings.

164 Hussein Abdallah and Nafes Qawas, “Franjeh, Karami question value of Geagea’s apology.” (Beirut) *Daily Star*, October 22, 2008, www.dailystar.com.lb/News/Politics/Oct/22/Franjeh-Karami-question-value-of-Geageas-apology.ashx#axzzzJppcm1p7

165 Robert Worth, “10 Years After a Mea Culpa, No Hint of a ‘Me, Too.’” *New York Times*, April 16, 2010, www.nytimes.com/2010/04/17/world/middleeast/17lebanon.html?_r=0&pagewanted=print

batant from the opposing camp, are members of Initiatives for Change and have been engaged, along with a handful of ex-combatants, in promoting reconciliation between communities.¹⁶⁶

Further, at the 2008 launch of the Palestine Declaration in Lebanon, Abbas Zaki, the PLO representative, publicly acknowledged the PLO's regret for the harm "the Palestinians have unintentionally caused . . . all through [their] stay" in Lebanon.¹⁶⁷ This public declaration culminated in the Openness and Reconciliation conference, sponsored by Phalange leader and former President Amine Gemayel.¹⁶⁸ The declaration and the conference remain controversial because they involved a limited and closed circle of Palestinian and Lebanese stakeholders; nevertheless it represents a certain degree of progress given the history of the two groups.

6.5 Reparations by Nonstate Actors

The Commentary on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law indicates that nonstate actors have similar obligations as states in situations where they hold "effective control over a certain territory and people in that territory."¹⁶⁹ As a result, nonstate actors should also be liable to repair victims for conduct amounting to serious violations of human rights.

In Lebanon, nonstate actors who were involved in hostilities have not been involved in the reparation of victims of the conflict. Instead, political parties have provided financial and other support to their own members. In 2006 the Cross Road association was formally established to provide medical and social service support as well as work placement for LF combatants who were physically disabled in the war.¹⁷⁰ Hezbollah operates a network of associations—including Al-Jarha, Al-Shaheed Charitable and Social Foundation, and Jihad al-Binaa—that cater to victims and their families. Following the 2006 war, the government's approach to compensation and reconstruction was largely overshadowed by Hezbollah's more efficient and popular Waad program.¹⁷¹ This poses serious questions as to the government's capacity and legitimacy.

Furthermore, post-2006 compensation and reconstruction efforts have exposed the chaotic approach to postwar reconstruction. "Inadequate monitoring" of a considerable number of actors involved in the process (the government, Hezbollah, and Arab or Western donors) has led to duplication,¹⁷² making the provision of equal access to compensation and reconstruction difficult.

166 Their testimonies were part of a project of UMAM Documentation and Research, "What's to be done? Lebanon's war-loaded Memory Initiative." Established to "elucidate some of the many factors that compelled Lebanese" to fight, it involved collecting testimonies from former combatants. Testimonies were published in "To the Death. A survey of the continuing experiences among fighters from Lebanon's civil war." See www.umam-dr.org/template.php?id=8

167 "Zaki apologizes for burden posed by Palestinians." (Beirut) *Daily Star*, January 8, 2008, www.dailystar.com.lb/News/Politics/Jan/08/Zaki-apologizes-for-burden-posed-by-Palestinians.ashx#axzz2bEhTu5UB

168 Walid Joumbat's Democratic Gathering, and the Democratic Left party also participated in the conference. Ibid.

169 Principle 3 (c) and Principle 15, last sentence: "While the Principles and Guidelines are drawn up on the basis of State responsibility, the issue of responsibility of non-State actors was also raised in the discussions and negotiations, notably insofar as movements or groups exercise effective control over a certain territory and people in that territory, but also with regard to business enterprises exercising economic power." In this connection reference is also made to the following provision: "In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim." It is a victim-oriented perspective that was kept in mind in extending, albeit in a modest and cautious way, the scope of the Principles and Guidelines to include the responsibility and liability of nonstate actors.

170 Phone interview with Toni Darwish, head of the Lebanese Forces Martyrs Casualties and Detainees, May 24, 2013.

171 Both the government's and Hezbollah's programs are largely funded by foreign donors. Waad is part of Jihad al-Binaa. See Zainab Yaghi, "270 Buildings for \$400 Million: The Southern Suburbs Erases the Effects of the July [War]," *As-Safir*, May 10, 2012, www.al-monitor.com/pulse/business/2012/05/270-buildings-for-400-million-th.html#ixzz2OSDR4a5E

172 Competing local and donor agendas, such as "political divisions at the municipal level," and the selectiveness of Arab donors' funding for the reconstruction of certain villages, using the "adopt a village approach," have further complicated the overall reparation scheme. IDMC, "Lebanon: displaced return amidst growing political tension" (Geneva: Internal Displacement Monitoring Centre-IDMC: December 15, 2006): 6–11. [www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E3B03B99C9DF92B1C12572450033378C/\\$file/Lebanon%20-December%202006.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E3B03B99C9DF92B1C12572450033378C/$file/Lebanon%20-December%202006.pdf)

7. Institutional Reform

The Ta'if Agreement's institutional reform plan was minimal, and the period that followed did not bring about expected transformations in the justice or security sectors. Postwar political parties have failed to provide alternatives to sectarianism. Instead, they have maintained the status quo. Some suggest that the Lebanese ultimately favor sectarian politics,¹⁷³ which are seen as providing a safety net through collective identity and affiliation; yet sectarian politics increasingly divide society.

With open-ended Syrian tutelage instigated by Ta'if¹⁷⁴ and Israel's occupation of the south until 2000, state institutions remained weak and plagued with endemic corruption. Lebanon's security and justice sectors remained largely dysfunctional, playing a repressive political role in the post-Ta'if era, particularly in terms of quelling opposition to Syrian influence. Yet, the reform of institutions that were involved in or failed to prevent human rights violations is a necessary measure to provide guarantees that such abuses will not reoccur.

7.1 Security and Justice Reform

Institutional Reforms in Ta'if

After Ta'if, warlords-turned-politicians secured seats in the executive branch as well as in the legislature, becoming de facto representatives of their religious groups. In allocating security and other administrative offices to their followers, former warlords secured loyalty to themselves instead of to government agencies, linking civil service posts to *zaims* (community leaders) and sects.

This was nothing new. Within the security sector, the military (LAF) traditionally has been viewed as a hub of Maronite power; the Internal Security Forces (ISF) of Sunni power; and General Security—although traditionally Christian-led—of Shi'a influence. As stated before, the allocation of top public positions to former warlords reinforced sectarian-based clientelism in postwar Lebanon, with state security institutions increasingly viewed as representing the biased interests of religious groups.

Yet, Ta'if had stipulated that all militias (Lebanon and non-Lebanese) be disbanded and the internal security and armed forces be strengthened. It also stipulated that the armed forces would return to their barracks once internal security forces were able to assume their security tasks.

Unfortunately, the agreement's reform plan was minimal, especially in regards to overhauling the justice sector. To civilianize Lebanon's security sector, the agreement stated that military intelligence services

173 One activist lamented, "The majority of the Lebanese people have chosen to ally themselves with one political group or the other. Communal ties have become stronger, and it is difficult to ignore their impact. This poses a serious challenge to our efforts." Abdel-Latif, Omayma. "Lebanon's Civil Society Says 'No More Silence,'" Carnegie Endowment, December 13, 2007, <http://carnegieendowment.org/sada/2008/08/13/lebanon-s-civil-society-says-no-more-silence/2uhs>

174 Ta'if stipulated that Syrian forces would assist Lebanese authorities in spreading its authority and only stipulated that Syrian forces would redeploy to the Beqaa within two years but left full withdrawal to be agreed on later by the two governments. This did not happen.

would be reorganized to serve military objectives exclusively. Finally, to enhance the judiciary's independence, Ta'if established the Constitutional Council as well as the High Judicial Council (HJC), with the latter mandated to try presidents and ministers (although only 2 out of its 10 members are elected by the judiciary).¹⁷⁵

The judiciary continues to face problems of independence, not least because Ta'if stipulated that the judges of the High Judicial Council were to be predominantly appointed by the executive and the judiciary continues to lack administrative and financial autonomy.¹⁷⁶

Furthermore, the postwar disarmament, demobilization, and reintegration (DDR) program was selective and incomplete. The government was to rehabilitate some 20,000 militia fighters in military and administrative institutions, yet Law 88 only integrated some 6,000 fighters into the ISF and the LAF,¹⁷⁷ and 2,000 more were later integrated into civil administration. Although heavy weaponry was officially handed over, several Lebanese and Palestinian factions retained their weapons, the SLA continued to operate in the south, and Hezbollah was recognized as the de facto resistance against the Israeli occupation.¹⁷⁸ While estimates of the number of militia fighters vary from 1.25 to 3 percent of the population,¹⁷⁹ the extent of reintegration is clearly modest. Expanding reintegration beyond state institutions would have given broader scope to rehabilitating fighters into civilian life and the formal economy. Unfortunately, the politicization of the program and marginalization of groups like the LF, due to their exclusion from integration into state institutions, further undermined the outcome.¹⁸⁰ As a result, militancy implicitly endured.

To further compound the situation, the international community (Arab, Western, and other donor states as well as international organizations such as the UN and EU) did not provide the financial, technical, or political support necessary to reform and develop state institutions recovering from a 15-year war.

Initiatives by the international community

The situation changed in 2004 with the passage of UN Security Council Resolution 1559. Targeting Syrian tutelage, the resolution represented the start of SC pressure on Syria, calling for the withdrawal of all foreign troops, disarming of Lebanese and non-Lebanese militias, extending the Lebanese government's control over all its territory, and holding free and fair elections.¹⁸¹ Resolution 1559 catalyzed a series of subsequent resolutions: SC resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1664 (2006), and 1757 (2007), all pertaining to the UNIIIC and the establishment of the STL. In 2006, resolution 1680 called for delineating the Lebanese-Syrian border and establishing normal diplomatic relations between the two countries. Resolution 1701 (2006) established a cessation of hostilities between Israel and Hezbollah, expanded the mandate of UNIFIL, and called for the international community to assist the Lebanese government in spreading its authority across Lebanese territories (including the south, where it had largely been absent since 1978); subsequent resolutions extended UNIFIL's mandate.

In light of this, international donors have increased their support for Lebanese state institutions since Syria's 2005 withdrawal, the targeted assassinations and car bombing since 2004, the 2006 war with Israel, the 2007 conflict with Fateh al-Islam, and the 2008 internal violence, with particular attention to reforming the LAF, ISF, and the judiciary.¹⁸² Examples of such support include the EU's Security and Rule of Law project, which produced the first comprehensive *Practical Guide for Criminal Investigation*, written by

175 Ta'if, III-B (1-3).

176 International Federation for Human Rights, "Judicial Councils reform for an Independent Judiciary. Examples from Egypt, Jordan, Lebanon, Morocco and Palestine," May 2009, 14, www.fidh.org/IMG/pdf/ConSupMag523versiona2009.pdf

177 Law 88 Pertaining to Providing the Ministry of National Defence an Upfront Credit to Cover the Expenses of Training Camps for Re-habilitating Former Militia Members. *Al-Jareeda al-Rassmiya* (Official Gazette) No. 37 (September 12, 1991), 628.

178 De Clerck, *Ex-Militia Fighters*, 2012, 24.

179 Percentages taken from De Clerck, *Ex-Militia Fighters*, 2012, 24.

180 Elizabeth Picard, *The Demobilization of the Lebanese Militias* (Oxford: Centre for Lebanese Studies, 1999) 25–26.

181 www.un.org/News/Press/docs/2004/sc8181.doc.htm

182 For a brief overview of some of the donor support provided to the judiciary, see European Union, *Support to the Reform of the Judiciary*, August 2011), 2, http://ec.europa.eu/europeaid/documents/aap/2011/af_aap_2011_lbn.pdf.

the Ministry of Justice in collaboration with the ISF;¹⁸³ EU funding for training projects and the automation of courts;¹⁸⁴ UK support in forming the ISF's new Human Rights Department; and formulation of the first ISF Code of Conduct.¹⁸⁵ The 2012 launch of the ISF's first women-only police unit represents important progress in promoting trust in the institution and encouraging gender sensitivity.

7.2 The Need for Comprehensive Institutional Reform

While Ta'if sought to address the major causes of the war and provide for urgent institutional reform, it failed to provide an authoritative plan to transform the postwar period and reconcile Lebanese communities. Ta'if recognized that abolishing political sectarianism should be "a fundamental national objective;" Parliament was to set up a "national council" to formulate a "phased plan" to abolish sectarianism.¹⁸⁶ In the meantime, Ta'if proposed an interim period whereby jobs in the public sector would be allocated according to merit, although this excluded "top-level jobs . . . which shall be shared equally by Christians and Muslims without allocating any particular job to any sect."¹⁸⁷ Importantly, the agreement stipulated that the mention of sect and denomination on a person's national identity card should be abolished.

To address the prewar grievance of disproportionate power being held by Christians, executive power was transferred from the office of the president (traditionally held by a Maronite Christian) to the Council of Ministers (and notably the Prime Minister, who by custom is Sunni). It also established parliamentary *mounassafa* (parity) between Christians and Muslims until an election law "free from sectarian restrictions" is adopted and until a Senate representing Lebanon's sectarian groups is formed (to deal only with "crucial" matters).¹⁸⁸

Nevertheless, Ta'if suffered from inherent contradictions because it maintained the problematic formula of religious/sectarian power sharing. Equally critically, it did not provide a timeline for reforms.¹⁸⁹ To date, no nonsectarian election law has been adopted, no senate has been formed, and no plan to phase out sectarianism is in place. While top-level jobs have been allocated equally between Christians and Muslims, they are allocated to specific sects, and the provision on public-sector jobs has not been adopted.

Although Ta'if recognized the essential role of education in developing national identity and stipulated a curricula review and the development of a unified history textbook, nothing has materialized to date.

Moreover, Ta'if had recognized that "culturally, socially, and economically balanced development is a mainstay of the state's unity and of the system's stability."¹⁹⁰ To address prewar grievances of social injustice, it provided for strengthening the "central authority" to implement "a comprehensive and unified development plan capable of developing the provinces economically and socially."¹⁹¹ Ta'if also stipulated administrative decentralization to strengthen the capabilities of local authorities in achieving development. However, decentralization has not been adopted, local capabilities remain marginal, and cases of stark inequitable regional development remain a regular feature of postwar Lebanon.

7.3 Repercussions of Limited Reforms

The weakness of Lebanon's central institutions and the prevalence of sectarian politics have severely undermined Lebanon's security, even in the postwar period. Repeated clashes have exposed the limita-

183 www.ruleoflaw-lebanon.info/

184 EU, *Support*, 2011.

185 The Code of Conduct was written with the assistance of the Office of the UN High Commissioner for Human Rights. "A code of conduct to help protect human rights in Lebanon," January 24, 2012, www.ohchr.org/EN/NewsEvents/Pages/ACodeofConducttohelpprotectHRLebanon.aspx

186 Ta'if, II-G.

187 *Ibid.*, II-G (a).

188 *Ibid.*, II-A (5-7).

189 In 2009, and only after much pressure from civil society, the Lebanese finally achieved their right to remove the sect classification from identity cards.

190 *Ibid.*, I-F.

191 *Ibid.*, III-A (1-5).

tions of Lebanon's transition—most notably its partial DDR program. Predictably, Hezbollah's role as the resistance and its persistent weapons arsenal has led to opposing factions justifying their own need to bear arms, as has been seen by Sheikh Ahmad Assir's call for his supporters to take up arms.¹⁹²

Fuelled by the civil war in Syria, the regional struggle for power, and domestic polarization, the warring factions in Tripoli have been involved in periodic rounds of political violence since 2011. The May 2013 clashes even forced the LAF to withdraw temporarily from the area. Other examples include the May 2008 Beirut clashes between the two main Lebanese factions (March 14 and March 8) and the Arsal (Beqaa) attack on the LAF. It is not unusual for such events to revive grievances of the war.

Critically, Lebanese authorities have largely failed to investigate and prosecute individuals involved in violence, such as those of May 2008, those related to the spill-over of the Syrian war, as well as those related to the kidnapping "spree" that has spread across the country.¹⁹³

In this context, the composition of the LAF is inherently fragile. Without necessary political coverage from Lebanon's openly sectarian leadership, the army has been unable to act decisively, intervene effectively, or disarm factions. The state's legitimacy, authority, and monopoly over the use of force are increasingly challenged; unsurprisingly, vigilantism (often in the name of self-defense) is on the rise.

192 Assir, a Lebanese Sunni Sheikh (cleric) of the Bilal bin-Rabah Mosque in Sidon (south of Lebanon), is an outspoken opponent of Hezbollah's weapons and role as resistance, and an outspoken opponent of Iranian influence in Lebanon and the region. He illustrates domestic and regional Sunni-Shia rivalry and has led in June 2013 to an armed confrontation between his supporters and the LAF (leading to the death of 16 LAF members and some 20 gunmen). "Army Storms Assir's Security Zone, Cleric Disappears after 16 Troops Martyred," *Naharnet*, June 24, 2013, www.naharnet.com/stories/en/87984

193 Kidnappings have been linked to family and clan disputes, profit motives, and politics. The Lebanese Miqdad clan, for example, kidnapped some 20 Syrians and a Turkish businessman as leverage to release a family member that had disappeared in the Syrian war. Also, as mediation to liberate nine Lebanese Shia pilgrims kidnapped by a rebel group in the Syrian town of Azzaz (on the Turkish border) seemed to reach a dead end, victims' families allegedly abducted two Turkish pilots in August 2013 to pressure authorities to exert their influence in releasing the pilgrims. (Turkey is considered to hold influence on FSA and other rebel groups on its border.) In November 2013, a Palestino-Qatari mediation led to the release of the pilgrims; in exchange, Syrian authorities released 61 female detainees; the 2 pilots were also released in Lebanon. Although 13 men were charged for the kidnapping of the Turkish pilots, three men held in custody were released on bail; no prosecution is in sight. "Lawyers want warrants retracted in kidnapped pilots' case." (Beirut) *Daily Star*, October 22, 2013, www.dailystar.com.lb/News/Lebanon-News/2013/Oct-22/235393-lawyers-want-warrants-retracted-in-kidnapped-pilots-case.ashx#axzzzIzEYxAT. Human Rights Watch, "Lebanon: Tit-for-Tat Border Kidnappings. Civilians Describe Experiences; Meager Government Response," May 2, 2013, www.hrw.org/print/news/2013/05/02/lebanon-tit-tat-border-kidnappings

8. Conclusion

In the more than two decades since the end of the war and the signing of the Ta'if Agreement, Lebanon has yet to mend the multifaceted injuries of its past. Successive governments have seriously underestimated the value of accountability in contributing to stability and rule of law in the country. Above all, Lebanon's population has paid a heavy price for that inaction, as have government institutions.

There has been a double standard in efforts to deal with the country's complex past, as postwar arrangements placed little value on the rights and suffering of ordinary people in comparison with the rights and privileges of those in power.¹⁹⁴ Victims of mass violence have not received adequate remedies for their sacrifices, and antagonism remains prevalent among different Lebanese communities. This has led to the tainting of the credibility and legitimacy of Lebanese state institutions and the further segregation of Lebanese society. The regional dimension of the violence has also exacerbated this antagonism, leading to further polarization.

As discussed, the postwar transition in Lebanon has been characterized by selective justice and marginalization of victims, minimal truth-seeking efforts, partial reparation tainted by corruption, and incomplete institutional reform leading to weak guarantees of nonrepetition.

The amnesty laws and subsequent failures to prosecute individuals involved in waves of violence have reinforced and normalized a culture of impunity in Lebanon.¹⁹⁵ The country's postwar arrangements chose immediate peace (or cessation of hostilities) at the expense of justice. However, successive amnesties have not advanced sustainable peace or reconciliation.

Victims' rights have been treated unequally and most often sacrificed to benefit political respite, leading to a general sentiment of injustice in the population. In a protracted conflict with numerous warring parties, there is hardly ever a point of full satisfaction for all parties involved.¹⁹⁶ As a result, legacies of the conflict remain, creating pockets of resurgence. Instead of relying on state institutions to seek accountability, local stakeholders have taken matters into their own hands. Increased insecurity and a delegitimization of state institutions are direct consequences of a weak judiciary.

Looking back, Lebanon has not made genuine efforts to acknowledge the legacy of the war. The silence on the fate of the missing is symptomatic of this failure. Lebanese victims and society have a right to know the truth about what happened—a right that is also a condition for national reconciliation.

¹⁹⁴ See the position of Wadad Halwani and Nizar Saghie in Kanafani-Zahar, *Liban*, 2011, 94–95.

¹⁹⁵ That has been exacerbated by the international community's failure to hold Israel accountable for the material damage, population displacement, and other grave violations affecting the Lebanese civilian population.

¹⁹⁶ The plight of the SLA and their families is one illustration. Lebanese journalist Marcel Ghanem, in his *Kalam al-Nass* talk show of March 14, 2013, shed light on the legal difficulties and stigmatization faced by the wives and children of SLA members. These difficulties particularly affect children born in Israel who do not have national identity papers recognized by Lebanese authorities, thereby leading to their exclusion from basic public services like education.

Lebanon's institutional framework is still grounded in clientelism, as public posts continue to be used for partisan and sectarian politics. Mainly for this reason, the reparation scheme established by the government has been partial and inefficient. As evidenced by the implementation of the MoD's return project, political leaders have accumulated personal interests from state institutions, including those mandated with reparation—thereby notably strengthening their political power base, normalizing corruption, and reinforcing sectarianism as the backbone of state-society relations.¹⁹⁷

Shortcomings in security and justice reform are also stark. The Lebanese security system has yet to provide an impartial, transparent, and efficient service to the population; Lebanese and non-Lebanese groups remain armed, the ISF remains incapable of replacing the LAF, and the court system has failed to operate impartially or independently. Many have lamented the judiciary's subordination to politicians and have noted that its "independence . . . is a pure utopia."¹⁹⁸

Lebanon is yet again at a crossroad and has to make decisions in favor of sustainable peace. In any context, instability in a neighboring country risks spillover into another, but that risk is heightened in a situation in which national leaders and systems do not fully represent the nation. Justice and peace can no longer be construed as mutually exclusive; sustainable peace is anchored to—and dependent on—meaningful accountability.

197 Elizabeth Picard notes that the new political leaders were concerned with "victory for their communal group's interests" rather than national consensus. *Lebanon*, 2002, 167.

198 Quote from former High Judicial Council President Nasri Lahoud, in Maya Mansour and Carlos Daoud. *Lebanon: The Independence and Impartiality of the Judiciary* (Copenhagen: Euro-Mediterranean Human Rights Network, February 2010) 30, www.euromedrights.org/files/emhrn-publications/Justice_report_Liban_ENG_for_web_202742898.pdf. National and international NGOs have also drawn attention to these concerns. See for example Human Rights Watch, "Lebanon Country Summary," January 2012, www.hrw.org/sites/default/files/related_material/lebanon_2012.pdf

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ICTJ New York
5 Hanover Square, 24th Fl.
New York, NY 10004
Tel +1 917 637 3800
Fax +1 917 637 3900
www.ictj.org

ICTJ Beirut
Park Tower Building, 3rd Floor
Khalil Basha Street
Sanayeh, Beirut
Tel +961 1 738 044